



ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,
1883.

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OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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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 5th January, 1883.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, E.A., 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 Maharájâ Sir Jotíndra Mohan Tagore Bahádur, K.C.S.I.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble Rájâ Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Áhmad Khán Bahádur, C.S.I.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

The Hon'ble R. Miller.

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT introduced the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives. He said that, as he found that the Bill had not been circulated among hon'ble members before last Wednesday, he proposed to postpone until the next meeting the Motion that the Bill be referred to a Select Committee; but he should like, with the permission of the Council, to take this opportunity of explaining shortly the main provisions of the Bill. The Bill was divided into ten chapters. The first chapter contained the usual preliminary matter. It exempted from the operation of the Act Government establishments, and it contained a clause saying the

operation of the Indian Arms Act. As he had said on a previous occasion, the object of the Arms Act and the object of the present Bill were entirely different, and it was desired to keep the measures as distinct from each other as possible; and, therefore, it was provided that nothing in this measure should affect anything contained in the Arms Act. Then the Bill fixed the date on which the measure was to come into operation. It was to come into operation on a date to be fixed by notification; but power was given to make, at any time before that date, such rules as might be required for its actual working, subject to the proviso that the rules were not to come into effect until the Act itself came into effect.

Chapter II laid down the general law as to the manufacture and keeping of explosives, and prescribed the places at which they might be manufactured or kept. It was to be read subject to certain exceptions in the supplemental chapter (X).

Chapter III dealt with the licensing and registration of factories and magazines, and the registration and regulation of registered places, and conferred powers on the Local Government to make rules on all necessary matters. It would be observed that there were three classes of places to which this chapter applied, namely, factories, magazines and registered places. A factory under the Act was a place licensed for the manufacture of explosives; a magazine was a place licensed for keeping explosives; and a registered place was a place registered for the keeping of explosives. The difference between a magazine and a registered place was this. Magazines were places which were devoted exclusively to the keeping of explosives. Registered places were places like general stores or shops, which were not devoted exclusively to the keeping of explosives, but in which explosives might be kept.

This chapter would, for the present, have a very limited operation. The chapter did not apply to Government establishments, and it appeared, from returns which had been recently obtained from the Local Governments, that, if these establishments were eliminated, the number of places in British India in which explosives were manufactured was trifling. The chapter would, indeed, apply to places in which fireworks were made or kept, but he thought it right to say that there was no intention on the part of Government to interfere, by means of vexatious restrictions, with one of the most popular amusements in India. The object of the Act was simply to protect the public against danger, and, whenever it was found that the existing practice was not attended with any appreciable risk of danger to the public, it would, he presumed, not be interfered with.

Chapter IV related to the sale of explosives. It prohibited explosive being hawked, sold or exposed for sale on highways or public places; it prohibited the sale of an explosive to a child under thirteen; and it prescribed the manner in which an explosive exposed for sale or sold was to be packed and labelled.

Next, Chapter V treated of matters relating to the conveyance of explosives; it empowered the Governor General in Council to make rules as to the packing of explosives; it empowered the Local Governments to make rules to regulate the conveyance, loading, unloading and keeping of explosives within ports, and it directed Railway-administrations to make rules for their own railways. Moreover, it gave supplementary powers to the Governor General in Council to make rules for matters not provided for by the rules framed under the powers last mentioned.

Chapter VI regulated the importation of certain explosives, and prohibited their importation except under a license. The Governor General in Council was given power to regulate all matters connected with the grant of these licenses, and the officers of Sea Customs were given similar powers with regard to these explosives as they had with regard to any article on the importation of which restrictions were placed by the law for the time being relating to Sea Customs.

Then came Chapter VII, which conferred special powers on the Governor General in Council to regulate or prohibit all dealing with any explosives which, in the opinion of the Governor General in Council, were specially dangerous to the public safety.

Chapter VIII was headed "Government Supervision," and it provided for the appointment, and defined the powers, of Government Inspectors and other similar officers, giving them powers of search and detention in certain cases. It also provided for the giving of notices of accidents arising from explosion or fire in or about any factory, magazine or other place where explosives might happen to be kept.

Chapter IX dealt with penalties and legal proceedings. The penalties for breaches of the provisions of the Act and the rules made under it were restricted to forfeitures and fines, and the only instance in which the Act prescribed imprisonment as a punishment was that of resistance to a public officer.

A supplemental chapter (X) provided for several miscellaneous matters, of which there was only one to which he need draw special attention. Those who had studied the Bill would have seen that, although it appeared to be somewhat

long and complicated, it was, in fact, a skeleton measure. What it substantially did was to confer upon different authorities power to make rules relating to a number of different matters. The Government was obliged to adopt this form of legislation in consequence of the great variety of places and circumstances to which the Act would apply, and the necessity for making the Act elastic in order to make it workable. The result was, that the sting of the measure would lie, not in the Act itself, but in the rules made under the Act; and, that being so, they were bound to provide the same kind of opportunity for criticising the rules made under the Act as was given for criticising the Act itself. He had endeavoured to do this by section 75 of the Bill, which ran as follows:—

“ Every authority having power to make rules under any section of this Act other than section fifteen or section twenty-nine shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

“ The publication shall be made, in the case of rules made by the Governor General in Council, in such manner as may, in his opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner.

“ There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.”

It would be seen that this section gave general effect to the policy to which he had referred on a recent occasion. He need add no more than this, that, as the Bill was simply an empowering Bill, and as it was important that there should be no unnecessary delay in making the rules which might be found necessary, he should probably ask the Council to take the Bill into consideration and pass it before the end of the Calcutta session. Therefore he hoped that those who were interested in the measure would give the Council the benefit of their criticisms and suggestions at as early a date as possible.

CHUTIÁ NÁGPUR ENCUMBERED ESTATES ACT, 1876, AMENDMENT BILL.

The Hon'ble SIR STEUART BAYLEY introduced the Bill to amend the Chutiá Nágpur Encumbered Estates Act, 1876, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert and Reynolds and the Mover. He said that he had explained the grounds upon which this Bill was rendered necessary at a previous meeting, and, as its provisions were very simple, he thought he need not take up the time of the Council any further by going over the same ground again.

The Motion was put and agreed to.

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The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. CROSTHWAITÉ presented the further Report of the Select Committee on the Bill to make better provision for Local Self-Government in the Central Provinces.

The Council adjourned to Friday, the 12th January, 1883.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

CALCUTTA;

The 5th January, 1883. }

*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 12th January, 1883.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, R.A., 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 Mahárájá Sir Jotindra Mohan Tagore Bahádur, K.C.S.I.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble Rájá Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Áhmad Khán Bahádur, C.S.I.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

The Hon'ble R. Miller.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. CROSTHWAITE moved that the Reports of the Select Committee on the Bill to make better provision for local self-government in the Central Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that to clause (a), section 34 of the Bill, the following words be added, namely :—

“ and as to the number of the representative members for each circle or group of circles, and as to the number of the representatives of the mercantile classes or professions, to be elected or appointed to each local board or district council ;”

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He said that the amendment was merely a verbal one. The Committee had thought that the section as worded sufficiently provided for the determination of the number of members for each circle or group, and for the number of representatives of the mercantile classes, by the Chief Commissioner. But, as there seemed to be a little doubt on the subject, they thought it better to make the matter clear by adding the words which he had read to clause (a) of section 34.

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITÉ also moved that the Bill, as amended, be passed. He said :—

“In asking the Council to pass this Bill, I think it necessary to take the opportunity of explaining the plan and the principles on which it has been framed more fully than I have yet done, with the object of making the intention of those who have framed the law clear and intelligible to those who will have to work it. I wish to premise my remarks by reminding the Council and the public that this Bill is intended for the Central Provinces only; that it is not intended to be a model for other Governments to follow; and that, in framing it, we have looked exclusively to the condition and needs of the Provinces to which it applies.

“The first thing we had to settle was the constitution of the boards and councils. We began by recognising the principle that the village is the unit of all administration in this part of India. Whether in the management of the revenue, the police or education, nothing much can be done unless there is an organisation, minute and spreading enough to reach and deal with each individual village. Under the ancient system of the country, each village managed its own affairs; and although there is little trace in the Central Provinces—which, compared with other parts of India, are distinctly a new country—of those complicated village-communities which still thrive in Northern India, yet the system of village-management was, until a comparatively recent date, complete. Every village had its headman or *patél*, who, without having any greater rights in the land than the other villagers, acted as their guide, agent and leader. By the Mahrátha revenue-system, under which the village-community was jointly responsible for the whole revenue, and all details of assessment were left to the villagers themselves, the people were forced to act together under their headmen, and to arrange their own affairs.

“During the later period of the Mahrátha power, and in the earlier years of British rule, the headman became a contractor and farmer of the revenue. Still he remained a distinct power in the village, and retained somewhat of his official

character. Under the terms of our last settlements, he has, in most cases, become the owner of the land; and, if it were not for the provisions of the Central Provinces Revenue Act, which was passed in 1881, his position and duties as headman would be in danger of becoming merged and lost in his newer and larger character of landowner.

“The provisions of the Revenue Act enable the Government to select in every village one of the resident landowners, or, if the landowners are absentees, some suitable resident, to be the mukaddam, as he has been called in that Act, or headman of the village; and this mukaddam, both in the manner of this appointment and in the duties required of him, represents the patel of forty or fifty years ago as nearly as the change in his relations to the villagers, caused by the creation of a proprietary right in the soil, will permit.

“Believing that the scheme of self-government will have much greater vitality if it can be founded on some indigenous institution, which the people can understand and are accustomed to, we decided on taking the village and the mukaddam or headman as the basis of our scheme and building up from this foundation.

“The nomination of the mukaddams is a matter outside this Bill, and I presume that, under the provisions of the Revenue Act, each village already has its mukaddam. The first step, then, for the enforcement of the present measure, is to arrange the villages into circles, the size of which will depend on a variety of circumstances, and may be varied from time to time; the next to choose, or to allow the mukaddams themselves to choose, a representative mukaddam for each circle. These representative mukaddams will form the hearts of the local boards.

“By this plan, which, I may perhaps be allowed to say, has been adopted at my suggestion, several advantages are gained. First, we secure to the board the advantage of local knowledge of all parts of the area under its jurisdiction; secondly, without directly choosing the electors, we obtain a manageable constituency or electoral body, to which we may be able to leave the choice of members; thirdly, we get, as members of the board, the men who can best aid us in the execution of small local works; and fourthly, we connect the boards intimately with every village, and secure the presence in every village of a person who is represented on the board, who may look forward to becoming a member of the board, and who may fairly be expected to aid the board in the performance of its duties, and in the course of time will, I hope, come to regard himself as part and parcel of the governing body of the country.

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“To this scheme it has been objected that the mukaddam is not a representative of the villagers, who are mostly his tenants, and whose interests are not identical with his.

“To this, I reply that the cesses which make up the greater part of the fund at the disposal of the local boards and district councils are paid by the owners of land, and that it is right, therefore, that those owners should be largely represented. Secondly, I do not think that, in the matter of the duties which the local boards will have to administer, the interests of the two classes—landlords and tenants—are divergent. Anything which tends generally to the wealth of the country benefits both classes. In educational matters, the landlords are perhaps inclined to be retrogressive, but hardly more so than the peasantry themselves; and, as I will show hereafter, we have taken precautions against any tendency to neglect primary education. Lastly, it is practically impossible at present to have a system of election under which each village should elect its own representative. As it is, I believe we are going quite as far as anything that has been done in England in the way of making the local boards representative bodies: and at present, while I think that it is in every way a good thing to take this step, I think also it is inexpedient to go further. When the people are ready for more, they will make themselves heard.

“After the appointment or the election of the representative mukaddams, the next step is to select members to represent the professional, mercantile or trading classes. The number of such representatives must vary with the character of the population in each locality. We have, therefore, left it to the Chief Commissioner to decide how many of these representatives there shall be.

“The method of election or appointment is also left to the Local Administration. I conceive that it will probably be convenient at first to appoint some of the leading chaudhris or trade-masters, and that hereafter the election of the representatives may be entrusted to them.

“It has been represented to the Select Committee by my friend the Hon'ble Rájá Siva Prasád that clause (b) of section 4 is so worded as to exclude traders resident within a municipal area from sitting on local boards. It will be noticed that this criticism does not apply to clause (b) of section 5. On a district council, traders who reside within municipalities may sit. The intention in excluding municipal residents from local boards is to prevent the predominance of urban interests and to maintain the rural character of the boards. The head-quarters of a sub-division are generally at or within a municipality, and the largest bankers generally reside there. If these bankers were eligible, they would certainly be elected, and the tendency would be to

give an undue influence to the residents at the head-quarters, which, I think, has been a very common fault in the existing committees.

“The larger traders can, whenever it is advisable, be nominated by the Government.

“The third element in the board is the Government nominees. In clause (c), section 4, power is given to the Chief Commissioner to appoint members equal in number to one-third of the board. This power has been taken for several reasons. In the first place, it appears the best method of dealing with the question of official members. It leaves considerable discretion to the Chief Commissioner, who may appoint no official members, or may appoint as many as one-third of the whole board. Secondly, it enables the Chief Commissioner to appoint persons of eminence who may not be eligible or may not have been elected under the other clauses—a large non-resident land-owner for example. Thirdly, it will enable the Chief Commissioner to secure to some extent the representation of an influential minority, say (to take a case not probable in the Central Provinces) of a large body of European planters.

“With what I have already said, there will be no difficulty in understanding the constitution of the district councils, as laid down in section 6 of the Bill. They are intended to represent and to unite the local boards, and to be controlling and consultative, rather than executive bodies, which, while leaving most of the executive work to the local boards, will have the power of executing under their own immediate supervision large and important works affecting the whole district. The relation of the local boards to the district councils is one of subordination, especially in financial matters. We are of opinion that no other relation is possible at present, but no doubt every care will be taken by the district councils to refrain from unnecessary interference and to leave local boards to manage their own affairs. As the district council will not meet very frequently, and as a majority of two-thirds of the whole council is required in order to overrule a board, there need not be much apprehension of constant or vexatious meddling.

“I apprehend that the council and the boards will work very much through committees. To attain success, this appears to be the best plan. There will be a financial committee, an engineering committee and a committee for education.

“We have found in the Central Provinces a system of this kind already in force for the management of schools, and at the request of my friend Mr. Colin Browning, the very able Director of Education in the Central Provinces,

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who in a quiet, unostentatious manner has done very signal service to the cause of education in that part of India, we have recognised the existing school committees and given them a place in the Bill (section 16). As the history of these committees shows what has been done, and suggests what can be done, by working through the people themselves, I will read what Mr. Browning says about them :—

“ Every Government school, of whatever kind,—whether middle class or primary,—has a school committee. Each school committee consists of not less than four members. They are usually nominated by the Deputy Commissioner. The school committee members are asked to visit their school once a month collectively, and one individual member, chosen by rotation, visits, or should visit, the school weekly. The school committee members sometimes examine the boys ; but the members are often illiterate and unable to examine the scholars. Still, they see those that are present, inquire regarding absent boys, settle matters of discipline, and arrange within certain limits what rate of fee scholars shall pay, and what boys shall be free scholars. The school committees are especially useful in providing suitable accommodation for their schools and in repairing school-houses. Several schools have adopted a certain uniform. This uniform the school committees give to the poorer boys at their own expense. School committees are indispensable for the proper conduct of schools. They not only represent our wishes to the people, but the wishes of the people to us. It is often by their influence that many scholars attend school.”

“ Mr. Browning adds that the great use of school committees is undeniable. I need only add that they are entirely unpaid, and that the number of gentlemen serving on these committees is between three and four thousand. This is certainly a fact that affords great encouragement to those interested in the success of the present measure.

“ Turning now to the conduct of business, it will be seen that the election of a chairman has, as we explained in our former report, been left to the members of the local bodies. The Hon'ble Rájá Siva Prasád (of whose valuable advice we have lately had the advantage) urged the Select Committee to leave the boards and councils free to elect an outsider to the chair. There may, doubtless, be advantages in this plan ; but I think the result would be this, that the election of the District Officer being possible, the boards would naturally cling to him, and we should have much trouble in getting them to exert their own powers and to walk alone. I do not think this would be a fair way of working the experiment at the outset.

“ Under the Bill as it stands, there is nothing to prevent a weak board, mistrustful of its own powers, from asking the Government to nominate an official whom it may appoint as its chairman. But the strain is not put upon it of passing over or refusing to elect an influential official, who, if eligible,

would certainly be proposed for election. The way in which the Bill will work is not very different from the plan which Sir A. Lyall proposes to follow in the North-West. He proposes to let the members of the board meet and decide for themselves whether they will elect their own chairman from among themselves, or leave the appointment to the Government. In the latter case, the District Officer will ordinarily be appointed.

“ The control sections of the Bill are perhaps the only part of the measure which has evoked any hostile criticism. They are thought by some writers in the public press to be too strong and to be inconsistent with the freedom or independence of local bodies.

“ It is said by one writer that ‘ the local boards and district councils will thus be absolutely at the mercy of the Deputy Commissioner. It will be impossible for them to do anything against his wishes.’

“ I do not think that the gentleman who brought this accusation could have understood this portion of the Bill. The Deputy Commissioner has a very limited power of interference.

“ He can object to an estimate ; but the Commissioner has to decide on his objection, and will doubtless take care to let the board or council be heard before coming to a decision. He can inspect works and call for reports, but no local body which is conscientiously doing its duty need fear enquiry. He can suspend the execution of an order or resolution, if he thinks anything is being done to cause injury or annoyance or lead to a breach of the peace, and in very extraordinary emergencies he can step in and execute a work which would properly belong to the board or council. But these powers can only be exercised subject to the check of immediate report to the Commissioner, and in some cases to the Chief Commissioner.

“ The larger powers of providing for the performance of a duty in respect of which a board or council has made default can only be exercised by the Chief Commissioner ; while the extreme measure of suspending a council or board in case of incompetency, default or abuse of powers can only be exercised with the approval of the Governor General in Council.

“ I think, then, that such criticisms as those I have quoted are unfair, and show the inability of the writer to understand that impatience of reasonable and constitutional control is more likely to wreck the policy of extending self-government than any official interference.

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“Your Excellency has already explained to the public—I think in answering an address at Lahore—that the powers of control proposed to be taken by the Government are no greater than those retained in similar matters in England. And to this it has been replied that there is public opinion in England, and that the people there are strong enough to resist official or officious interference. It is, no doubt, true that there is more danger of undue official interference in India; but, at the same time, the very weakness of the people and their want of independence renders control more necessary. And it must not be forgotten that, if there is not much strength as yet in public opinion, there is, vested in the Local Administration and in your Lordship's Government, a powerful control over the district officials which will, no doubt, secure a discreet and moderate use of the law.

“It must be remembered that the funds which are to be entrusted to these local bodies will not consist merely of local rates, but will be supplemented very largely from the Provincial revenues—in other words, from the proceeds of general taxation. It must be recollected, also, that their duties are of such a nature that the due performance of them is necessary for the wealth and prosperity of the whole country. Control, therefore, is essential; and in the provisions of this Bill I think we have safely steered between the danger of encouraging a fretting constant meddling that would degrade and disgust the boards, and that of entire abstinence from interference which would leave inexperienced boards to destroy themselves.

“As to the duties of district councils and boards, section 9 is sufficiently explicit. It has been the desire of the Select Committee to follow the wishes of the Government by giving to the boards every work on which they can be fitly employed; and, if sufficient funds are forthcoming, I do not think the energies of our boards will be allowed to rust for lack of work. I have only to notice, in respect of the power of exception reserved to the Chief Commissioner by section 9, that this power is not given with the object of allowing him to interfere from time to time by taking special works out of the hands of the local bodies, but in order that works like railways, large provincial roads, great irrigation works and the like, which cannot profitably be administered by local authorities, may be retained under the immediate management of Government.

“And as to this matter of the duties of the boards, I anticipate that, when the officers in charge of districts realize the nature of the organization which is sought to be established and kept alive by the provisions of the measure now before the Council, they will not fail to perceive the advantage of utilizing the local boards, and the individual members of them, in many ways not laid down

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in the law, and quite outside of the scope of this Bill. They will seek from them information regarding the state of the people, and the agricultural conditions of the country. They will use them as mediums for explaining and making known to the people the wishes and intentions of the Government, and they will go to them for aid in all matters of local administration, including the revenue and the police. The organization which we contemplate, reaching, as it will, to every village, will, I have every hope, be found adapted to all these ends. In fact, I anticipate that, even if from want of money the energy of the board may not be fully occupied in the execution of works of improvement, it may still find ample and useful employment in many ways, and that there need be no fear of the new institutions expiring from want of occupation.

"It remains for me to say a few words as to the financial part of the scheme and the sources of supply enumerated in section 23 of the Bill. As I have already suggested, the greatest difficulty in the way of working the scheme will be the scanty supply of money. The school-cess of the whole Province is less than a lakh and a half of rupees, the road-cess is no greater; and these two cesses will form the bulk of the funds which the district councils can absolutely call their own. The area of the Provinces, excluding feudatory States, is roughly 8½,000 square miles, and the population is about 10 millions. The councils, must, therefore, depend in a great measure on the contributions made to the fund by the Administration. These contributions can be made, and no doubt will be made, for fixed periods of years, so that the councils will be able to adopt something better than a hand-to-mouth policy. But they cannot be of a very large amount, and the danger that I apprehend is not that the members of the boards will neglect their duties, not that they will be controlled into a state of apathy by official meddling; but that they will find themselves helpless for want of money. I hope that this may be remedied in part by the generosity of private individuals, who wish to benefit their fellow countrymen; and who will work through the agency of the boards. We have a good deal of money in the Central Provinces, and the spirit to use it well is not wanting. At the present moment, the municipality of Jabalpur is constructing a very fine work for the supply of water to the city and cantonment, and that they have been able to do this is entirely due to the extraordinary munificence of Bhaq Seth Gokul Dass, a well-known banker, who, when I was Commissioner of Jabalpur, came forward to aid us in carrying out this noble work. I am quite sure that his example will be followed by others.

"The various sources of income, which are enumerated in section 23, we have formed into a fund, in the disposal of which we have left the councils unfettered, except in one matter. It has been provided that the amount

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expended from the district fund in any financial year on primary education shall not be less than the estimated net proceeds for that year of the rates levied for the maintenance of schools.

“The school-cess is levied on the land, and it was intended for, and in the Central Provinces has always been duly appropriated to, rural primary schools.

“So far as regards the practice hitherto followed, this restriction on the discretion of the councils will make no change. But, on the representation of Mr. Browning, and in view of the repeated declarations made by the Secretary of State and the Government of India as to the appropriation of this cess, we have thought it best to provide, by law, against its application to other purposes.

“The only other matter which I need notice is in connection with section 34, which empowers the Chief Commissioner to make rules for a great many matters, and I have no doubt it will be thought by some that many of these matters are very important, and ought not to have been left to rules. It is, however, of the first importance in a measure of this kind,—especially as it is in some ways a new and experimental measure,—to leave great discretion to the authorities who have the working of it, in order that they may, by practice, arrive at the best methods of giving it effect.

“Of this I am quite sure, that every endeavour will be made in framing the rules to follow the spirit of Your Lordship’s policy, and that the Government may confidently rely on the loyal co-operation of every officer connected with the Central Provinces Administration in giving effect to the law.

“In conclusion, I have only to ask the Council to pass the Bill, and to express my earnest hope that it may benefit the people of the Central Provinces, and, if possible, increase that loyalty to the British Government for which they are now conspicuous.”

The Hon’ble SAYYAD AHMAD KHAN said :—“ My Lord, I intend to vote in favour of the passing of this Bill, but, in explanation of my vote, I am anxious, with your Lordship’s permission, to make a few observations on some features of this Bill. My Lord, I am one of those who believe that the success of local self-government will, in a great measure, depend upon the amount of independent power to be conferred upon the local boards and the district councils. Indeed, I am convinced that it may be safely laid down as a general rule, that the greater the powers conferred upon these bodies the greater will be the cordiality, earnestness and industry with which the work will be performed by the members. Holding such views, it would

be only natural for me to dissent from such provisions in the Bill as are intended to authorise interference on the part of the district authorities. But, my Lord, I wish to offer no opposition, as I am aware that this Bill relates only to the Central Provinces, that those Provinces are among the least advanced parts of British India, and I feel that in this circumstance is to be found justification for exceptional treatment. There is another important matter in this Bill to which I assent with a similar qualification. I refer to the provisions in this Bill regarding the constitution of local boards and district councils. Upon this question, which appears to me to be one of the most important in the entire scheme of local self-government, there appear to be two prevalent opinions. Some people think that the local boards and the district councils should consist of entirely separate sets of members; the other opinion is the one which has been adopted in this Bill in section 6, clause (a), which provides that the district council shall consist of 'representatives of groups of circles within the district, one or more for each group, being a member or members of, and elected by, the local board for that group.' I understand the effect of this provision to be, that, as far as clause (a) is concerned, none but members of local boards are to be eligible to the district councils. Now, my Lord, my knowledge of the people leads me to believe that, in such parts of India as the North-Western Provinces and Oudh, persons of social standing and respectability would not be willing to serve on local boards subject to the authority and control of the district council. And, if the local boards are to be the only bodies from which the representatives of the landed interest are to be elected for the district councils, there will be a great risk of losing the services of many men whose presence might prove of great use and valuable assistance in the work entrusted to the district councils. My own feeling is, that perhaps the best and safest rule for the constitution of the district councils would be to provide that all the members of the local boards should also be members of the district councils; in other words, to remove the distinction between the positions of members of the local boards and members of the district councils. Such a course would attract the best class of the people to serve both on the local boards and the district councils; the local boards would discharge their duties as if they were sub-committees of the district councils; every member of the local board would have a voice in the deliberations of the district council itself; and there would be no room for those petty jealousies which will attend the election by the local board of a member for the district council. If such a provision as I have ventured to suggest were adopted, the district councils would of course be numerically larger than under the provisions of the Bill now before us; but I do not think the district councils would be too bulky for working purposes; and I am convinced that the chance of securing well-attended meetings will

certainly be greater in proportion to the number of which the district council is composed. My Lord, I should have considered it my duty to have dwelt more fully on these considerations had I been prepared to oppose any provision in this Bill. But, as I have already said, I regard the Central Provinces as requiring an exceptional treatment, and in a matter of this kind it is no doubt safer to rely upon the advice of the local authorities. I am all the more unwilling to offer any definite opposition to the Bill, as under its provisions the landed interest is to be represented in the local boards by mukaddams, or executive headmen of villages, appointed under the Central Provinces Revenue Act of 1881. Such men will, no doubt, be persons of position and influence, and the remarks which I have ventured to make have, perhaps, not the same force in regard to the Central Provinces as they might have had if the Bill now before the Council related to my part of the country.

“But, my Lord, far more important than any of the points I have noticed are the provisions contained in clause (c) of section 5, and the corresponding clause in section 6 of the Bill. These clauses reserve to the Government the power to appoint members of the local boards and the district councils not exceeding one-third of the whole number. I regard this provision in the Bill with unqualified satisfaction, and, as this is the first occasion on which the subject of local self-government has come before the legislature, I cannot avoid expressing a hope that the provision to which I have alluded is an indication of the policy which Government intends to pursue in regard to legislation for other provinces also. How far the Government should control the constitution of local boards and district councils is a matter of principle by no means peculiar to the Central Provinces. It is, indeed, a matter which goes to the very root of the entire scheme of local self-government for which the country is indebted to your Lordship's Administration. To that noble scheme I am proud to give my hearty, though humble support, for I rejoice to feel that I have lived long enough to see the inauguration of the day when India is to learn at the hands of her rulers those principles of self-help and self-government which have given birth to representative institutions in England, and have made her great among the nations of the world. My Lord, I sincerely believe that all the intelligent classes throughout India sympathise with the feelings which I have expressed, that they feel grateful to the Government for the privileges which the scheme of local self-government will confer upon them, and that the effect of those privileges will be to enhance the popularity of the British rule, and to inspire feelings of loyalty and devotion among the vast population of British India. The more real those privileges are, the more beneficial

will be the results. Having such views and feelings as these, I cannot possibly have sympathy with those who deprecate the withdrawal of Government from the direct management of local funds and local affairs; and it is natural for me to wish, as a matter of principle, that the local boards and the district councils should consist, as far as possible, of persons whom the voice of the people has elected as their representatives. But, my Lord, I feel that I am not acting inconsistently with my feelings and views in cordially supporting those provisions of this Bill which reserve to Government the power of appointing one-third of the members of the local boards and district councils. I am convinced that no part of India has yet arrived at the stage when the system of representation can be adopted, in its fullest scope, even in regard to local affairs. The principle of self-Government by means of representative institutions is perhaps the greatest and noblest lesson which the beneficence of England will teach India. But, in borrowing from England the system of representative institutions, it is of the greatest importance to remember those socio-political matters in which India is distinguishable from England. The present socio-political condition of India is the outcome of the history of centuries of despotism and misrule, of the dominancy of race over race, of religion over religion. The traditions and feelings of the people and their present economic and political condition are in a vast measure influenced and regulated by the history of the past: the humanizing effects of the British rule have not yet demolished the remembrance of the days of strife and discord which preceded the peace brought to India by the British supremacy. India, a continent in itself, is inhabited by vast populations of different races and different creeds: the rigour of religious institutions has kept even neighbours apart: the system of caste is still dominant and powerful. In one and the same district the population may consist of various creeds and various nationalities; and, whilst one section of the population commands wealth and commerce, the other may possess learning and influence. One section may be numerically larger than the other, and the standard of enlightenment which one section of the community has reached may be far higher than that attained by the rest of the population. One community may be fully alive to the importance of securing representation on the local boards and district councils, whilst the other may be wholly indifferent to such matters. Under these circumstances, it is hardly possible to deny that the introduction of representative institutions in India will be attended with considerable difficulty and socio-political risks. In a country like England, where the distinctions of race no longer exist, where the differences of sectarianism in religious matters have been mitigated by the advance of toleration, the matter does not present such difficulties. The community of race and creed makes the English people one and the same nation, and the advance of education has rendered

smaller differences wholly insignificant in matters connected with the welfare of the country at large. Christian constituencies do not object to return Jews to represent their interests in Parliament, and, indeed, for socio-political purposes, it may be said that the whole of the population of England forms but one community. It is obvious, of course, that the same cannot be said of India. The system of representation by election means the representation of the views and interest of the majority of the population, and, in countries where the population is composed of one race and one creed, it is no doubt the best system that can be adopted. But, my Lord, in a country like India, where caste distinctions still flourish, where there is no fusion of the various races, where religious distinctions are still violent, where education in its modern sense has not made an equal or proportionate progress among all the sections of the population, I am convinced that the introduction of the principle of election, pure and simple, for representation of various interests on the local boards and the district councils, would be attended with evils of greater significance than purely economic considerations. So long as differences of race and creed, and the distinctions of caste, form an important element in the socio-political life of India, and influence her inhabitants in matters connected with the administration and welfare of the country at large, the system of election, pure and simple, cannot be safely adopted. The larger community would totally override the interests of the smaller community, and the ignorant public would hold Government responsible for introducing measures which might make the differences of race and creed more violent than ever. My Lord, I have dwelt upon this matter at such length in order to explain why I, a sincere admirer of the representative system, have given my cordial support to such provisions of this Bill as appear to militate against the system of election, pure and simple. Government, in reserving to itself the power of appointing one-third of the members of the local boards and district councils, is adopting the only measure which can be adopted to guarantee the success of local self-government, by securing and maintaining that due and just balance in the representation of the various sections of the Indian population which the system of election, pure and simple, would fail to achieve."

The Hon'ble MR. HUNTER said:—"My Lord, I congratulate your Lordship's Government on the passing of this Act. It is the first legislative expression of that policy of local self-government with which your Excellency's name will be for ever identified in India. It is, however, only in regard to the educational sections of the Bill that I shall venture to detain the Council with a few remarks. Those sections had to accomplish two objects. They had, in the first place, to conserve the popular element in

the existing educational mechanism of the Central Provinces. They had, in the second place, to guard against placing restrictions on the further development of popular instruction, or hampering the action of the Education Commission now sitting. The Bill has been carefully considered by the members of the Commission, and I have the pleasure to say, on their behalf, that it seems to accomplish both these objects. The unit of educational administration in the Central Provinces—indeed, I believe, the smallest administrative unit of any kind—is the school committee. One thousand of these useful little bodies are at present at work in those Provinces. The quotations made by the member in charge of the Bill, from the able report by my friend Mr. Browning, render it unnecessary for me to describe the action of such committees. Their origin dates from the formation of the Education Department itself; and whenever a new school is established, a new school committee is appointed. There is, therefore, a widespread system of school boards in the Central Provinces—a system which has the accumulated experience of twenty years of actual work, and which has within itself the elements of a natural and necessary growth, in proportion to the spread of intelligence and education. The present Bill organises these educational administrative units into a part of a complete system of local administration. The school committees consist of not less than four members, of whom the mukaddam, or village-head, is almost always one. The Bill provides that the district council shall, as far as practicable, conduct the management of the schools through these school committees. The mukaddams, and probably other members of the school committees, will have seats in the local boards; while the local boards will be represented in the district council. The school committee is, therefore, the pre-existing unit of local administration, whence some of the most important members of the local board will be drawn; and there is a perfect chain of responsibility through the local board to the district council.

“ The only other aspect of the Bill with which I shall detain the council is in regard to educational finance. Two of the financial difficulties which arise in Indian Provinces with regard to the education of the cultivators may be stated as follow. First, the difficulty of securing that funds specially raised for primary education shall be entirely spent on primary education, to the exclusion of higher classes of schools. Second, the difficulty of securing that funds specially raised from the cultivators shall be entirely spent on the education of the cultivators, to the exclusion of the town or municipal schools. The present Bill provides for the first difficulty. All funds raised for primary education in a district, although paid at first into a common fund, shall be expended solely on primary education; or rather, a sum at least equal

to the educational funds raised, shall be thus spent. With regard to the second difficulty, the Bill is silent. For that difficulty does not yet arise in the Central Provinces, outside municipalities and cantonments; that is to say, within the area over which the Bill has jurisdiction. The difficulty may arise hereafter in the Central Provinces, as it has done in other parts of India; but it is so complicated by local considerations and local claims, that the Bill wisely refrains from entering on a thorny question which has not yet arisen in the particular area with which it deals. That question, however, will require a definite legislative answer in some other parts of India; and it is now receiving the attention of the Education Commission. The present Bill preserves the existing popular element in the educational system of the Central Provinces. It provides for the strict application of funds raised for primary instruction, to the purposes for which they are levied; and it in no way fetters the Education Commission in its efforts to still further develop popular education."

The Hon'ble RÁJÁ SIVA PRASÁD said:—"My Lord, after the able and lucid exposition of the principles on which the Bill is based by the Hon'ble Member in charge of it, I have very little left to add. However, I am very glad to find that the Hon'ble and learned Dr. Hunter has spoken so strongly in favour of the Bill, especially so far as the education of the people is concerned, and with those remarks I fully concur. As to the self-government scheme, the whole country, from the Himalayas to Cape Comorin, has already responded in terms of unqualified approval, but I do not agree with the Hon'ble Member in charge of the Bill in the mode of the selection of chairman. The result of the limitation of power of the district councils and local boards in making selections from among themselves will be quite different from what he expects. Many good and fit Natives, who would have offered themselves as candidates for chairmanship, may not accept a membership. Still, I do not like to interfere in any way with the wishes and plans of the Local Governments. Self-government does not abolish the Local Governments, and they are, after all, the best judges in such matters."

The Hon'ble MR. ILBERT said the Council had been reminded that day that the importance of this measure consisted in its being the first attempt to embody in a legislative form the principles laid down by the Government of India in its Resolutions on the subject of local self-government, and it had been explained on a previous occasion that this circumstance was due to a mere accident. But he could not help thinking that it was a happy accident which entrusted the task of preparing and introducing and explaining this measure to a gentleman who,

from his thorough knowledge of local circumstances and local requirements, and his genuine and sympathetic appreciation of Native character, was so eminently qualified to perform the task as his hon'ble friend Mr. Crosthwaite. His hon'ble friend had so fully explained the provisions of the Bill and its general objects that he had left little for MR. ILBERT to add, either for the purpose of meeting criticisms or for the purpose of removing misapprehensions ; and, of course, anything he could say would not carry with it the weight which necessarily attached to a person who spoke with a local experience which MR. ILBERT could not pretend to possess. He was necessarily compelled to approach this subject from an English point of view, and to look at it with the light of such knowledge as he happened to possess of the working of local representative bodies in England. But that the knowledge and experience derived from these sources was altogether inapplicable to similar institutions in India was a proposition which he was not prepared to admit. If it could not tell the Government what they were able to do or what they ought to do, it might be useful for the purpose of telling them what mistakes they ought to avoid. He had read a good many reports on the working of local representative bodies in India, and as he had read them he had often been reminded of the aphorism of Artemus Ward that "after all there is a good deal of human nature in man." What he meant was that, in spite of the enormous differences between the Englishman and the Hindu, and between England and India,—differences which no Indian statesman would be likely to minimize or overlook,—yet there were certain broad principles of policy which were as applicable here as they were applicable there, and which an Indian could not any more than an English statesman afford to disregard. One was often tempted to suspect that, where the attempts to introduce or develop self-government had failed in India, the failure might be traced to causes which would have produced the same effects in England. Suppose, for instance, that a statesman had to frame or give effect to a scheme for entrusting new or extended powers to local representative bodies in England. What would be the main considerations which he would endeavour to keep in view ? In the first place, he would bear in mind that the main object of local self-government was to enlist on the side of the Central Government local knowledge and popular sympathies, and, even if he could be assured that that object could not be attained without the risk of sacrificing a certain amount of administrative efficiency, he would still be prepared to make the sacrifice. Then he would recognize the necessity of building on and developing existing institutions. Instead of creating new authorities or new machinery, he would do his best to utilise the authorities which were already in existence and the machinery with which the people were familiar. Again, he would take care

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that the work which was entrusted to local bodies should be work of a kind to which they were accustomed, as to which their special knowledge and experience would be valuable and in which they would be likely to take an interest. The main function of a local representative body, especially of a local body in a rural district, was to provide in a simple way for petty local wants. These were the things about which the members of such bodies knew about which they really cared and which they were likely to do well. If they were required to carry out works which were conceived on an Imperial or Provincial scale, they would be discredited; if they were fettered with elaborate formalities, they would be disgusted.

Then in dealing with the question of finance, an English statesman would recognise the importance of appropriating local taxes to local purposes. The British rate-payer like to see what became of his money, and strongly objected to its being spent outside his parish or union: if he was told that he would reap the benefit of the expenditure in an indirect manner, he was apt to be incredulous and dissatisfied. It was possible that the Indian rate-payer might be influenced by similar feelings. Then, care would be taken to leave a considerable amount of discretion to local boards, both as to the works on which the money placed at their disposal was to be spent, and as to the mode in which those works were to be carried out. Unless such discretion were given, all real responsibility for, all genuine interest in, local work was made impossible, and the body which had been called into existence for the purpose of assisting the Government with its knowledge and experience was reduced to the level of a mere collecting and spending machine.

Lastly, whilst allowing great latitude as to matters of detail, he would, as to matters of principle, reserve large and strong powers to the Central Government, taking care, of course, that these powers would not take the form of vexatious or arbitrary interference, but should be exercised with reference to general principles and for assignable reasons.

Such were among the most important of the considerations which would be applicable to any experiment in the direction of extending self-government in England; whether, and how far, like considerations were applicable to similar experiments in this country, and, if they were applicable, whether the failure of some of those experiments could in any measure be attributed to a disregard of them, he would leave to those who had more knowledge of India than himself to say.

The only one of these considerations on which he wished to touch further to-day was that which related to the matter of control, and he wished to refer

to that for two reasons :—first, because, as his hon'ble friend Mr. Crosthwaite had remarked, it was the feature of the Bill which had evoked most criticism ; and secondly, because it was a point on which direct appeal had been made to English precedents. Some of the official critics of the Bill seemed to have feared that its effect would be to take away Government control, whilst there was another class of critics who apparently thought that the existence of such control was incompatible with the existence of local self-government at all.

The Government of India did not share the apprehensions of the first class of critics, and they did not agree with the views of the second. Nothing was further from their intention than to place local representative bodies in a position of absolute freedom from Governmental control. What was proposed was not to remove such control, but to alter its character, to substitute for dictation from within control from without, and to take care that this control should be exercised with reference to fixed and general principles and for definite and intelligible reasons. Control in this form, so far from being incompatible with, was an essential feature of, any good system of local self-government. Take, for instance, the system which prevailed in England ; not a model system by any means, but a system under which a great deal of useful work was done in a very creditable manner ; and consider the relations in which local bodies in that country stood to the Central Government. The most important of the local representative bodies in England were the town councils and local boards in towns, the boards of guardians and the newly established school boards. These were the bodies which, in the language of modern Acts of Parliament, were usually referred to as the "local authorities." They represented the local, as distinguished from the central, element in the Government of the country ; and their most important functions were to supervise the relief of the poor, to look after schools and roads and to provide for the maintenance of the public health. In the discharge of each of these functions, their proceedings were controlled by some department of the Central Government. Thus, school boards acted under the control of the Education Department ; town councils, local boards and boards of guardians, in their capacity of sanitary authorities, acted under the control of the Local Government Board. He would not refer to the relations which existed between the school boards and the Education Department, except for the purpose of remarking that the section of the present Bill giving power to suspend a district council or local board in case of default was modelled on a section of the English Elementary Education Act of 1870 (section 63), which gave a similar power to the Education Department in the case of a defaulting school board. But Mr. ILLBERT would take his illustrations mainly from the important Public Health Act of 1875, which regulated the powers and duties of local authorities when exercising sanitary functions.

The department of the Central Government which was charged with the control of local sanitary authorities was known as the Local Government Board; but it was not a board at all in the sense of being a deliberative or consultative body—it was simply a department of the State consisting of a President and a Secretary who sit in Parliament, and change with the Government of the day, and of a large permanent staff consisting of secretaries, assistant secretaries, inspectors and other officers. If reference were made to the Public Health Act, 1875, it would be found that the powers of control and supervision which were conferred by that Act on the Local Government Board were numerous and extensive. The sanction of the Board was required for loans and leases. It regulated the terms on which money was to be borrowed and lands let out on lease. Its approval was required for all bye-laws. Its sanction was required for appointments to all offices which were not wholly paid for out of local rates. It prescribed the form in which local authorities were to keep their accounts. It appointed auditors to audit their accounts; and these auditors not only had power to check the accuracy of the figures, but were required to disallow every item of account which was contrary to law, to surcharge the same on the person making or authorising the making of the illegal payment, and to charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person. Its inspectors were entitled to attend any meeting of the local authority. The Board might direct its officers to hold local enquiries as to the mode in which the Act was carried out and might in appropriate cases charge the expense of the enquiry on the local rate. And lastly, if the local authority made default in the performance of its duties, the Local Government Board might take effectual steps for enforcing and securing the performance of that duty. The section which conferred that power was so important, and bore so directly on the proposals contained in the present Bill, that he would take the liberty of reading it to the Council.

Section 299 of the Public Health Act, 1875, was as follows:—

“Where complaint is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board, if satisfied, after due enquiry, that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty, and shall by order direct that the expenses of

performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench and be enforced in the same manner as if the same were an order of such Court."

He made these references to English legislation for the purpose of showing that there was ample English precedents for the powers proposed to be conferred by the present Bill on the Local Government and its officers. The Government of India did not say that the precise powers which were in the present Bill were necessary or applicable under all circumstances or in all parts of India. It was enough to say that they appeared to be required in the Central Provinces, and he hoped and believed that, in the form in which they were given, they would be found to be sufficient.

The Hon'ble MR. GIBBS said:—

"At the last meeting of Legislative Council at Simla, at which I was unfortunately not able to attend, the Hon'ble Mr. Plowden made some observations on the policy of this Bill, founded on his experience of thirty years as a member of the Civil Service, and, in the course of his speech on that occasion, he alluded to the fact that he was in my absence the senior representative of the Civil Service in the Council. I am not only the senior member here, but with the exception of one member in the Madras Presidency, I believe I am the oldest representative of the Civil Service in India; and it is in that character that I wish to make a few observations on the present occasion. My opinion of the necessity for local self-government is not an opinion recently formed, or merely formed on the question being brought forward by your Lordship. I have long seen that such a necessity must arise, and that it was merely the natural outcome of that system of education which has been going on under the auspices of the British Government for between forty and fifty years. I have for many years watched the progress made by the Natives of this country to render themselves capable of taking part in the Government, and done my best to hasten on that end, whenever I had the opportunity, specially by trying, and sometimes with success, to increase the power and independence in municipalities and other local bodies in Western India. Particularly I am allude to the Municipality and Port Trust in the City of Bombay. I am sure that no true friend of the Natives of this country can hold any other opinion than that it would be for the good of the empire when the people of the country become fitted to take a more direct part in its government. This has to a certain extent been going on for many years, by the employment of so many Natives, some in important, but the majority in subordinate, official posi-

tions under Government; but the present movement is of very much greater importance than anything that has yet been attempted, for it will enable the independent gentry of the country not merely to join the Government in carrying on the administration of the Empire, but in their own individual capacity to step in and relieve the ordinary Government of much of its work.

"I feel sure that the leading people can, and will, do much to carry out the policy now proposed, but at the same time I feel equally certain that the success of that policy will depend almost as much on the District Officers and their conduct towards the boards as it will on the boards themselves. It will require judicious care and assistance, and not dictation, on the part of the District Officers to assist the gentlemen who form the boards, especially at the commencement, to carry out their onerous duties with success.

"As regards the powers of control given under the Act, I feel quite sure, although no one could be better pleased than myself to avoid such clauses, that no real friend of the people could object to such control at the first, because its real object is to ensure the success of the Act, which, without it, might, and would probably, fail. I feel quite certain, however, that, when it is found that the boards can act alone, such control will be reduced, and eventually perhaps almost entirely removed.

"As an example of what I mean, I would point to large bodies, such as some of the larger municipalities of the Bombay Presidency, and especially to the Municipal Corporation of the City of Bombay. I have no doubt that, if any measure for amending the Acts under which those bodies work were now under consideration, the control at present insisted on might be considerably reduced and modified.

"I am aware that this is a special Bill for a special province, and, therefore, I will say nothing as to its details beyond expressing my conviction that the great local experience of the Hon'ble Member in charge will have provided for all that is possible to ensure success, and I trust most sincerely that it will prove a blessing to the province to which it applies.

"Your Excellency has been congratulated on the passing of this measure to-day; I will rest content with congratulating myself that I have had the honour and satisfaction of forming one of the Council and the Government who have initiated so far successfully the important policy of local self-government in India."

His Excellency THE PRESIDENT said :—

“ I really have nothing to add to the remarks which have been made by previous speakers in the course of this discussion. The Bill before us is, as has been pointed out, a Bill relating to the Central Provinces only, and, consequently, it is framed in accordance with the special circumstances which prevail in that district.

“ The Government do not put this Bill forward as a model measure which they would recommend to be followed by all the other Local Governments throughout the country. It might almost be said that the Central Provinces is one of the least advanced districts in India, to which a system of local self-government can be considered to be at all applicable. It is, therefore, natural that a measure to be applied to a district of that description should be framed in a manner which might not be suitable to the circumstances of districts of a much more advanced description, and I desire that it should be distinctly understood that this Bill relates to the Central Provinces, and the Central Provinces only. It is a measure which we have reason to believe is well suited to the circumstances and people of those Provinces, but, doubtless, many of the provisions which find a place in this Bill will not be considered by the heads of Local Governments in other parts of India either necessary or suitable for the populations under their charge. That being so, there is really very little necessity for me to make any remarks upon the details of this Bill. They have been ably explained by my Hon'ble friend Mr. Crosthwaite, and commented on with his full knowledge of such questions by my Hon'ble and learned friend Mr. Ilbert; and I do not think, therefore, that there are any matters upon which any further explanation with respect to the views, intentions and objects of the Government can be required from me.

“ I will, however, make just one remark upon a single point of detail, alluded to by my Hon'ble friend who introduced this discussion. He spoke of the section of the Bill—section 34—which relates to the framing of rules by the Chief Commissioner, and he said that some persons might think that a very wide discretion was left to the Local Government in respect to the framing of those rules. Now, it is very important that all persons who have to consider Bills of this description should bear in mind that the provisions which are contained in measures which will form part of the law of the land are hard-and-fast provisions which cannot be altered without referring again to the Legislature and passing a new Act. Now, in a matter of this kind, particularly at its commencement, it is very undesirable to lay

down more hard-and-fast rules than are necessary. What you want is that the system should be elastic; and that you should ascertain by practical experiment what modes of self-government are most suited to the requirements and idiosyncrasies of the people in different parts of the country; for, if you tie the hands of the Government too tight by the regulations of an Act of the Legislature, that elasticity which is so desirable in order to arrive at the system best suited to fulfil the wishes and meet the requirements of the country will be altogether lost, and the Government will find itself bound, whether the measure is in practice found to be suitable or not, to enforce the provisions of the law, or else to go through the long and complicated process of again referring the matter to the Legislature. But those who are inclined to think that these rules are all too elastic, should bear in mind that we have, in this Bill, in fulfilment of the promise made in the Resolution of the Government, issued a short time ago, in respect to rules of this description, distinctly laid down that the rules issued under section 34 shall be published beforehand in draft and left for the consideration of the public for a certain period, in order that, if any objections are felt to them, those objections may be fairly represented to the Local Government.

“And, certainly, if ever there was a case in which we may trust implicitly that the rules which will be made—I hope speedily—under the Bill about to become law, will be those best suited to carry out the provisions of this measure in a friendly spirit towards the spread of self-government, it is this; because it is due to Mr. Morris, whose time in the Central Provinces, I regret to think, is drawing to a close, but who nevertheless will have an opportunity of making the rules under this Bill, that I should say again, what I said on the occasion of a previous discussion at Simla, that there is no civil servant in India who has shown himself, long before this question was taken up by the present Administration, more desirous of applying largely and wisely the principles of local self-government than Mr. Morris. The best thanks of the Government are due to that distinguished public servant for this part of his policy, as well as for the ability with which he has so long administered the Central Provinces over which he has been placed; and I feel the most entire confidence that, in entrusting the initiation of the system established by this Bill to his hands, we are leaving it to one who fully and heartily approves of the principles of the Government on this subject as laid down in their Resolutions on local self-government.”

The Motion was put and agreed to.

EXPLOSIVES BILL.

The Hon'ble MR. LIBERT moved that the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives be referred to a Select Committee consisting of Lieutenant-General the Hon'ble T. F. Wilson, the Hon'ble Mr. Hope, the Hon'ble Durga Charan Laha, the Hon'ble Messrs. Reynolds and Miller and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. LIBERT 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.

The Council adjourned to Friday, the 26th January, 1883.

R. J. CROSTHWAITE,

Additional Secretary to the Government of India,

Legislative Department.

CALCUTTA ;
The 12th January, 1883. }

*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 26th January, 1883.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.G., 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.
Major the Hon'ble E. Baring, B.A., 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 T. C. Hope, C.S.I., C.I.E.
The Hon'ble Mahārājā Sir Jotindra Mohan Tagore Bahādūr, K.C.S.I.
The Hon'ble C. H. T. Crosthwaite.
The Hon'ble Rājā Siva Prasād, C.S.I.
The Hon'ble Sayyad Ahmad Khan Bahadur, C.S.I.
The Hon'ble Durgā Charan Lāhā.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble R. Miller.

INDIAN RAILWAY ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the Indian Railway Act, 1879.

ELEPHANTS PRESERVATION ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. GIBBS moved that the Bill to amend the Elephants Preservation Act, 1879, be taken into consideration.

The Motion was put and agreed to

ELEPHANTS' PRESERVATION.

The Hon'ble Mr. GIBBS also moved that, for the enacting clause of the Bill, the following be substituted, namely :—

“ For section 4 of the said Act the following shall be substituted, namely :—

“ ‘ 4. Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.’ ”

Rights of Government with respect to certain elephants and tusks.

He said that, as the Bill was originally drafted, there was some doubt attaching to the enacting clause, and it was thought better to make the section perfectly clear. In consequence, the clause which he now moved to introduce was proposed to be substituted for the enacting clause of the Bill.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Friday, the 2nd February 1883.

R. J. CROSTHWAITE,

Additional Secretary to the Government of

India, Legislative Department.

CALCUTTA ;

The 26th January, 1883. }

*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 February, 1883.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, E.A., 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 Maharájâ Sir Jotúndra Mohan Tagore Bahádur, K.C.S.I.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble Rájâ Siva Prasád, C.S.I.

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

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble R. Miller.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects. He said :—“ The effect of the existing law on this subject is summed up in a section of the new Criminal Procedure Code (443), which directs that

“ No Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.”

“ Now, there is no restriction on the nationality of a Presidency Magistrate ; Natives of India may hold, and have held, that office. The result of the law,

therefore, is that, within the limits of the Presidency-towns, jurisdiction over European British subjects may be exercised by any person who happens to be a Presidency Magistrate, whether he is a European British subject or not; but that, outside these limits, in any part of the Mufassal, that jurisdiction cannot be exercised by any of Her Majesty's Magistrates, however complete may have been his training—however long may have been his judicial experience—however high may be his rank in the service—unless he happens to be a European British subject.

“Such is the existing law, and it was settled in this form in the year 1872, after a very remarkable debate, which resulted in a very remarkable division. The Select Committee on the Bill which afterwards became law as the Criminal Procedure Code of 1872 had adopted a resolution in which they recorded their opinion ‘that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might with advantage be extended in the case of European British subjects.’ It will be observed that there was nothing in the resolution which implied that the exercise of this jurisdiction in future was to be confined to persons who are themselves European British subjects. Such a limitation was, however, inserted in the Bill as finally settled by the Committee; but, when it was brought before the Legislative Council, Sir Barrow Ellis (I shall take the liberty of referring to him and others by the titles which they now bear) moved an amendment which would have had the effect of striking out the limitation. It would appear that the limitation to which he objected had in fact been introduced in pursuance of some kind of bargain or compromise between members of the Committee holding different opinions on the subject. Repeated references were made in the course of the debate to the existence of this compromise. Thus, Mr. Chapman, whilst expressing his agreement with much that had fallen from Sir Barrow Ellis, said that he felt himself unable to support the amendment for the very plain and conclusive reason that he, as member of the Select Committee, considered himself bound to adhere to the pledge he had given to the European community that, under the altered law, an Englishman should retain his privilege of being tried by an Englishman. Again, Mr. Inglis said that he did not intend to go into the question on its merits, as he considered that he was bound by the terms of the recommendation which he had signed with other members of the Committee. My eminent predecessor, Sir James Stephen, who was in charge of the Bill, declared in the most emphatic terms that he could not undertake to justify on principle the terms of a compromise. And Sir J. Strachey, who also supported the proposals, admitted that the provisions of the Bill represented a compromise which was open to criticism of every kind. The amendment moved by Sir Barrow Ellis was put to the vote,

and was lost on a division by a majority of 7 to 5. But the minority on the division included the majority of the Executive Council. It consisted of the then Viceroy, Lord Napier of Murchistoun, the then Lieutenant-Governor of Bengal, Sir G. Campbell, his immediate successor, Sir R. Temple, the then Commander-in-Chief, Lord Napier of Magdala, and Sir Barrow Ellis. Each of these distinguished members of the Government of India not only voted but spoke in support of Sir Barrow Ellis's amendment and against the proposals that are embodied in the existing law. And I shall make no apology for quoting today some of the arguments which they used, and some of the opinions which they expressed.

“Sir Barrow Ellis said that, in making the invidious distinction which was now proposed, if we excluded any Justices of the Peace from the exercise of certain powers, we were really casting a stigma on the whole educated Native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that, if you had Native Covenanted Civil Servants, you ought not to bar them from exercising the powers of a Civil Servant, among which powers is the jurisdiction of a Justice of the Peace over European British subjects. By Act II of 1869 Natives might be appointed Justices of the Peace, and on what ground, he would ask, was it proposed to restrict their powers as Justice of the Peace ?

“Sir George Campbell was of opinion that the Council should adhere to the decision which had been come to by the passing of Act II of 1869, namely, that a Justice of the Peace must be either a European British subject or a Covenanted Civil Servant. To reopen that question, and to limit the powers that might be exercised by any Justices who were Covenanted Civil Servants, appeared to His Honour to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light, he should be inclined to vote for the motion before the Council.

“The Commander-in-Chief said that the Native members of the Covenanted Civil Service having been to Europe, having become acquainted with European feelings, ideas and customs, and having qualified themselves to take their places with European members of the Civil Service, His Excellency would frankly accept them as real members of the Covenanted Civil Service, and allow them to exercise all the functions which the European members exercised.

“Lord Napier of Murchistoun said that his vote would be given in conformity with the opinion which had been expressed by the Commander-in-Chief.

His Excellency thought that the restriction would embody a stigma on the Native community in general. It was equivalent to stating that, under no circumstances, as far as the administration of the law was concerned, could the Native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the power of trying European British subjects. He thought that by the restriction we, in effect, said to the European—‘You are not to be tried in the Mufassal by the agency by which you are tried in the High Courts and in the Courts of the Magistrates in the Presidency-towns, with the general approval and sanction of the European and Native communities.’ It was saying, in effect, that the Native who had attained to the position of a Sessions Judge was not competent to try a European British subject, but that he might try him when he became a Judge of the High Court and sat beside a European Judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject, than in permitting Native Justices in the Presidency-towns to try him. There appeared to His Excellency to be no such broad distinction whatever between the conditions of society and of public opinion in this respect between the Presidency-towns and the Mufassal. There were now a great number of public-spirited men and a great deal of public spirit all over the provinces. Communications by rail, the dissemination of newspapers both in English and the Vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the Presidency-towns and the Mufassal. His Excellency did not himself consider that there was the slightest possibility that, in the rare case of a Civil and Sessions Judge trying a European British subject in the Mufassal, there would be an abuse of justice.

“Sir Barrow Ellis said that he desired to add his testimony to the efficiency with which Native Magistrates had performed their duties in the Presidency-towns, in the administration of justice to both Europeans and Natives, and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European Magistrates. And, if they had done that, he saw no reason why Natives in the position of Covenanted Civil Servants or Sessions Judges should not be equally competent to administer justice to the European in the Mufassal. His Hon’ble friend Mr. Stephen had remarked that in this matter we were not to consult the feelings of the Judge, but of those who were to be subjected to the jurisdiction. In answer to that, Mr. Ellis would say that he saw no reason why that which did not hurt the feelings of Europeans in the Presidency-towns should hurt them in the Mufassal.

“And, finally, Sir Richard Temple said he thought that the inference

was undeniable that, if the Natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as Judges over Europeans in the Mufassal for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance.

“ However, as I have said, these views, though they commended themselves to the majority of the Executive Council, did not commend themselves to the majority of the legislature, and the amendment proposed by Sir Barrow Ellis was lost.

“ It was not to be expected that a decision which avowedly proceeded on the terms of a compromise, and against which such a formidable weight of official authority was arrayed, should be accepted as a permanent settlement of the question. It has not been so accepted. Whenever proposals have been made for amending the Criminal Procedure Code, the attention of the Government has been directed to the anomalous position in which Native members of the Covenanted Civil Service have been left by the legislation of 1872. In the early part of last year, Mr. Gupta, a Native member of the Bengal Civil Service, submitted to the Lieutenant-Governor of Bengal a note in which he pointed out that the existing law, if maintained, would give rise to an invidious distinction, and to very practical inconveniences in the case of those Natives of the country who might expect in course of time to attain to the position of a District Magistrate or of a Sessions Judge. I may add that the anomalous nature of the present arrangements could not be better illustrated than by Mr. Gupta's own case. He officiated for some time as Presidency Magistrate here in Calcutta, and, while so officiating, he had, under the law as it stands, full powers over European British subjects, even in comparatively serious cases, and exercised those powers to the satisfaction of the Local Government and the public. On his removal to a more responsible appointment in the interior, he ceased to be qualified to deal with even the most trivial cases affecting Europeans. Mr. Gupta's proposal was that the law should be amended by extending the jurisdiction over European British subjects to Natives of this country holding the office of a District Magistrate or of a Sessions Judge, and he suggested that the amendment might be made in the Bill which has since become law as the Criminal Procedure Code of 1882. However, that Bill had then nearly reached its final stage, and it was obvious that a question which was of such importance and difficulty, and about which it would be impossible to take action without consulting both Local Governments and the Secretary of State, could not with propriety be raised at so late a stage of the discussion on the Bill. In this, as in other matters, the Government had, as was pointed out last year by my friend Major Baring, to choose between, on the one hand,

passing the new Code, with the amendments which had been generally accepted,—amendments which were of considerable importance,—or, on the other hand, postponing the Code, with all its improvements of form and substance, until all possible amendments of the law had been got together and considered.

“Of these two courses, the Government adopted—and, I think it will be generally agreed, wisely adopted—the latter, taking care, however, to make it clear that, whilst re-enacting, for the purpose of consolidation, certain provisions of the existing law, they were not to be considered as expressing an opinion that these provisions might not with advantage be amended.

“This was Sir Ashley Eden’s own view, and accordingly he postponed the submission of Mr. Gupta’s note to the Government of India until the new Criminal Procedure Code had become law. But, when he did submit it, he accompanied it with a strong expression of opinion as to the expediency of altering the law in the direction indicated by Mr. Gupta. He remarked that, as a question of general policy, it seemed to him right that Covenanted Native Civilians should be empowered to exercise jurisdiction over Europeans as well as over Natives who are brought before them in their capacity as Criminal Judges. Now that Native Covenanted Civilians might shortly be expected to hold the office of District Magistrate or Sessions Judge, it was also, as a matter of administrative convenience, desirable that they should have the power to try all classes of persons brought before them. Moreover, if his power was not conferred upon Native members of the Civil Service, the anomaly might be presented of a European Joint Magistrate who is subordinate to a Native District Magistrate or Sessions Judge being empowered to try cases which his immediate superior cannot try. Native Presidency Magistrates within the Presidency-towns exercised the same jurisdiction over Europeans that they do over Natives, and there seemed to be no sufficient reason why Covenanted Native Civilians, with the position and training of District Magistrate or Sessions Judge, should not exercise the same jurisdiction over Europeans as is exercised by other members of the service.

“For these reasons, Sir Ashley Eden was of opinion that the time had arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXVIII of the new Code of Criminal Procedure, or when at least Native Covenanted Civilians who have attained the position of District Magistrate or Sessions Judge should have entrusted to them full powers over all classes, whether European or Native, within their jurisdiction.

“ Before taking any further action in the matter, the Government of India considered it desirable to ascertain the views of Local Governments and Administrations as to the expediency of the amendments suggested by Sir Ashley Eden ; and accordingly they addressed a circular letter to the several Local Governments, inviting a confidential expression of opinion on those suggestions. The result was remarkable. There was an overwhelming consensus of opinion that some change in the law was required, and that the time had come for removing the present absolute bar on the investment of Native Magistrates in the interior with powers over European British subjects. As to the precise extent to which the law should be modified, there was, as might naturally be expected, some difference of opinion ; but it was generally admitted that a Native Civilian in the position of a District Magistrate or Sessions Judge should have equal powers with his European colleagues, and there was a very strong body of opinion that there should be no distinction made between Native and European members of the Covenanted Civil Service at any step in respect of their judicial powers, provided that they were individually found qualified to exercise those powers.

“ Under these circumstances, it has become abundantly clear that the existing law cannot be maintained, and the only question which we have to consider is not whether the law should be altered, but how it should be altered. In approaching this question, there is one consideration of which we must not lose sight, and of which it is not likely that we should lose sight, and that is, that this is a subject with respect to which it is eminently undesirable to avoid constant tinkering of the law. The settlement arrived at in 1872 may not have been satisfactory,—I do not myself think that it was satisfactory,—but, such as it was, we should not be justified in reopening this difficult question unless we saw our way to a solution which should be, I will not say final—for nothing in legislation is absolutely final—but which should contain in itself the elements of stability and durability. Can we find any such solution? If we look the question fairly in the face, and endeavour to realise distinctly the object at which we ought to aim and the facts with which we have to deal, I think that we can. As to the object at which we ought to aim, there will be no difference of opinion. It is simply the effectual and impartial administration of justice. And as to the facts with which we have to deal, no one who has studied the statistics and reports of the cases involving charges against European British subjects can fail to be struck with two things—first, that, as compared with the great mass of ordinary criminal business, they are exceptionally rare, and secondly, that they are exceptionally troublesome and difficult. To what conclusion do these two peculiarities point? They appear to me to show that, in

the interests of the effectual and impartial administration of justice, it is not necessary, and that, in the same interests, it is not desirable, to clothe all Magistrates indiscriminately with the power of dealing with these cases. As we are justified in excluding from the jurisdiction of inferior Magistrates as such the cognizance of the graver classes of offences, so we should be justified in excluding from their jurisdiction the cognizance of a class of offences the trial of which, from the circumstances under which they are ordinarily committed, presents features of exceptional difficulty. It involves no disrespect to the magisterial or judicial office to say that an officer who may be fully competent to dispose of a common case of theft or assault may not be competent to dispose of a class of cases which, as will be admitted by all impartial persons, are apt to put an exceptionally severe strain on the judicial qualities of tact, judgment, patience and impartiality. We are, therefore, I conceive, fully justified, on principles of general applicability, in confining the jurisdiction exercisable in this particular class of cases to a specified class of Magistrates; and the further question which we have to determine is, how this class is to be defined. My answer is, that the line ought to be drawn with reference to the presumable fitness of the Magistrate, and with reference to that alone, and that we ought not to base any difference which we may think fit to make between particular classes of Magistrates on race distinctions, which are as invidious as they are unnecessary.

“These are the principles by which we have been guided in framing the proposals which I am now asking leave to lay before the Council. We are of opinion that the time has come when the settlement which was arrived at in 1872 may with safety, and ought in justice, to be reconsidered; we are of opinion that, if this question is re-opened, it ought to be settled on a permanent and Stable foundation; and, finally, we are of opinion that no change in the law can be satisfactory or stable which fails to remove at once and completely from the Code every judicial disqualification which is based merely on race distinctions.

“Accordingly, we propose to amend the law, first, by repealing the words which confine the exercise of jurisdiction over British subjects to persons who are European British subjects themselves; secondly, by declaring that every District Magistrate and Sessions Judge shall be, by virtue of his office, a Justice of the Peace, and, as such, capable of exercising jurisdiction over European British subjects; and thirdly, by empowering Local Governments to invest with the office of Justice of the Peace, and consequently with jurisdiction over European British subjects, any person who, being either

(a) a member of the Covenanted Civil Service,

- (b) a member of the Native Civil Service constituted under the statutory rules,
- (c) an Assistant Commissioner in a non-regulation province, or
- (d) a Cantonment Magistrate,

is for the time being invested with the powers of a Magistrate of the first class, and is, in the opinion of the Lieutenant-Governor, fit to be entrusted with those further powers. We propose to make no distinction in the law between European and Native officers. We consider that the care exercised in the selection of officers for the Covenanted Service, both in Regulation and Non-Regulation Provinces, together with the subsequent training that they receive, warrants our amending the law in the manner proposed. As a fact, no officer would be eligible until he had passed all the departmental examinations and been in training long enough to show the superior authorities whether he would be likely to use any powers conferred on him with proper discretion. These proposals will completely remove from the law all distinctions based on the race of the Judge. The limitations remaining on the jurisdiction of particular classes of Magistrates will be based, not on any difference of race, but simply on differences of training and experience.

"These, then, are our proposals. I repeat that, in making them, the only object which we have in view is to provide for the impartial and effectual administration of justice. It is by that test that we desire our proposals to be tried. If they are tried by that test, I am not without a confident hope that they will commend themselves both to the European and to the Asiatic subjects of Her Majesty as reasonable and just."

The Hon'ble MR. EVANS said that he was not well acquainted with the rules of debate in the Council, but wished to know whether the principle of this measure should be debated on this occasion, when leave was asked to introduce a Bill, or whether the measure should be debated at a later stage. Most of the non-official members of the Council were in the same position as himself, and had heard today, for the first time, what the proposed measure was. It was, no doubt, one which had been often debated and was a vexed question. As had been pointed out, it was settled by a compromise in 1872, and MR. EVANS would also point out that there was nothing which was more dear to any man, and more especially to an Englishman, than his liberty, and nothing which he was more jealous of than any change in the tribunal which could deprive him of that liberty in a moment. He might also point out that, when an Englishman came into a tropical country, a sentence of imprisonment

on him in certain seasons and places meant almost certain death. He did not propose now to discuss the principles of the settlement which it was now proposed to come to. He thought that the able speech in which it was introduced and the grave matters which were set forth in it deserved full consideration, and he did not think he would be justified in propounding any views of his own on the subject at once. But time should be given to the non-official community, considering that the question of the tribunal was one of the greatest importance—far greater than any question concerning the law of property and other such matters. Under these circumstances, he would ask His Lordship if he considered it was convenient to debate the principle of the Bill on the motion for leave to introduce it, then that the motion should be postponed so as to give time to the non-official English community in India, which was scattered far and wide in the various provinces, to make their voices heard, or, at any rate, that it should be postponed today, as he felt he could not give full consideration to it that day.

His Excellency THE PRESIDENT said :—“ Nobody is pledged in the smallest degree by the introduction of this or any other Bill, and it would be obviously very unfair that Hon’ble Members of Council should be called upon to express an opinion on the principle of a Bill which they have not seen. Nothing could be more lucid than the statement made by my hon’ble and learned friend who proposes to introduce the Bill, but, until the Bill itself is in the hands of the public, it would be unfair both to them and to the Government that any opinion should be expressed upon it, or that any discussion should take place upon the measure in this Council.

“ No one knows better than my hon’ble and learned friend Mr. Evans how difficult it is to understand a Bill, even with the clearest explanations of its provisions, until you have the Bill itself before you ; and the public are sometimes perhaps a little too much inclined to criticise by anticipation measures of which they know nothing and have seen nothing ; and I myself should not be in the smallest degree inclined to give any sort of encouragement to a procedure which, as I have said, is unfair both to the Government and to the public.

“ I need not, I am sure, say that the Government has no desire to push this matter forward without giving full time for its consideration.

“ The proper occasion, I think, for discussing the principle of the Bill will be on its reference to a Select Committee.

“ I look upon that stage of the procedure as standing in the place of what is called ‘ the second reading ’ in Parliament at home. In the House of Lords,

a Bill is often brought in and put on the table without saying a word; in the House of Commons, this is not the case, but the occasions on which discussions arise on the introduction of a Bill are rare, and debate on the principle of the measure takes place on the second reading.

“What I would, therefore, suggest would be that leave should now be given to bring in this Bill; that it should be brought in at the next meeting of the Council, and then published; and that due time should be given, before the motion is made for its reference to a Select Committee, in order to enable Members of Council to consider it when they receive it in print, and to be prepared to discuss it fully after they have acquired a perfect knowledge of its provisions.”

MAHÁRÁJÁ SIR JOTÍNDRA MOHAN TAGORE having asked permission to address the Council on the subject of the Bill, His Excellency the President remarked:—

“Although, according to strict rule, the Maharájá has lost his turn for speaking, I am sure that this Council would wish me to give him leave to address them. And, in doing so, I should like to take the opportunity of expressing the great regret I feel that this, I believe, is the last occasion on which we shall have the presence in the Council of our hon'ble colleague Maharájá Sir Jotíndra Mohan Tagore. During the long period of his service in the Legislative Council, the Maharájá has distinguished himself by his fairness, his enlightened views and his remarkable courtesy towards all the Members of this Council.

“The Government of India have derived very great advantage from the presence of my hon'ble friend in the Council, and it is a source of deep regret to me that the fair rule of giving a chance to others to take their place in this Council, and, therefore, of not unduly prolonging the presence in it of any one particular member, added to the Maharájá's own desire to be relieved of duties which clash with his other engagements, have necessitated his retirement, and occasioned the great loss to the Council which must result from his absence from it.”

The Hon'ble MAHÁRÁJÁ SIR JOTÍNDRA MOHAN TAGORE said:—“My Lord, I have listened with great interest to what has been said by my hon'ble and learned colleague opposite, and, as this may be the last occasion, as Your Lordship has observed, on which I shall have the honour of addressing this Council, I beg leave to take this opportunity of offering, on behalf of my countrymen, their grateful thanks to Your Excellency for redeeming the promise, which was held out to them during the last session of the Council, to amend that portion of the Criminal

Procedure Code which relates to the trial of British-born subjects. Although it is impossible to say anything with regard to the details of the Bill before it is introduced, the very fact that something will be done now to remove the anomaly which has been a source of standing complaint with my countrymen from a very long time is in itself a matter for congratulation. Knowing the broad and statesman-like views which have always characterised Your Lordship's government, we have every reason to hope that legislation in this direction will be of a piece with those other great measures of reform,—among which I may name the repeal of the Vernacular Press Act, and the Act which, for the first time, has introduced the principle of self-government in this country,—which we feel sure will mark Your Lordship's administration as an epoch in the annals of British India; and I am free to confess, my Lord, that, on this closing day of my humble career in this Council, I feel an honest pride that I have had the good fortune to occupy a seat here while these great measures have been either passed or initiated under the auspices of Your Excellency's liberal government.

“And I take this opportunity, my Lord, to tender my own most hearty and grateful thanks for the very kind manner in which Your Excellency has been pleased to speak of my humble services in this Council.”

The Motion was put and agreed to.

UNIVERSITIES DEGREES BILL.

The Hon'ble MR. GIBBS introduced the Bill to authorize the Universities of Calcutta, Madras and Bombay to grant certain honorary degrees, and moved that it be circulated for the purpose of eliciting opinion thereon.

He said the short history of the measure was this. In the Bill which became law a short time ago for the establishment of the University in the Panjáb, permission was given to that University to confer certain honorary degrees. It would also be in the recollection of the Council that an Act conferring power on the University of Calcutta to grant honorary degrees generally was passed in 1875 very hurriedly through the Council, to confer the honorary degree of Doctor of Laws on His Royal Highness the Prince of Wales. Under that Act the University also, some short time afterwards, conferred a similar distinction on three eminent scholars, two of whom were Natives, namely, Rajendralál Mitter, K. M. Banerji and Monier Williams. Some time after, the Secretary of State addressed a despatch to Government, asking them to abstain from conferring these honorary degrees. It seems, however, to the Government of India that the time has now arrived when the Universities in this country have attained to a status and position which would warrant this

power being exercised by them; and the Calcutta University, on being unofficially consulted, was of opinion that the measure which the Government proposed to introduce was one worthy of acceptance. It would repeal the Act of 1875 and limit honorary degrees being conferred by the University of Calcutta, as well as by other Universities, to that of Doctor of Laws, which was generally the honorary degree conferred by the older Universities of Oxford, Cambridge and Dublin; and, in accordance, he had now to introduce the Bill, leave to do which was obtained in Simla, to grant this power to the Universities of Calcutta, Madras and Bombay, the two latter of which did not hitherto possess it.

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 *Fort St. George Gazette*, the *Bombay Government Gazette* and the *Calcutta Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

LITTLE COCOS AND PREPARIS ISLANDS LAWS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the law in force in the Little Cocos Island and Preparis Island. He said that these two islands, as members of the Council might be aware, lay to the north of the Andaman group, between that group and the projection of land which was formed by the mouths of the Irrawaddy. The Little Cocos Island used to form a portion of the territories administered by the Chief Commissioner of the Andamans and the Nicobars, and, as such, was a portion of the scheduled districts contained in the Scheduled Districts Act. For administrative purposes, it was thought advisable a short time ago to transfer the Island to the administration of the Chief Commissioner of British Burma, and to attach it to the District of Hanthawaddy, in British Burma. It was considered necessary to withdraw the Little Cocos Island from the operation of the Scheduled Districts Act, and to make the law the same as in that portion of British Burma. These objects would be effected by the present Bill, and it would take effect retrospectively from the date from which they were transferred to the administration of the Chief Commissioner of British Burma. But, considering the nature of the population of the Islands, he did not think that a retrospective measure would involve any serious risk of interfering with vested rights. He had turned for information on this subject to a copy of the *Gazetteer* of Dr. Hunter, from which high authority he learnt that the inhabitants of

AGRICULTURAL LOANS.

Little Cocos, at the date when the *Gazetteer* was published, consisted of a few wild pigs and a good many birds. But he had just been informed by His Excellency the Commander-in-Chief that there were also a lighthouse-keeper and eleven chaprásis.

The Motion was put and agreed to.

NIZÁMAT ACT REPEAL BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to-repeal Act XXVII of 1854.

AGRICULTURAL LOANS BILL.

The Hon'ble MR. CROSTHWAITE moved that the Hon'ble Rájá Siva Prasád and the Hon'ble Mr. Thomas be added to the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements.

The Motion was put and agreed to.

The Council adjourned to Friday, the 9th February, 1883.

E. J. CROSTHWAITE,

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

CALCUTTA;

The 2nd February, 1883.

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 Government House on Friday, the 9th February, 1883.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, R.A., 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 C. H. T. Crosthwaite.

The Hon'ble Raja Siva Prasad, C.S.I.

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

The Hon'ble Durga Charan Laha.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble R. Miller.

The Hon'ble Kristo Das Pal, Rai Bahadur, C.I.E.

NEW MEMBER.

The Hon'ble Kristo Das Pal, Rai Bahadur, took his seat as an Additional Member.

NIZAMAT ACT REPEAL BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to repeal Act XXVII of 1854 be taken into consideration. He said that the object of the Bill was to repeal formally an Act which, in consequence of arrangements recently made with the Nawab Nazim of Bengal, had become unworkable. The Bill was approved by the Local Government; it had been duly published in the *Calcutta* and *Bengali Gazettes*, and the Council

had received no objections or suggestions for amendment. Under these circumstances, the Committee recommended that the Bill be passed in the form in which it was introduced.

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. . . .

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects. He said that the step which he was then taking was purely formal. He would not invite the Council to discuss the principle of the Bill until full time had been given for its consideration by the outside public.

LITTLE COCOS AND PREPARIS ISLANDS LAWS BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the law in force in the Little Cocos Island and Preparis Island, and moved that it be circulated for the purpose of eliciting opinion thereon.

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* and the *Andaman and Nicobar Gazette* in English, and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 16th February, 1883.

R. J. CROSTHWAITE,

Additional Secretary to the Government of India,

Legislative Department.

CALCUTTA; }
The 9th February, 1883. }

*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 February, 1883.

PRESENT :

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, R.A., 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 T. C. Hope, C.S.I., C.I.E.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble Rájá Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Áhmad Khán Bahádur, C.S.I.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

The Hon'ble R. Miller.

The Hon'ble Kristo Dás Pál, Rai Bahádur, C.I.E.

INDIAN RAILWAY ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Indian Railway Act, 1879, be taken into consideration.

He said that the object of the Bill was to make two or three minor amendments in the Indian Railway Act of 1879. The Bill as originally introduced was confined to three points:—first, the sanction required for the first opening of a railway or part of a railway for the public conveyance of passengers; secondly, the inspection of the railway which had been opened; and thirdly, the powers of Railway Authorities to impose fines on their servants. Since the Bill was circulated, several valuable suggestions had been made as to further points in which the Act might be amended. However, the Committee thought that, as

the extension of railways in this country would probably necessitate before long a general revision of the Act and the preparation of a Bill to meet the growing wants of the country, it would be expedient to confine themselves to matters with which the Bill before them was concerned, and to leave suggestions on other points to be considered when the whole law relating to Indian railways was dealt with. Accordingly, the Committee had made only such amendments in the Bill as they deemed necessary or desirable in order to give better effect to the present intentions of the legislature. These amendments were briefly as follows :—

(1) The Committee had enabled the Governor General in Council to appoint officers, either by name or by virtue of their office, to be inspecting officers under the Act.

They had drawn section 5 B so as to render it unnecessary for the Governor General in Council specially to appoint an officer to inspect any particular railway; and, as it might, in some cases, be desirable that sanction should be obtained at once to the opening of a railway, and that the inspecting officer's report should be communicated by telegraph, they had omitted the provision requiring that officer's report to be in writing.

(2) They had given the Governor General in Council power to confer, in any particular case or class of cases, on the inspecting officer the power to sanction the opening of a railway or portion of a railway. As the Bill was drafted, this power had to be conferred in each particular case, and they considered that it would be more convenient to enable a general power to be conferred on the inspecting officer for dealing with any particular class of cases, such as minor additions to, or extensions of, a railway.

(3) They had reserved to the Governor General in Council a power to review any sanction given by an inspecting officer, and to cancel or modify it.

(4) To meet a case when it was desirable to sanction the opening of a line subject to conditions which were to be complied with by a Railway Administration, they had expressly declared that the sanction might be absolute or subject to conditions. They had accordingly provided that, when a conditional sanction was granted for the opening of a railway and the conditions were not complied with, the sanction should at once be deemed to be void, and that the railway should not be used until sanction was again obtained.

(5) To provide for the case where, after sanction had been given for the opening of a railway, an alteration was made in it by the Administration, they

had prohibited the use of any portion of a railway so altered as to interfere with the safety of passengers, until formal sanction had been obtained for the opening of the portion for the public conveyance of passengers.

(6) They had conferred upon officers appointed to inspect railways the additional power of inspecting the rolling-stock used on a railway.

The Committee had made no alteration in the section of the Bill which related to the powers of Railway Authorities to fine their servants. The effect of that section, as it was originally drawn and as it now stood, would be to give Railway Authorities in India the same powers with respect to the infliction and recovery of such fines as was given to Railway Companies in England by English legislation.

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.

MERCHANT SHIPPING BILL.

The Hon'ble MR. ILBERT also presented the further Report of the Select Committee on the Bill to amend the law relating to Merchant Shipping. He said :—

“I should like to take this opportunity of explaining the reasons which have induced the Committee to make a considerable change, not in the substance, but in the form of the Bill.

“The Bill, as originally introduced, repealed and re-enacted, with certain amendments, two of the later Indian Merchant Shipping Acts, Act IV of 1875 and Act XIII of 1878.

“When the Bill was before the Select Committee, it was decided that it would be advisable, for the convenience of persons connected with Merchant Shipping, to make the Bill more of a consolidating measure, and accordingly it was expanded into Bill No. II, which repealed and re-enacted not only Act IV of 1875 and Act XIII of 1878, but also the unrepealed portions of Act I of 1859 (the principal Indian Merchant Shipping Act), Act XIII of 1876, and Act VII of 1880, chapter III. Bill No. I consisted of 31 sections: Bill No. II consisted of 157 sections, and was in appearance, though not in reality, a somewhat formidable measure. Now I fully admit the great practical convenience of being able to find the whole of the Statute Law on a given subject

within the four corners of a single Act, and accordingly I think that the rule which we have adopted in India of repealing old law and re-enacting it with the necessary amendments, instead of passing a series of amending Bills, is a sound general rule to follow. It is a rule which cannot, under ordinary circumstances, be followed in England, for reasons which any one who is acquainted with English Parliamentary procedure will readily appreciate. But those reasons do not apply out here, and, as I have said, it is a useful general rule to observe.

“On the other hand, there is another sound general rule which has to be borne in mind, and that is, that in subjects like Merchant Shipping it is desirable to make the Indian Statute Law correspond as closely as possible to the English Statute Law. It is very inconvenient for a merchant or a seaman to find himself under one shipping law in London and under a totally different shipping law at Calcutta. Accordingly in dealing with those branches of Merchant Shipping Law which are not regulated by Act of Parliament, and with respect to which we have power to legislate for ourselves, we have always taken care that our legislation shall conform as closely as circumstances will admit to Imperial legislation, and whenever any important amendment of the law has been made in England, we have usually followed suit at no distant interval out here.

“But if we were to pass the consolidating Bill which was prepared last year, we should not be bringing our Indian Merchant Shipping Law into harmony with English Merchant Shipping Law. On the contrary we should be enacting for Indian ports certain provisions which have been repealed as to, and are no longer in force in, English ports. The provisions to which I refer are contained in Act I of 1859, and relate to the subjects of advance notes, of arrest without warrant, and of imprisonment for desertion.

“These sections were copied from corresponding enactments in the English law. But those corresponding enactments, or as much as remained of them, were deliberately repealed in 1880 by the English Parliament by an Act which extends only to the United Kingdom and leaves the Indian law untouched. So that if we enacted them here, we should be departing from instead of following the English law. And although it is perfectly true that when in the process of consolidation we re-enact any particular enactment, merely for the purpose of simplifying the form of the law, we are not to be taken as expressing any opinion in our legislative capacity as to the intrinsic merits of that enactment; yet I think it might be urged with some show of reason that, having regard to the obvious desirability of making the English and the Indian Mer-

chant Shipping Acts harmonious, we ought not to re-enact for India what has been repealed for England without justifying the difference which we should be thus maintaining between the laws of the two countries. Whether the alterations recently made in the English Merchant Shipping Law as to desertion are or are not beneficial, and whether similar alterations ought not to be made in the Indian law, are questions on which I shall be fully prepared to express my opinion when the time for discussing them arrives; but until that time does arrive, I think we had better avoid any form of legislation which would afford an opportunity for raising these difficult questions. Accordingly, we have thought it more prudent to steer quite clear of these delicate topics by cutting down our Bill to its original form of an amending Bill.

“There are two further considerations which reconcile me to the abandonment of last year’s project of consolidation. The first is, that I shall probably have, before the end of the present winter session, to propose some further amendments of the Merchant Shipping Law, so that our consolidating Act would be swiftly followed by an amending appendix. The second is, that the consolidation which would have been effected, if the Bill had become law in last year’s form, would have been a very incomplete—I might almost say illusory—consolidation of the existing Merchant Shipping Law. It would only have consolidated so much of that law as is contained in the Indian Statute-book: it could not have comprised any part of the English Merchant Shipping Acts. But the Indian Merchant Shipping Law is a mere fringe on the English Merchant Shipping Law, much as under the old system in England the rules of equity were a fringe on the rules of common law, and the scattered enactments which make up this fringe are hardly intelligible without a reference to the still more numerous and scattered enactments which make up the body of the garment.

“However, as I said before, I fully admit the inconvenience of having to search for the law up and down a large number of Acts; and although we do not at present see our way to removing this inconvenience by consolidation, yet I think we may find a practical, even if it be a temporary, remedy for it by bringing together in the form of a digest the various enactments, whether contained in the English or in the Indian Statute Book, which make up the sum total of the Indian Merchant Shipping Law. I hope that we may with the help of the Legislative Department be able to prepare some such digest as this before the end of the current year, which is the date at which we propose that this new Bill should come into force.”

RULES OF BUSINESS.

BENGAL PILOTS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to give power to arrest persons whose evidence is needed under Act XII of 1859.

RULES OF BUSINESS.

The Hon'ble MR. ILBERT also moved that the following amendments be made in the Rules for the conduct of the legislative business of the Council of the Governor General, namely:—

(1) That after Rule 17 the following be inserted, namely:—

“17A. The Council may, at any time after leave to introduce a Bill has been granted, direct that the Bill be published in such manner as the Council thinks fit.”

(2) That in the fourth paragraph of the 24th Rule the word “and” be omitted, and that the following be added to that paragraph, namely:—

“and the date on which the publication has taken place, or, where publication in more than one Gazette or in more than one language is ordered, the date on which the publication in each such Gazette and each such language has taken place.”

(3) That to the 24th Rule the following paragraphs be added, namely:—

“When the Committee recommend the republication of a Bill which was originally ordered by these Rules or by the Council to be published in more than one Gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the Bill be republished in every such Gazette and every such language.

“If the Committee are of opinion that it is unnecessary to republish the Bill in any such Gazette or in any such language, they shall, in their report, state the grounds of their opinion.”

(4) That after the 29th Rule the following be inserted, namely:—

“29A. Notwithstanding anything in the foregoing Rules, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration has been carried, to submit the Bill, or any part of the Bill, to the Council section by section. When this procedure is adopted, the President shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question ‘that this section, or (as the case may be) this section as amended, stand part of the Bill.’”

He said that the object of the first amendment was to supply what appeared to be an omission in the rules. Under the rules as they stood, there was

no provision made for the publication of a Bill, for the introduction of which leave had been asked, until a motion had been made, after the introduction of the Bill, that it be referred to a Select Committee, taken into consideration or circulated for opinion. As the principle of the Bill might be discussed when any such motion was made, it was considered desirable that the Council should be enabled to have the Bill published as soon as leave to introduce it was granted, so that the public might have an opportunity of giving their opinions as to its provisions, and members of Council might be in a better position to discuss its principle and provisions, when the time for discussion arrived. With respect to the last three of the amendments, he had on a previous occasion explained pretty fully the reasons which induced the Government to propose them, and the objects aimed at by each of them, and he did not think it necessary that he should recapitulate to-day what he had said before. These amendments had been for some time before the public, they appeared to have received general approval, and he had not received any suggestions for their modification. Under these circumstances, all that was necessary was that he should formally move that they be taken into consideration and the rules be passed.

His Excellency THE PRESIDENT said:—"Before I put the amendment I should like to point out that the present arrangement is rather more anomalous even than my hon'ble and learned friend has stated it to be; because, under Rule 22 of the existing Rules, 'the Governor General, if he see fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill.' So that you can publish a Bill before introducing it, but you cannot publish it, under the Rules, immediately after leave is given to introduce it, but must wait until it has actually been introduced. I think that sufficiently shows that it is by an accidental omission in the Rules that such an anomaly exists, and that it is quite right that it should be removed."

The first amendment was put and agreed to.

The second and third amendments were also put and agreed to.

The Hon'ble KRISTODÁS PÁL said:—"My Lord, before the last amendment is put to the vote, I wish, with Your Lordship's permission, to make a few general remarks. In the first place, I desire to express my high appreciation of the enlightened and liberal spirit in which changes in the Rules of Business

of this Council have been proposed to-day. The primary object of these changes, as the hon'ble and learned Member has explained, is to afford the public a better and fuller opportunity to discuss the measures laid before this hon'ble Council. I will not go over the grounds which have been already traversed by the hon'ble and learned member in proposing the changes in question, but I submit that the public feel deeply grateful to Your Excellency's Government for the steps that are being taken to give a wide publicity to legislative measures, to enlist the co-operation of the Press in their discussion, to educate and strengthen public opinion, and thus to legislate in the broad light of day.

“While upon this subject I venture to invite the attention of Your Excellency and of the hon'ble Council to some points connected with the Rules of Business of this Council. Rule 9 provides that, after a motion is made, the debate shall be opened by the junior member, who shall be followed by the other members in consecutive order. Although I am the youngest member of this hon'ble Council, and have had no experience of the working of its rules, still it strikes me that this rule is a source of much practical inconvenience. It may happen that, after the mover of a motion has spoken, the junior member may quite concur with him, and may have, therefore, little to add to what has been already said; but after hearing other members, who may object to the motion, he may wish to answer them, but under this rule he will be tongue-tied. He must speak first, or not at all. Practically, therefore, the junior member and those immediately above him are put under a bann. I am not aware of any legislative assembly, society or corporate body which has such an inexorable rule. I think this rule requires amendment.

“The next point is the publication of a Bill when material alterations have been made in it by the Select Committee to which it may have been referred. Already a motion has been carried to-day that, if in any case the Select Committee should recommend the publication of the amended Bill, it should be published for general information. I make no doubt that the Select Committees will act in the spirit in which the new rule has been made; but supposing that in any case a Select Committee should act otherwise, surely any member of the Council ought to be at liberty to move that an amended Bill should be published for the reason stated. I think it necessary to mention that considerable dissatisfaction is now and then produced in the public mind on the score of scant opportunities allowed to the public for the discussion of a Bill at the last stage, though radical alterations might have been made in it at that stage. The rules of the old Legislative Council, better known as Lord

Dalhousie's Legislative Council, were more liberal in this respect. Rule 85 of the old Council ran as follows :—

“ ‘ LXXXV. Any member may likewise move in Council that the draft be republished for general information, on the ground that the amendments which may have been adopted are of so new and important a nature that the Act ought not to be passed without being previously published for general information ; and, if the motion be carried, the amended Bill shall be published, and notice may be given of a day on which the third reading and passing of the Bill will be moved.’ ”

“ I would humbly recommend the adoption of this rule and extend it to Bills when they have been subjected to material alterations by a Select Committee.”

The hon'ble speaker then proceeded to point out the absence of a rule to permit private individuals to be heard by counsel in respect of private or personal Bills as under Rule 29 of the old Legislative Council.

The Hon'ble MR. HOPE said he thought the Hon'ble Member was out of order in speaking upon points which were not then before the consideration of the Council.

His Excellency THE PRESIDENT :—“ Strictly speaking, no doubt, the Hon'ble Member is out of order in referring to portions of the Rules not before the Council. I was going to make that remark myself afterwards ; but I thought that, as this is the first occasion on which we have had the pleasure of hearing the Hon'ble Member addressing us in this Council, I should be acting in accordance with the wishes of the Council if I did not interrupt him. Strictly speaking, Mr. Kristodás Pál can only speak on the motion before the Council at this moment ; but of course it is open to him to make suggestions to Government on the points on which he desires to represent his views. If my hon'ble friend Mr. Hope presses his objection, I must rule in his favour ; but I was anxious to hear what my hon'ble friend Mr. Kristodás Pál had to say.”

The Hon'ble MR. HOPE remarked that there was considerable inconvenience in discussing in the Council matters which were not before it for discussion.

His Excellency THE PRESIDENT :—“ Then, if objection is taken, I must rule my hon'ble friend out of order. At the same time, I hope that he will do us

the favour of indicating his views to the Government on the points to which he desires to draw attention, and I can assure him that they shall receive full consideration."

The Hon'ble KRISTODÁS PÁL explained that, before venturing to address the Council, he had consulted the hon'ble and learned Law Member, who had advised him not to move substantive amendments, but to confine himself to general remarks and suggestions for the consideration of the Council.

The Hon'ble MR. ILBERT said he thought what he intended to say to the hon'ble member was this—that although in his opinion it would be out of order to move any substantive amendment of which notice had not been given, he thought there would be no objection to suggestions being made and general outlines given of proposed alterations, not with the object of inviting discussion, but that they might be moved and discussed on some future occasion.

The fourth amendment was then put and agreed to.

The Hon'ble MR. ILBERT gave notice of his intention to propose a very minor amendment of the rules, which had been necessitated by the recent changes in the arrangement of the tables. Under the existing rules, it was provided that the Commander-in-Chief should sit on the right of the President, and the Governor or Lieutenant-Governor should sit opposite to the President. There was some little inconvenience in giving strict effect to that rule under the existing arrangements, and as a matter of fact the rule had not been observed. Accordingly, he would suggest that the rule should be modified in this way, namely, by substituting for Rule 5 the following :—

"That the Governor or Lieutenant-Governor and Commander-in-Chief should sit on the right of the President; the Legal Member should sit wherever it might be convenient; and, subject to these provisions, the Members should sit according to seniority, the Junior Member sitting to the left of the President."

His Honour THE LIEUTENANT-GOVERNOR said that, while deprecating the wrath of the Hon'ble Mr. Hope and the risk of being called to order by the President, he wished to say one word. He thought it would be a very salutary change if the rule requiring members to speak without rising from their chairs be altered, so as to provide that hon'ble members should speak standing instead of sitting.

His Excellency THE PRESIDENT said he must rule that His Honour the Lieutenant-Governor was out of order. A rule which applied to the junior member of the Council was equally applicable to the Lieutenant-Governor.

The Council adjourned to Friday, the 23rd February, 1883.

R. J. CROSTHWAITE,

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

CALCUTTA;
The 16th February, 1883. }

*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 February, 1883.

PRESENT :

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

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

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

Major the Hon'ble E. Baring, R.A., 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 T. C. Hope, C.S.I., C.I.E.

The Hon'ble Bájá Siva Prasád, C.S.I.

The Hon'ble Sayyad Áhmad Khán Bahádur, C.S.I.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble R. Miller.

The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.

MERCHANT SHIPPING BILL.

The Hon'ble MR. ILBERT moved that the Reports of the Select Committee on the Bill to amend the law relating to Merchant Shipping be taken into consideration. He said that he explained at the last meeting of the Council the reasons which had induced the Select Committee of this year to make a change in the form of the Bill, and that the Bill which he was now asking the Council to take into consideration was substantially the Bill which was agreed to by the Select Committee of 1881; that was to say, it was the original Bill *plus* the substantial alterations and additions which were made by the Select Committee of last year *minus* the additions which were made for the purpose of consolidation. The original Bill made two or three amendments in the existing Merchant Shipping Law. The most important of those amendments were these: First, provision was made for the appointment of an officer who was called the Port Inspector, and who, in addition to performing the duties now

performed by the Health Officer, was entrusted with the duty of inquiring into any complaints which on the arrival of a ship in port might be made by any of the crew against the master or against any others of the crew. Secondly, addition was made to the class of cases in which Marine Courts of Inquiry were to be held. Thirdly, power was given to the Local Governments to fix a scale of provisions for less than which a master was prohibited from contracting with any lascar or Native seaman; and, lastly, a provision was inserted in the Bill to the effect that, when the service of any lascar was to end at any port not in British India, the agreement between him and the master should invariably stipulate for his return to British India, and not merely for his employment on board some vessel bound to such other port as might be agreed on, possibly not in British India.

That was the Bill as originally introduced. The Select Committee of 1882 agreed on sundry amendments and additions which he would notice. The most important of the amendments were as follows:—

- (1) To meet a doubt that had arisen, it was provided, in section 5 of the Bill, that nothing in the Bill should apply to any ship belonging to or in the service of the Government of India.
- (2) Clauses (a) and (c) of section 6 were made to apply only to cases where material damage had been caused; and, at the suggestion of the Board of Trade, the application of clauses (d) and (e) of that section had been limited to British ships.
- (3) At the suggestion of the same Board, power had been given, in section 9 of the Bill, to the Court making an investigation to inquire into charges against masters, mates or engineers, whether they were certificated or not. It had also been provided that, in every case in which any charge of incompetency, misconduct or wrongful act or default arose, the Court should, before the commencement of the inquiry, furnish the master, mate or engineer concerned with a copy of the report or statement of the case upon which the investigation had been directed.
- (4) In section 13, sub-section (1), the Court had been required, on the recommendation of the Board of Trade, in cases involving any question as to the cancelling or suspension of the certificate of a master, mate or engineer, to constitute as its assessors two persons having experience in the Merchant Service.

- (5) In section 19 it had been provided that the certificate granted in lieu of a cancelled or suspended certificate should be of a grade lower than the one cancelled or suspended; and, in accordance with the opinion expressed by the Local Governments, they had been empowered to grant under that section certificates without being advised by the Court to do so.
- (6) In section 20 it had been made clear that the Local Government could not cancel or suspend, in the cases mentioned in that section, certificates granted under the Merchant Shipping (Colonial) Act, 1869.
- (7) At the request of the Bengal Government, the officer to be appointed under section 28 of the Bill as introduced (now section 31) had been called the Health-Officer, and he had been given the powers conferred on a Shipping Master by Act I of 1859, section 71. Clause (b) of that section of the Bill had also been modified so as to confine the power of medically examining persons on board to the medical examination of seamen or apprentices.

He would explain that, in the Acts relating to Merchant Shipping, "seaman" included an officer. Those were the amendments. The additions were three in number:—

- (1) In section 34 power was given to the Local Governments of fixing, with the previous sanction of the Governor General in Council, the fees payable by candidates for examination for certificates as masters or mates.
- (2) In section 35 Local Governments were given the power, conferred on the Board of Trade by section 134 of the Merchant Shipping Act, 1854, of requiring the further examination of persons reported by the examiners to be qualified for certificates.
- (3) The punishment which could be awarded under section 79 of Act I of 1859 for misconduct endangering the safety of a ship or of any person on board was imprisonment for two years. The corresponding provision (section 239) of the Imperial Merchant Shipping Act, 1854, allowed such offences to be punished with fine or imprisonment or both, and there was no reason why the punishment should be necessarily more severe under our law. Accordingly, section 36 of the Bill provided a penalty of fine

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which might extend to Rs. 1,000, or imprisonment which might extend to two years, or both.

That was the Bill as settled by the Select Committee of 1882, and that was the Bill as it now stood. All he needed to add was that they had considered the provisions of an Imperial Act which had been passed in England since the beginning of last year and which was called the Merchant Shipping (Colonial Inquiries) Act, but that it did not appear to necessitate any change in the form or substance of the present Bill.

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.

BENGAL PILOTS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to give power to arrest persons whose evidence is needed under Act XII of 1859 be taken into consideration. He said that this was a small Bill, which was merely supplementary to the Bill which had just been passed by the Council. It re-enacted in a separate measure one of the sections which was repealed by the Bill which was just passed. The only alteration made in the form of the Bill as approved by the Select Committee of last year was that, inasmuch as they had postponed the coming into operation of the other Bill to the beginning of next year, so they had postponed to the same date the commencement of this small supplementary measure.

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.

The Council adjourned to Friday, the 2nd March, 1883.

R. J. CROSTHWAITE,

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

CALCUTTA ;
The 23rd February, 1883. }

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 March, 1883.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, B.A., C.S.I., C.I.E.

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

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

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

The Hon'ble Rájá Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Áhmad Khán Bahádur, C.S.I.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble R. Miller.

The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.

The Hon'ble J. W. Quinton.

NEW MEMBER.

The Hon'ble J. W. Quinton took his seat as Additional Member.

BENGAL TENANCY BILL.

The Hon'ble MR. ILLERT moved for leave to introduce a 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:—

“MY LORD,—I ought to explain that I am not, strictly speaking, the Member in charge of this important Bill, and that it is only through accidental

circumstances that the onerous task of justifying its introduction and explaining its main provisions has devolved on me instead of on my honourable friend Sir Stuart Bayley, who is in every way so far more competent to perform this task.

“The first question with which I have to deal is whether any necessity exists at all for undertaking a general revision of the rent law? The Rent Bill has so long been a household word in Bengal, the defects of the existing law have been pointed out so repeatedly, so persistently and from so many different quarters, that there will be many to whom it will doubtless seem that this question is one which it is idle to ask and unnecessary to answer. And yet the question has been asked. We have been told that, in undertaking our present task, we are undertaking a work of supererogation. The suggestion has been made that, in taking it up, we have been actuated by a spirit of mischievous and restless activity, prompted, I presume, by the desire of finding some occupation for that superabundant leisure with which it is well known that the Government of India is endowed. Nay, it has even been hinted that our wish has been to imitate similar legislative achievements of the British Parliament, and that the Bengal Bill not only follows the lines, but was suggested by the introduction, of the recent Irish Land Act.

“So far as these hints convey any imputation of being influenced by political or party considerations, they are easily disposed of by reference to a few simple dates. The present Bill, as everybody knows, is based on the recommendations of the Bengal Rent Commission. That Commission was appointed under Lord Lytton’s Government in the month of April 1879, and had nearly concluded its labours at the time when England was in the throes of the last general election; it presented its report just eleven days after Your Excellency took your seat as Viceroy; and it was only in compliance with the pressing and urgent request contained in Sir Ashley Eden’s letter of July 1881 that the Government of India considered the question of legislation at all.

“But the truth is that, if there ever was a measure against which the charge of unnecessary, precipitate or premature legislation could not, with any decency, be brought, it is this. If we trace it to its ultimate origin, we shall find that it embodies an endeavour to redeem a pledge which was given at the time of the permanent settlement, and which has never been adequately redeemed. If we examine its immediate causes, it will be easy to show that, for the last twenty years, there has been a persistent demand for a revision of the existing law, not merely on points of detail, but on points of principle; not merely as to procedure, but as to substantive rights; that this demand has grown in urgency with each succeeding year; that the subject has occupied the attention of successive

Lieutenant-Governors of Bengal; that attempts have at various times been made to dispose of it by legislation in the Bengal Legislative Council; and that each unsuccessful attempt has shown the futility of any settlement which should deal only with procedure, and should leave the substantive rights of landlord and tenant untouched.

“What, then, are the facts with which we have to deal, and what are the evils for which legislation is required? Broadly stated, they are these. We have a population of some sixty millions, mainly deriving their means of subsistence, directly or indirectly, from the soil; the great majority, directly, as cultivators; a small minority, indirectly, as rent-receivers. The mutual rights of these two classes, the rent-receivers and the cultivators, are uncertain and obscure; the machinery for ascertaining and enforcing those rights is insufficient and defective; and the result is friction, which has taken different forms in different parts of the province. In Bihár, where the landlords are strong and the tenants are weak, we have rack-renting and acts of lawless and high-handed oppression on the part of the landlords: in Eastern Bengal, where, comparatively speaking, the landlords are weak and the tenants strong, we have combinations of the tenants to resist the payment of rent. This is what Sir Ashley Eden said a few years ago of Bihár, in a letter which he wrote as Lieutenant-Governor, pointing out the urgent necessity for some reform in the law:—

‘In Bihár what is most wanted is some ready means of enabling the raiyat to resist illegal distraint, illegal enhancement and illegal cesses, and to prove and maintain his occupancy-rights. Apart from the backwardness and poverty of the raiyat, there are many points in the existing system of zamindári management in Bihár which seem to call for speedy amendment. The loose system of zamindári accounts, the entire absence of leases and counterparts, the universal prevalence of illegal distraint, the oppression incident to the realisation of rents in kind, the practice of amalgamating holdings so as to destroy evidence of continuous holding, are evils which necessarily prevent any possible development of agricultural prosperity among the tenant class, and place them practically at the mercy of their landlords or of the *thikudárs* (or lessees), to whom ordinarily their landlords from time to time transfer their rights.’

“And here is a picture, drawn about the same time, of the way in which the law was working, or failing to work, in other parts of the province:—

‘It is to be borne in mind’ (I am quoting from the Bengal Administration Report of 1875-1876) ‘that the last Rent Act for Bengal (VIII of 1869) clearly lays down the conditions under which alone the rent of an occupancy-raiyat can be enhanced. But it does no more than this. It does not prescribe any rule, nor even any principle, upon which the enhancement is to be determined. The consequence is that, whenever a dispute arises, the parties cannot form any idea as to how it will be decided. The Courts do not, indeed cannot, know how to decide; and the end is that no real decision can be attained. It follows, then, that no enhancement is lawfully adjudged, and consequently the landlord is strongly tempted to obtain by illegal

means what he regards as his due. This again produces resistance on the part of the raiyat; and if many raiyats are implicated, then some union or other combination is formed, which ends in a general withholding of rents by the tenantry, and an attempt at forcible exaction of it by the landlord,—in all which there lie the germs of agrarian disturbance.’

“ Rack-renting here, land-leagues there. We have, indeed, in the existing state of things all the elements of agrarian misery and agrarian disturbance.

“ I have broadly classified the persons interested in the soil as rent-receivers and cultivators. Let me try and explain somewhat more fully the position and proportionate numbers of the persons who make up these classes. For this purpose, I cannot do better than quote a few paragraphs from a minute which has recently been published by my friend Mr. Justice Cunningham :—

‘ The classes interested in the soil in India’ (he says) ‘ are (1) the Government, (2) the proprietors or revenue-payers, and (3) tenants or rent-payers. This last class contains a great variety of holders, and is itself divided into two main divisions, namely, (a) tenure-holders, who represent every intermediate interest between a proprietor and the raiyat; and (b) raiyats, who represent persons originally let into occupation for the immediate purpose of cultivation, and who, to a great extent, are still the actual cultivators of the soil, though korfas or sub-raiyats are not uncommon. Each of these divisions, again, presents numerous varieties. ‘ Tenure-holders’ range from a holder, who may be to all intents and purposes an owner, subject merely to a fixed and unalterable rent-charge, to holders who have merely a precarious leasehold interest. ‘ Raiyats,’ too, vary greatly in the character of their interest, some having a right to sit at fixed rents and to be altogether exempt from enhancement; some to sit at rents which are enhanceable only under certain prescribed restrictions; some being mere tenants from year to year. The under-raiyats may, as a rule, be said to be tenants from year to year.

‘ The numbers of these various classes are, speaking roundly, as follows :—

‘ There are 130,000 revenue-payers, who pay the Government a land-revenue of about 3½ millions sterling, and enjoy a rental officially returned at something over 13 millions sterling. This 3½ millions of revenue is only half a million larger than that fixed at the time of the Permanent Settlement, namely, three millions. It is reckoned, that, as the zemíndár’s share was fixed at one-tenth of the gross proceeds of the rent, ‘ the net rental’ (i.e., share available for the proprietors after payment of revenue) at that time must have been between £300,000 and £400,000. While the Government revenue, accordingly, has increased only by half a million, the landlord’s share has risen from, say, £350,000 to 9½ millions sterling. But this rental of 13 millions is only an official return for road-cess purposes, and is believed by many good judges to represent very inadequately the whole amount which, in one way or another, the proprietors receive. One writer reckons the entire amount paid annually by the occupants of the soil at between 25 and 30 millions sterling.

‘ This rental is paid from a cultivated area of, say, 55 millions of acres,—an area about one-sixth larger than that of the United Kingdom,—which has 47½ millions of acres under crops and pasture. The agricultural rental of the United Kingdom, however, is estimated at 67 millions sterling.

'The class intermediate between proprietors and raiyats, namely, tenure-holders, numbers about 750,000, the annual income in the great majority of instances, 620,000, being below £10.

'Below this superstructure of revenue-payers and intermediate landlords come the occupants of the soil, the 'raiya'ts,' about 10 millions in number. The following figures show their general condition :—

Raiyats paying over	Rs. 100 ⁰	25,000 or, say, १०० of the whole.
" between	50—100	120,000
" "	20— 50	680,000
" "	5— 20	2,800,000
" under	" 5—	6,200,000

'It thus appears that there are nine millions of raiyats paying a rental below £2 per annum, and of these more than six millions pay under 10 shillings, a rental which implies a holding between two and three acres in extent.'

"Taking another principle of classification, we may divide the persons with whom we have to deal into rent-receivers and rent-payers. The zamíndár belongs to the first class, the middleman both to the first and the second, the occupier to the second alone. And in ordinary legal parlance we describe members of the first class as landlords, and members of the second class as tenants, applying to them terms borrowed from English law. Now, the most fertile source of confusion and mistake in India has been the misapplication of English analogies to Indian facts. Because we have described the Bengal zamíndár as a landlord, many people unacquainted with his true position have jumped to the conclusion that he is a landlord, or landowner, in the English sense of the word. Nothing can be further from the truth. Among many differences between the English landowner and the Bengal zamíndár, there are two which at once strike an Englishman who has had any practical acquaintance with the management of English estates.

"In the first place, every body knows that a large portion of the money paid by an English tenant to an English landlord as rent represents interest on capital which has been expended on farm-buildings, drainage and the like. But what proportion of the money paid as rent by the ordinary Bengal raiyat represents interest on capital ?

"In the next place, the English landlord knows pretty accurately, or, if he does not, his agent knows for him, who his tenants are, what rent they pay and where their lands lie. But these are just the facts which the zamíndár complains that both he and his agent have so much difficulty in finding out, and which he is always asking us to try and help him to find out. Imagine an English landlord coming to Parliament and asking it to help him in making up a proper rent-roll.

“No; the English landlord is one thing, the Bengal zamíndár is another. A revenue-payer we found the zamíndár, a rent-receiver we made him; but a landlord or a landowner, in the English sense of the word, neither we nor his own efforts have ever succeeded in making him.

“I said just now that the ultimate origin of the present measure might be traced back to the time of the Permanent Settlement. At that time, as now, there were three main classes interested in the soil of Bengal—the State, the revenue-payers or zamíndárs, and the cultivators or raiyats. I am omitting, for the sake of simplicity, the persons holding intermediate interests between the zamíndár and the raiyat. Much learning has been devoted to ascertaining the precise position and rights of the zamíndár and the raiyat at the time of the Permanent Settlement, but amidst the controversies which have for the last century raged, and are still raging on this subject, one point may be taken as conclusively proved, namely, that the great mass of the Bengal raiyats were at the time of the Permanent Settlement in the enjoyment of certain customary rights, which, at least, included the right of occupying the land conditionally on the payment of the rate of rent current and established in the locality, and, I may add, the right of having that rate of rent determined by the State. Now, what the authors of the Permanent Settlement did was this. They settled and defined the mutual rights of the State and the revenue-payers or zamíndárs. They did not settle, define or ascertain the mutual rights of the zamíndárs and the raiyats. They settled and defined the mutual rights of the State and the zamíndárs by declaring that the amount of revenue payable by the latter, which had formerly been fluctuating, or fixed for short terms of years, should be fixed for all time, and should not be increased by reason of any increase in the area under cultivation. And at the same time, and as part of the same settlement, they formally declared that the zamíndárs should be deemed to be the proprietors of the soil, whatever that expression might mean; in other words, as I shall show hereafter, they transferred to the zamíndárs those indefinite proprietary rights in the soil which had formerly been claimed by the State. But they did not settle or define, they did not even ascertain, the rights of the raiyats or occupying cultivators. The legislation of 1793 left those rights outstanding and undefined, and, by so leaving them, it tended to obscure them, to efface them and, in too many cases, ultimately to destroy them. That both the Court of Directors in England, and the Governor General in Council here, were aware of the possible consequences of their legislation, we well know. Immediately before the Permanent Settlement was made, the Court of Directors, in conveying instructions to the Government here with respect to it, wrote as follows:—

‘In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced. * * * *

You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the raiyats and subordinate landlords, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our government.'

"In conformity with these instructions, a formal declaration was made expressly saving the right of the Government to legislate for the protection of persons having interests in the soil below those of the zamindárs. This declaration was embodied in Article VII of the Proclamation of the 22nd of March 1793, relative to the limitation of the public demand upon the lands, was repeated in section 8 of Regulation I of 1793, and was as follows :—

'To prevent any misconstruction of the foregoing Articles (the Articles, namely, under which the amount of revenue was permanently fixed), the Governor General in Council thinks it necessary to make the following declarations to the zamindárs, independent taluqdárs and other actual proprietors of land :

'*First*, it being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependant taluqdárs, raiyats and other cultivators of the soil; that no zamindár, independent taluqdár, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.'

"Again, it was enacted by the 67th section of Regulation VIII of 1793 (a Regulation re-enacting with modifications the rules for the Decennial Settlement) that proprietors should be bound by the restrictions in their kabuliyats, and the 9th of these restrictions, as stated by Harington (Vol. II, page 255) was

'That implicit obedience be shown to all Regulations which have been or may be prescribed by Government, concerning the rents of the raiyats and the collections from under-tenants and agents of every description, as well as from all other persons whatever.'

"The duty was admitted, the power was asserted; but more than half a century elapsed before the legislature took any effective steps to discharge their obligation. And when they did take those steps, their benevolent intentions were marred and, to a great extent, frustrated by circumstances which were never foreseen or contemplated at the time of legislation.

"In 1859, was passed, Act X of that year, which was entitled 'An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.'

“The most important of the provisions of that Act were as follows :—

‘(1). Raiyats who hold at fixed rates of rent which have not been changed from the time of the Permanent Settlement (1793) are entitled to hold for ever at those rates. If the rent has not been changed for 20 years, it is to be presumed that it has not been changed since 1793.

‘(2). Raiyats having rights of occupancy but not holding at fixed rates are entitled to leases at fair and equitable rates; the rates previously paid to be deemed fair and equitable unless the contrary be shown in a suit.

‘(3). Every raiyat who has cultivated or held land for 12 years has a right of occupancy in that land so long as he pays his rent; but this rule does not apply to certain private or domain lands let by the proprietor for a term or year by year. The accrual of the occupancy-right may also be barred by a written contract.

‘(4). The rent of a raiyat having a right of occupancy can only be enhanced (a) if the rate of rent is below the prevailing rate payable by the same class of raiyat for similar land in adjacent places; (b) if the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat; (c) if the quantity of land held by the raiyat is proved to be greater than he has paid for.

‘(5). Raiyats not having rights of occupancy are entitled to leases only at such rates as they and their landlords may agree upon.

‘(6). A raiyat is liable to ejection if in arrear of rent at the end of the year, but if he is an occupancy-raiyat, or holds under an unexpired lease, he can only be ejected by a judicial decree or order.

‘(7). The produce of land is hypothecated for its rent and may be distrained before it is stored, but only in respect of arrears of one year.’

“Act X of 1859 was a useful and beneficial Act, and if, as must be admitted, its working has not been successful on some important points, this failure is attributable not to any defect in the fundamental principles on which the Act was based, but mainly to defects of language and expression. The circumstances under which the Act was introduced, and the changes which it underwent during its passage through the legislature, have recently been submitted to a very careful examination, and the result of this examination has been to bring out clearly two points—

“(1) that the Bill as originally introduced was not intended to codify the law of landlord and tenant in Bengal, but to amend one particular branch of it—that relating to the recovery of rent; and

“(2) that the provisions of the Act which have given rise to most controversy and difficulty were introduced into it by way of after-thought, and that the most important of them was based on a misconception of existing facts.

“The expression ‘fair and equitable rates,’ the twelve years’ rule, and the enhancement rules, do not appear in the original draft of the Bill: they were introduced into it by the Select Committee. The Committee explained in their report that they had substituted for the phrase ‘pargana rates,’ that is to say, rates current in the pargana or locality, the phrase ‘fair and equitable rates,’ and that they had laid down some rules by which the fairness of the rate might be ascertained. As to the twelve years’ rule, the Committee explained that the term ‘resident raiyat,’ which had been used in the original Bill to designate the class of persons who were to enjoy occupancy-rights, had been objected to by the North-West Board of Revenue as too narrow. In the North-Western Provinces, occupancy-rights were undoubtedly possessed in some cases by tenants who were not resident in the village, and to such cases it had been usual to apply a twelve years’ rule of prescription. In order to meet this objection, the Select Committee dropped the phrase ‘resident,’ and adopted as the test of occupancy the holding of the same land for 12 years. The intention was evidently to enlarge the class of occupancy-raiyats, and not to exclude any who otherwise under the broad term of ‘resident raiyat’ would have belonged to it.

“The alterations made by the Committee appear to have been treated as little more than verbal emendations, and were not much discussed in Council.

“It was out of the enhancement-rules that the first serious difficulty arose. No special procedure for securing the easy adjudication of enhancement-cases was prescribed, and it was apparently thought that the general rules embodied in the Act would sufficiently guide the discretion of the Revenue Courts in fixing ‘fair and equitable rents.’ The Act, however, had to be interpreted by the Appellate Courts of the Presidency, and difficulties soon began to manifest themselves. In the case of *Hills v. Ishwar Ghose*, which was decided in 1862, the Chief Justice of Bengal, Sir Barnes Peacock, laid down the doctrine that the absolute increase in the value of the produce and also the portion of it due to the tenant’s expenditure of capital or labour being ascertained, the landlord was entitled to the rest as economic rent. He took his stand on the celebrated definition of rent given by Malthus. ‘Rent,’ said Mr. Malthus, writing in England, and ‘rent,’ repeated Sir Barnes Peacock, delivering judgment in Calcutta, ‘is that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary

rate of agricultural capital at the time being.' In reply to the possible objection that this definition of rent ignored the distinction between an occupancy-raiyat and a tenant-at-will, he denied the right of the former to have his rent 'fixed at a lower rate than that which a tenant not having a right of occupancy would give for it.'

"This decision did not commend itself as sound to those who were best acquainted with the true position and rights of the Bengal raiyat, and three years afterwards it was overruled by the High Court in what is popularly known as the Great Rent Case of 1865. I need not recapitulate the findings of the Judges on the numerous issues raised in that trial. Suffice it to say, that the majority of the Court altogether repudiated the definition of economic rent, and the theory that rent ought to be fixed by competition, as inapplicable to the customs and conditions of the country; and that they held the words 'fair and equitable' rent to mean 'that portion of the gross produce calculated in money to which the zamíndár is entitled under the custom of the country,' and to be equivalent to the varying expressions 'pargana rates,' 'rates paid for similar lands in adjacent places,' and 'rates fixed by the law and usage of the country.' They further held that, in cases where the enhancement of what once was a 'fair and equitable rent' was sought on the ground of the produce having increased in value, the rule of proportion should be applied; that is to say, the former rent should bear to the enhanced rent the same proportion as the former value of the produce bore to the increased value. From these conclusions the Chief Justice, as is well known, dissented, and upheld the doctrine of an 'economic rent' as laid down by him in Ishwar Ghose's case. But the rulings of the majority of the Judges became, and are now, the law of the land. Meanwhile, the Government of the North-Western Provinces had discovered that the rule, which had been introduced by amendment into Act X of 1859 for the purpose of covering the special case of occupancy-tenants who were not resident in the village, had most injuriously affected the position of the resident occupancy-raiyat. The latter, in place of falling back on the broad plea of occupancy, was now compelled to prove a continuous occupation of specific fields for an uninterrupted term of 12 years. It was found that the rule denied occupancy-rights to tenants whose very designation in the rural tongue stamped them as occupancy-tenants. 'I am informed by those qualified to judge,' wrote the Lieutenant-Governor of the North-Western Provinces, 'that the effect of the Act in many districts of the North-Western Provinces has been wholesale enhancement of rents or ejection of raiyats who had a customary claim to occupancy, and who, under the law as it previously stood, would probably never have been molested.'

“The question was referred by the Local Governments to the Government of India, was fully discussed between the latter and the High Court of Bengal, and brought out the valuable truth that Act X of 1859 was not intended to be an exhaustive statement of the rights of tenants, and that, its provisions notwithstanding, any claims to occupancy-rights founded on the custom of the country as to residency might be successfully maintained. The discussion seems to have merged in the more pressing question of the law of enhancement; and with the decision of the latter in the Great Rent Case, the project of amending the occupancy-sections of the Act to meet the difficulties complained of in the Upper Provinces was for a time laid aside.

“I must touch very lightly on the history of the Rent Law during the interval between the Great Rent Case in 1865, and the appointment of the Rent Commission in 1879. The chief landmarks of this period are the passing of the Bengal Act of 1869, the Pubna riots of 1873, followed by the passing of Sir Richard Temple's Agrarian Disputes Act in 1876, the successive attempts made in the Bengal Council to amend the law as to the recovery of rent, and, concurrently with all these, repeated and unceasing complaints of oppression and exaction in Bihár.

“The Bengal Act VIII (B. C.) of 1869 repealed, in all districts to which it was extended by the Local Government, Act X of 1859, and transferred the trial of rent and enhancement suits from Collectors to the Civil Courts. The substantive law of Act X of 1859 was, with some unimportant exceptions, embodied in the repealing Act, which was expressly confined to an amendment of the existing law in respect of procedure and jurisdiction, although the debate on the Bill brought out numerous admissions as to the necessity which existed for revising the substantive law of 1859.

“The period of seven years which followed the passing of the Act of 1869 was marked by incessant efforts on the part of landlords to obtain higher rents, and by determined opposition on the part of the tenantry, more especially in the Eastern Districts, to what they conceived to be unjust and unauthorised demands. In the Eastern Districts, the rapid growth of the jute-trade, and the improvement of communications, had placed the cultivator in a position of comparative affluence. This accounted at once for the anxiety of the landlord to share these profits, and the resolve of the tenant to retain them.

“The administration reports of the years 1871—1876 are filled with accounts of illegal exactions on the part of zamíndárs, of the frequent reprisals of their tenants, of the formation of agrarian leagues, and of the anxious efforts of the Exe-

cutive to avert breaches of the peace. The disturbances which, in 1873, broke out in the Pubna District in Eastern Bengal were but a symptom, though in an exceptionally acute form, of what was taking place in other parts of India. The Pubna riots arose immediately out of what has always been a fertile cause of similar disturbances—the sale and break-up of an old estate. The estate of the Nattore Rájá came into the market, and was bought by five zamíndárs, each of whom tried to make the best of his bargain by raising his rents. The landlords were Hindus, the tenants were Mubammadans; and religious differences fanned the flame of opposition by the latter to the demands of a new and rent-raising landlord. Short measurements, illegal cesses, the forced delivery of agreements to pay enhanced rents, were the main grievances which the cultivators banded themselves together to resist. The disturbances which ensued were put down with the strong hand—there were 242 arrests and 99 convictions in the sadr sub-division of Pubna; but the inquiries which the Government made into the cause of the outbreak brought into very clear light the substantial character of the tenants' grievances, and the need of applying a drastic remedy.

“The Pubna riots took place in the last year of Sir G. Campbell's Lieutenant-Governorship, and the first two years of his successor were fully occupied with the Bihár famine. This explains why Sir R. Temple's Agrarian Disputes Act, though closely connected with the disturbances of 1873, did not become law until 1876. The intention of the Act was to meet apprehended agrarian disturbances by transferring, in special localities and for a limited period, the entire jurisdiction in matters of enhancement and arrears from the Civil Courts to the Revenue-authorities. It was merely a temporary measure, to be put in force on application by persons interested; and, owing to causes on which I need not dwell, it was never brought into actual operation. But Sir R. Temple always intended to supplement it by permanent legislation, and in August 1876 proposed to introduce a Bill to define the principles on which the rights of occupancy-raiyats and tenure-holders should be fixed, to simplify the procedure for realising arrears of rent in undisputed cases, and to make the interest of an occupancy-raiyat liable to sale for default in paying rent and transferable by private agreement.

“These proposals had not, however, been fully considered when Sir R. Temple, early in 1877, made over charge to Sir Ashley Eden; and it was then arranged that the larger amendment of the law should be deferred, and a Bill providing only for the realisation of undisputed arrears introduced at once.

“When, however, the Bill was introduced into the Bengal Council, it was found that it was impracticable to limit its scope to procedure only. The discussion as to the transferability of the right of occupancy had materially advanced, and it had been recognized that the legislature would have to alter the law with reference to ejectment, distraint, instalments and deposits of rent and, possibly, sub-letting.

“It began to be apparent that many of the proposed provisions would eventually prove to be intimately connected with other portions of the law not ostensibly affected by it; and, in February 1879, a majority of the Select Committee recommended that the whole subject of a revision of the Rent Law should be once for all fairly faced.

“This proposal was supported by Sir Ashley Eden, and, in April 1879, the Government of India sanctioned the formation of a commission to prepare a digest of the existing statute and case law, and to frame the draft of a consolidating Bill.

“Meanwhile, a separate discussion had been going on with reference to the abuses which I have already mentioned as prevailing in the relations between landlords and tenants in Bihár. As far back as the year 1868, the late Lord Lawrence, who was then Governor General, had recorded a minute relating to the depressed state of the peasantry in Bihár, in which he had said that he believed ‘that it would be necessary for the Government, sooner or later, to interfere and pass a law which should thoroughly protect the raiyat and make him, what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it.’ Again, in the years 1875 and 1876, when the condition of Bihár came under consideration, it was acknowledged that some remedies must be applied. Two years later, the Lieutenant-Governor, Sir Ashley Eden, appointed a Committee of experienced Bihár officials to advise on the matter; and, on the 8th of March 1879, they submitted their report, proposing so many changes of the existing law that they did not consider that the requirements of the case could be properly met by a mere amending law. They were of opinion that the whole Rent Law should be recast.

“Thus, two independent Committees arrived simultaneously at the same conclusion, namely, that the time for a complete revision of the existing law had arrived.

“The Rent Commission was appointed in April 1879, about a month after the presentation of the report on Bihár, and that report was referred to the Commission for consideration.

“The Members of the Rent Commission were Mr. Dampier, Member of the Board of Revenue, as President; Mr. Field, who was then District Judge of Burdwan and is now one of the Judges of the High Court; Mr. Harrison, who was then Secretary to the Board of Revenue; Mr. Mackenzie, who was then Secretary to the Government of Bengal and is now one of the Secretaries to the Government of India; Mr. O’Kinealy, who was then Legal Remembrancer and is now officiating as a Judge of the High Court; and three Native gentlemen, Bábú Mohini Mohan Roy, Bábú Peary Mohan Mookerjee, and Bábú Brojendro Kumar Seal.

“Their instructions were—

“(1) to prepare a careful analysis and digest of the existing Rent Law, as contained in the Acts and Regulations concerned with this subject, and in the decisions of the Courts since the passing of Act X of 1859, and

“(2) after considering the suggestions for amendment that had been put forward of late years, to endeavour to prepare a draft Bill embodying such additions to the substantive law, and such improvements in the law of procedure, as might be found advisable.

“The digest was first compiled by Mr. Justice Field, and was submitted in August 1879.

“The draft Bill and an elaborate report explaining fully the alterations which the Commission proposed to make in the existing law, and the reasons for proposing them, were submitted in June 1880, and were published in 1881.

“Never had the relations of landlord and tenant in Bengal—rarely has any subject of legislation—been so thoroughly, so patiently, so exhaustively examined as by the Bengal Rent Commission. They have thrown a flood of light on the past and present legal and economical position of the raiyat; they have ascertained the existing law on a most complicated and difficult subject; they have determined the main lines on which any amendment of that law must proceed. Their minute and careful inquiries have placed beyond question or doubt the broad and important fact to which I referred in the opening part of my speech, namely, that whatever may have been the position, actual or legal, of the bulk of the Bengal raiyats before the Permanent Settlement, their customary rights at least included the right of occupancy conditional on the payment of the rate of rent current in the locality, and the right of having that rent fixed by Government. And, whatever may be the precise form that

may be assumed by any legislation for the purpose of declaring, confirming or restoring those rights, that legislation must inevitably build on the foundations which have been laid, and follow the lines which have been traced, by the Rent Commission. To each and all of the Members of the Commission the thanks of the Government and of the public are unreservedly due; and, if there is any one member of the Commission to whom those thanks are due in a special manner, that member is Mr. Justice Field. Before the Commission had begun their labours, he had, by his admirable edition of the Bengal Regulations, shown himself to be a past master of the subject with which the Commission would have to deal. The popular view of the Bengal rent question has long been the same as that which used to be entertained about the Schleswig-Holstein controversy, namely, that it was one of those subjects which no ordinary person can understand. But, before any person commits himself to an expression of that opinion, I would advise him to procure and read Mr. Field's admirable Introduction to the Regulations of the Bengal Code. He will find in that Introduction a concise and lucid exposition, expressed in language which is as intelligible to the amateur as it is to the expert, not only of the existing rights of landlord and tenant in Bengal, but of the circumstances out of which those rights arose, and the mode in which they have been altered by administration, by legislation and by changes in political and economic conditions. Mr. Field's digest, which collects the whole of the statute law and the case law connected with the subject of landlord and tenant in the Lower Provinces of Bengal, at once took its place as an authoritative statement of that branch of the law; and, as we are not, by our present Bill, attempting the ambitious task of framing a complete code of the law of landlord and tenant, it is a great satisfaction to me to think that we already have, and shall continue to have, in this digest the best possible substitute for such a code. And, lastly, it is no secret that we are indebted to Mr. Field's pen, not only for the draft Bill which was submitted by the Commission, but for their elaborate and admirable report.

“ That report has long been before the public, and I may assume that my audience are familiar with its contents. I will, therefore, simply summarise the most important of the proposals of the Commission.

“ The 12-years' rule under which an occupancy-right is acquired by prescription was retained, but it was proposed to create a new class of subordinate occupancy-raiyats by providing that a tenant, who had held for three years and less than 12 years, should be protected from ejection at the will of his landlord, that he should be entitled to claim abatement of rent like occupancy-raiyats, that his landlord should not be able to enhance the rent at his pleasure, and that,

if the raiyat thought the rent demanded unreasonable, he might give up the land and demand compensation for disturbance and for such improvements as he might have effected. These provisions, it was hoped, would, by protecting this class of tenant from eviction, eventually enable them to secure the full occupancy-right. This right, as regarded its incidents, was more fully and clearly defined by the Commission than it had been previously either by statute law or by case law. An attempt was also made to distinguish the occupancy-raiyat from the tenure-holder, by restricting the area which could be let as an occupancy-holding to 100 bighás. The occupancy-raiyat was declared to have the right of transfer by sale, gift or devise, subject to certain conditions as to the landlord's consent, but he was not to be allowed to mortgage. He was exempted from ejection for arrears of rent, as henceforth the landlord's remedy was to lie in the sale of the holding. He was to be allowed the benefit of all improvements, and full liberty to deal with the land as he thought best; but limits were to be set to the rack-rent he might demand from an under-tenant.

“ Other recommendations of the Commission applied to all classes of tenants, irrespective of their status or rights. Thus, the right to erect a brick or other house upon his holding, irrespective of the landlord's permission, was given to every raiyat; distraint of crops as a mode of recovering rent was abolished; and stricter provision was made for the giving of receipts and the maintenance of zamindari accounts.

“ As to enhancement of rent on occupancy-holdings, the substantive law was, in the main, retained; but a proviso was added in virtue of which an increase in the letting value, due neither to the landlord nor to the tenant, was to be equally shared between them. It was further proposed that the enhanced rent, when obtained on the ground of increase of value of the produce, should not be more than double the former rent, and that no enhanced rent should exceed one-fourth of the average annual value of the produce of the land.

“ As to procedure in enhancement-suits, the Commission proposed to require the landlord, when suing on the ground of an increase in prices, to proceed in the Collector's Court, but to leave him, in other cases, the option to elect the Civil Court or the Collector's Court, unless the latter Court had been generally or specially vested by competent authority with sole jurisdiction. Power was given to the Collector, in dealing with such suits, to prepare a table-of-rates, or an enhanced rent-roll, or to effect a complete re-settlement of the estate, as the circumstances of the case might require. The table-of-rates was intended to show the different classes of land prevailing in the estate or locality, with the prevailing rates of rent, and the enhanced rates warranted by the law.

In drawing up this table the Collector was to be guided by the representations of both parties; it was not to take effect until it had been duly published, and it was to hold good for ten years.

“If the landlord failed to effect a settlement with the tenants on the basis of the table-of-rates, the Collector might go a step further and prepare an enhanced rent-roll or *jamabandī*, showing not merely enhanced rates of rent, but the actual rent at these rates which each tenant was to pay. This rent-roll was to hold good for ten years.

“In exceptional cases, where a new landlord, on coming into possession, was prevented, by a combination among his tenants, from ascertaining the holdings or even the names of the latter, the Collector might prepare a complete rent-roll by means of proceedings which, practically, involved a settlement of every holding of the estate.

“Finally, in making proposals for an abbreviated procedure in rent-suits, the Commission recommended that certain portions of the Civil Procedure Code should not be extended to rent-suits at all, that the right of appeal in petty cases should be abolished, and that, in all cases, the summons should be for the final disposal of the suit. In making these recommendations, the Commission expressed their conviction of the extreme danger of summary methods of justice, and their inability to propose a revival of the ‘summary-suit’ system of the old Regulations.

“The Commission’s Report seems to have reached the Government of Bengal in June 1880. On the 15th of July in the same year, it was forwarded by Sir A. Eden to the Government of India, with a letter in which he expressed his opinion that the Report and Bill, ‘however open to modification in details, presents, on the whole, a reasonable basis for legislation.’ Sir A. Eden’s own views are very clearly stated in this letter. He considered that ‘a general revision of Act X of 1859 was urgently called for in Bengal,’ and that ‘in the interests of the Government, of the land-owners themselves, and of the agricultural community at large, it was very desirable, even at this late day, to define and strengthen the position of the great mass of cultivators.’ ‘He would like,’ the letter continues—

‘to see the Bengal raiyats, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times. He would, at the same time, not seek in any way to diminish or encroach upon the existing emoluments of zamindárs or other rent-receivers. On the contrary;

he would like to help them to realise their rents more punctually; and, even where these are now excessive, he would not seek to interfere to lower them. He would substitute for the present large and uncertain power of enhancement which the law seems to give to landlords, but which they are quite unable to utilise, a reasonable system of regulating rents, under the control and direction of Government officers, such as the universal custom of India originally favoured and recognised. The zamíndárs will thus be admitted to share in the growing prosperity of the country upon fair terms; and, though they will not have all that they claim in theory, they will have a great deal more than they are now able actually to enjoy in practice. They will cease to feel the irritation of unsuccessful desire, while their tenants will cease to look upon them as their natural foes.'

"These words were repeated in a letter which was addressed in December 1880 by Sir A. Eden to the British Indian Association, and in which he asked for an opinion on the proposals of the Rent Commission. After quoting them as an exposition of his general policy he went on to say:—

'The chief point to be kept in view is the establishment of the occupancy-tenure upon a broad and permanent basis. Protection against arbitrary eviction must certainly be given to every settled cultivator who pays the established rent. No raiyat should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent. A substantial tenantry, free from debt, and in a position to save and bear the pressure of occasional bad seasons, is what Bengal requires. The Lieutenant-Governor desires therefore to see the occupancy-tenure made the rule and not the exception; but at the same time he would have it kept as far as possible in the hands of *boná fide* cultivators, and sub-letting by occupancy-tenants should be discouraged, if it cannot be altogether prevented.'

"He added that he did not—

'look upon the occupancy-tenant as entitled to sit at any specially *privileged* rate of rent, but only at the established rates ruled to be equitable for the classes of land held by him and approved by the Revenue-authorities. This being the case, all that the Government desires to do is to protect him against arbitrary ejection, and provide by law that the amount of his rent shall not exceed fair and equitable limits, open to authoritative revision from time to time.'

"Meanwhile, Mr. Reynolds had, with the assent of the Government of India, been placed on special duty to revise the Bill. Mr. Reynolds' work was accomplished in the winter months of 1880-81. His revised Bill was then submitted to District Officers and to various Associations for opinion; and in July 1881, Sir A. Eden was able to communicate his matured proposals to the Government of India. The extent to which public opinion had been taken on the Bill, as originally prepared by the Rent Commission, and as redrawn by Mr. Reynolds, is shown in the bulky volumes which were submitted by the Government of Bengal to the Government of India, and which we now propose to publish. No less than sixty-four reports, memorials and notes—many of them of great length—had been received and carefully considered. 'There

was hardly a principle or a section,' the Government of Bengal was able to say, 'that had not formed the subject of comment or controversy.'

"With Sir A. Eden's letter was forwarded, not only Mr. Reynolds' Bill, but also a revised draft of that Bill, embodying the amendments which had commended themselves to the Lieutenant-Governor. The accompanying letter explains the main points on which this revised draft, which may be described as Sir A. Eden's Bill, differs from the Bill of the Rent Commission, and the reasons for these divergencies. In summarizing the contents of this letter, I cannot do better than avail myself of Mr. Justice Cunningham's minute. The conclusions at which Sir A. Eden had arrived were:—

'1. That from 1863 the necessity of a radical revision of Act X of 1859 had been admitted on all hands; that since the Pubna riots in 1873 this necessity had been recognised as urgent; and that the landlords had been as forward as any class in pressing for a change in the law.

§ 12.

'2. That Act X of 1859, while opening the door to certain classes of raiyats who had no claim to occupancy-rights, had on the whole operated to the detriment of the entire body, especially in Bihár, where 'only the more powerful raiyats had succeeded in resisting the landlords' encroachment,' where occupancy-rights had to a large extent disappeared, and the rents of the great mass of tenantry had been enhanced to twice their former amount within the last 16 years.

§ 22.

'3. That the rights originally conferred on the zamíndárs, whatever else they might have been, were not those of 'absolute proprietorship,' the Government prescribing a fixed rental to be adjusted by itself according to recognised rules, stringently forbidding any other exaction on the part of the landlords, taking numerous precautions for the protection of the raiyats 'in their possessions,' and reserving to itself the right of future interference, should it ever be necessary, on their behalf, without such interference giving rise to any claim on the part of the zamíndárs for abatement of revenue.

§ 20.

'4. That the rents of Bengal were and must, in existing circumstances, continue to be 'customary,' not 'competitive,' in the sense of the word employed by economists, the real competition being that arising from the necessity of large numbers who must live off the land, and have no alternative but starvation; that it was the duty of the State to regulate this customary rate, and so to fix the extent of beneficial interest left to the raiyats, and thus, in the words of a distinguished Revenue-officer, to recognise 'the raiyat's right, founded on the most ancient authentic records and uninterrupted prescriptive usage, through a succession of Governments, native and foreign, from ancient times to our own, to have their payments fixed by the authority of Government.'

§ 26.

§ 28.

- ‘ 5. That these occupancy-rights belonged by the old law and custom to the gross mass of the resident raiyats, as laid down by the highest authorities, *e.g.*, Mr. Holt Mackenzie in 1832 and Sir William Muir, who says, ‘ I am satisfied that the khudkasht or resident raiyat cultivator of Bengal was the ordinary type of hereditary or proprietary raiyats common throughout India. In fact, it appeared to be admitted by the chief spokesman of the zamíndárs that khudkasht raiyats of all degrees always had an occupancy-right.’
- ‘ 6. That the present time afforded the best opportunity for legislation.’

“The means by which Sir A. Eden proposed to meet these obligations were—

‘ 1. To give to all ‘ resident ’ raiyats occupancy-rights, putting a liberal construction on the word ‘ resident.’

‘ 2. To provide for enhancement of occupancy-tenants’ rates, by preserving the existing rules as to enhancement, but making those rules workable by having an official table of the rent and prices drawn up in each district, by which claims to enhancement can be adjusted by specially appointed tribunals. There would, in fact, be a sort of rent-settlement conducted by local officials of experience, by which the customary rates in each locality would be ascertained and declared.

‘ 3. To provide that the rents, thus declared just and equitable, should be binding on the landlord, no private contract being allowed to supersede them.

‘ 4. To guard against the conversion by the landlord of raiyat land, *i.e.*, land over which occupancy-rights exist, or can be acquired, into ‘ khamar,’ nij-jotá or sír land, over which the landlord’s proprietary rights exclude the growth of any subordinate interests. ‘ Khamar ’ lands appear to have been originally merely the surplus unreclaimed land of the village, which the landlord was allowed, during the continuance of his revenue-engagement with Government, to cultivate for his own benefit, but which became ‘ raiyat ’ as cultivators settled on them.’

“These proposals involved several material departures from the recommendations of the Rent Commission. The most important change related to the definition and status of the occupancy-raiyat. The Commission had recommended the retention of the 12-years’ rule as given in Act X of 1859, but proposed to create an intermediate group of tenants possessing inferior occupancy-rights, with a view of bridging over the gulf between the 12-year occupancy-tenant and the mere tenant from year to year or at will. These recommendations were, as already shown, the result of a compromise between those members of the Commission who wished to retain the letter of Act X of 1859, and those who wished to give effect to its undoubted intention. Sir A. Eden, as he told the British Indian Association, was for placing the occupancy-tenure on a broader and more permanent basis. He thus had to go back to the old phraseology of ‘ resident raiyat,’ and to find in a satisfactory definition of this term the solution of the question. In his Bill, a resident raiyat was one who had

resided for three years in a village, and a right of occupancy was conferred on every resident raiyat in all lands held by him within that village, or within a certain distance of his home.

“The table-of rates was the second important point in which Sir A. Eden’s Bill departed from the Rent Commission’s proposals. Discarding the Rent Commission’s scheme of concurrent jurisdiction, Sir A. Eden fell back upon the old principle of the pargana rate. As he had restored the ‘resident’ raiyat to his ancient position, so he proposed to restore the ‘pargana rate’ as the true index to the raiyat’s rent. The preparation of these tables-of-rates and authorised tables-of-prices was to be entrusted to specially qualified Revenue-officers. Sir A. Eden thought he saw his way to providing—

‘an agency which should in the course of a reasonable number of years determine the equitable rates of rent payable in all districts of Bengal, with due regard to existing rents, the increased value of produce, and other things. There can be no doubt, as already remarked, that in most districts these operations would largely increase the incomes of the zamindárs. The raiyats would, however, be protected by all the reservations and limitations suggested by the Rent Commission; the enhancements would be moderate, and at the same time authoritative; and the general result should be the removal of much cause of friction as between landlord and tenant, and the establishing of the beneficial interest of the occupancy-raiyat, and consequently of the agricultural prosperity of Bengal, upon a definite and permanent basis.’

“A third material question on which Sir A. Eden saw cause to differ from the Rent Commission related to the power of distraint. In the interest of the landlords he considered that distraint should be retained in a modified form. He proposed to make distraint throughout a process of the Court, to confine the right to distraint to one year’s rent, and, in the absence of a written contract or an order of enhancement, to the amount payable as rent in that year. The raiyat was to be allowed to guard against it by depositing the rent claimed or security for it in the treasury. The right was further fenced in by restrictions as to co-sharers and unregistered landlords, and by provisions for the gathering and storing of distrained crops and for raising the distraint at any time before sale by payment under protest of the sum claimed into the Collector’s Court. Distraint would thus practically take the form of a summary suit, and yet be open to less objection than any form of summary suit followed by an ordinary decree.

“In addition to distraint, Sir A. Eden proposed to give assistance to landlords in realising their rents in three other directions—

- (1) by the establishment of special Rent Courts;
- (2) by adopting the abbreviated Small Cause Court procedure of the Rent Commission;
- (3) by conceding in certain cases summary sale without decree.

The last privilege was to be granted only by special order of the Government to a proprietor on proof that a proper system of accounts and registration was kept up on his estate. And Sir A. Eden was not inclined to grant it readily. 'Summary sale without decree,' he wrote, 'after service of a notice, which, however 'duly' proved, the raiyat probably never saw, would mean to him utter ruin without warning and without remedy. The Lieutenant-Governor would never consent to such procedure as of general or ordinary application.'

"This, then, is the position in which the Government of India found the Bengal rent question when they took it up after the receipt of Sir Ashley Eden's letter of July 1881. The subject had engaged the unremitting attention of three Lieutenant-Governors; it had been threshed out as few subjects have ever been threshed out before; there was a general concurrence of opinion both as to the nature and magnitude of the evils which had to be dealt with, and as to the necessity for dealing with them in a general and comprehensive manner: and lastly, the lines on which remedial legislation must proceed had been clearly marked out.

"Nor was it by the Government of Bengal alone that the necessity for legislation had been insisted on.

"Holding an independent inquiry, the Famine Commission had come practically to the same conclusions, and made substantially the same recommendations as the Government of Bengal. 'The Commission have received a large amount of evidence,' they report,

'remarkable in its weight and unanimity, to the effect that in the Bengal Province the relations of landlord and tenant are in a specially unsatisfactory condition. We feel, no doubt, that the condition of the rent law and the way in which it is administered in Bengal are, as it was described to us by a high official of the province, a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, mainly owing to this cause, in a state of poverty, at all times dangerously near to actual destitution, and unable to resist the additional strain of famine.'

"And, in speaking of the necessity for legislation and of the kind of legislation that is required, they go on to say—

'We can feel no doubt that in all the provinces of Northern India, and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. This opinion is primarily based on the historical ground that they have a claim, as a matter of strict justice, to be replaced, as far as possible, in the position they have gradually lost; but it may also be supported on the economical ground that, in the case of these large cultivating classes, security of tenure must have its usual beneficial effect; and that, as a rule, the cultivators with occupancy-rights are better off than the tenants-at-will. Wherever inquiry has been made, it has been found that, in all matters

relating to material prosperity, such as the possession of more cattle, better houses and better clothes, the superiority lies on the side of the occupancy-tenants, and the figures in the preceding paragraphs also show that, as a rule, they hold larger areas of land. Where the subdivision of land among tenants-at-will is extreme, and in a country where agriculture is almost the only possible employment for large classes of the people, the competition is so keen that rents can be forced up to a ruinous height, and men will crowd each other till the space left to each is barely sufficient to support a family; any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and of peace of mind, such as can hardly be conceived by a community where a diversity of occupations exists, and where those who cannot find a living on the land are able to betake themselves to other employments.

‘It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent, and security for improvements, that we can expect to see property accumulated, credit grow up and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy-class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owning no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security, together with the protection of the tenant-at-will in his just rights and the strengthening of his position by any measure that may seem wise and equitable.’

“After what I have said, it must be abundantly clear that there is an urgent need for legislation, and that the two main objects at which our legislation should aim are—

- 1st*, to give reasonable security to the tenant in the occupation and enjoyment of his land; and
- 2ndly*, to give reasonable facilities to the landlord for the settlement and recovery of his rent.

“That both of these are legitimate objects of legislation no one will be found to deny. But we have been told that, whilst there is no reason in the world why we should not effect the one, there is a serious obstacle in the way of our effecting the other. We may legislate to enlarge the powers of the landlord, but we cannot legislate to enlarge the rights of the tenants. And why? Because we are barred from doing so by contract, the contract, namely, with the zamíndárs which was embodied in the Permanent Settlement. Now, far be it from me to enter into any minute or exhaustive inquiry into the meaning and effect of the numerous documents which, together, make up what is known as the Permanent Settlement. The time allotted to the performance of business in this Council is not long enough—life itself would hardly be long enough—for the due performance of such a task. I am quite aware that my hon’ble colleague,

Mr. Kristodás Pál, and myself might bombard each other for many a long summer day with rival extracts from the literature of 1793, without making a single step in advance. And, if I were rash enough to embark on such a controversy, I should throughout it be haunted by an uncomfortable consciousness of the presence of that worthy and portly nobleman, whose picture hangs on our Council-room wall, and who would seem to be looking down with an amused and complacent smile on our persistent and futile efforts to make out what on earth he meant. All that I can venture to do is, to state, as briefly as possible, the impression which the main features of the controversy have produced on one to whom the subject is comparatively fresh, and who has endeavoured to approach it with that impartiality which ought to be the characteristic of a well-balanced and ignorant mind. Now, I will not pause to consider how far a Government can, by entering into a contract, prevent itself and its successors for all time from doing that which, in the interests of the general welfare of the community, might apart from contract be justifiable and necessary. It is not necessary that I should do this; because, whilst fully admitting the existence of a contract and its binding character, there is no great difficulty in shewing that this so-called obstacle to legislation for the protection of the tenant is no obstacle at all, that it is a mere phantom barrier which, the moment that it is approached, dissolves into thin air.

“What was the contract embodied in the Permanent Settlement? Who were the parties to the contract, and what was its intention and effect?”

“The main features of the case admit of being very simply stated. Before 1793 the zamíndárs were, as they are now, the persons responsible to the Government for the payment of the land-revenue in cases where that revenue was not collected directly from the cultivator. The amount of land-revenue which each zamíndár had to pay, and for the payment of which the Government held him responsible, was fixed by contract or arrangement between him and the Government. Such contracts were termed settlements. They sometimes related only to the revenue of a particular year, but it was found in practice more convenient to make them for a term of years. Before 1793 there had been two or three quinquennial settlements, and in 1793 there was in force a decennial settlement, or settlement for a term of ten years. The Government agreed with the zamíndárs that this settlement should be made permanent, and that no addition should be made to the amount of revenue by reason of any future increase in the area under cultivation. In other words, the Government fixed in perpetuity that which had previously been fixed either for a single year, or for a term of years. The Permanent Settlement then was simply a contract between the Government and the zamíndárs as to the amount of land-

revenue payable by the latter to the former. The parties to the contract were the Government on the one hand and the zamíndárs on the other. The raiyats were not consulted about the arrangement, and were in no sense a party to it; and, according to the most ordinary principles of contract, it could not affect any right which they then had or might thereafter acquire.

“ But then it was said that at the time of the Permanent Settlement, and as part of the same arrangement, a formal declaration was made declaring the property in the soil to be vested in the zamíndárs; that throughout the Regulation of 1793, which confirmed and gave effect to the Permanent Settlement, the zamíndárs are described as the ‘proprietors’ or ‘actual proprietors’ of the land; and that this declaration and description are inconsistent with the notion of proprietary rights in the land being vested in any other class of persons. As to the use of the term ‘proprietor,’ no serious argument can be based upon it. I have heard of the magic of property. But I never understood that there was any such magic in the phrase ‘proprietor’ as to wipe out any rights qualifying those of the person to whom the phrase was applied: and it would be specially difficult to show that it had any such effect in the Regulation of 1793.

“ In the first place, the term, as applied to land, has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place, the term was freely applied to the zamíndárs of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and therefore could not possibly be taken as indicating, or, to use a technical term, connoting, rights created at that date. And thirdly, the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement-literature of British India. It means, in those parts of India which are not permanently-settled, the person who, whatever may be his rights in the soil, has the right of having a settlement made with him, the person, namely, whom, for purposes of land-revenue, and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor of the land. Such a recognition, of course, is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number of other persons. All such rights are simply left outstanding. The use of the term ‘proprietor’ in this sense is closely analogous to the use of similar terms in English statute law. Here, for instance, is a definition of ‘owner’ taken from a recent English Act—the Public Health Act of 1875:—“ Owner’ means the person for the time being receiving the rack-rent of the lands or premises in connection with

which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent." In this case, the legislature has said: We intend to impose certain sanitary duties on the owners of lands and houses. We will not inquire too closely which of several persons ought, as between themselves, to perform those duties. It is sufficient for our purposes to find out who gets the rent; we will treat that man as owner for the purposes of the Act. We will make him primarily responsible for the performance of duties imposed on owners by the Act, and leave all questions between him and third persons untouched. And this is precisely the policy which the East India Company adopted in Bengal before the date of the Permanent Settlement. They found a number of persons claiming interests in the soil. Which of those persons had the best claim, as against the others, to be considered true owner of the soil, was a theoretical question of enormous difficulty. But which of those persons ought, for land-revenue purposes, to be dealt with as owner of the soil, and primarily liable for land-revenue accordingly, was a practical question, which admitted of a practical solution. The East India Company settled it in Bengal by selecting the zamíndárs as the persons to deal with, and they christened them landholders or proprietors accordingly.

"What, then, is the meaning of the formal declaration referred to in Regulation II of 1793, that the property in the soil was vested in the landholders, and of the statement in the same Regulation, that the property in the soil had never before been formally declared to be so vested?"

"Here again, if we bear in mind what is so often insisted upon by the zamíndárs, that the Permanent Settlement was a contract, that is to say, an arrangement between two parties, the Government on the one hand and the zamíndárs on the other, and that this declaration was embodied in, and formed part of, that contract, there is no real difficulty in coming to a conclusion as to what it really meant. In dealing with persons who had interests in the soil, the Government claimed rights over them in two capacities. It claimed to be both supreme Government and supreme landlord. In one capacity it was dealing with subjects; in the other capacity it was dealing with sub-proprietors or tenants. But it was never very easy to say either what its rights as supreme landlord comprised, or at what point the line was to be drawn between its rights as landlord and its rights as Government. As to the first question, it is, of course, obvious that the rights of a supreme landlord may be of the most limited nature. According to the theories of English law, all English land is held mediately or immediately of the Crown, and therefore, says Blackstone, 'the sovereign only hath *absolutum et directum dominium* in the land.' But

we all know that this absolute and direct ownership or proprietary right is of the most shadowy character. And as to the second question, I need only remind an Indian audience of the eternal controversy whether that share of the produce which is payable to the Government in districts not permanently settled ought more properly to be denominated revenue or rent. Now, it was this second question which the Government endeavoured to solve in making the Permanent Settlement. It said to the zamíndárs, we will not only fix for ever that share of the produce for the payment of which you are to be held responsible, but we will give up to you our claim to be considered your landlords. What you pay us shall be revenue, not rent. As between ourselves, you, and not we, shall be deemed to be the proprietors of the soil.

“But there were three things which the Government did not do by the Permanent Settlement. It did not divest itself of its general right—a right which belonged to it not as landlord but as Government—to make from time to time such laws and adopt such administrative measures as it might think expedient for the general welfare of all classes of its subjects; it did not define the nature and extent of the proprietary rights which it gave up to the zamíndárs; and it did not include in its grant any proprietary or *quasi*-proprietary rights belonging not to itself, but to some other class of persons. Before the settlement, the zamíndárs, when not cultivating themselves, occupied a middle position between the Government, with substantial but ill-defined proprietary rights over them, and the great mass of cultivators, with substantial but ill-defined proprietary rights under them. After the settlement, they were freed from the one, but they remained subject to the other.

“Nor is there any ground for the suggestion that the occupancy-rights which at the time of the Permanent Settlement were—I will not say saved, for they required no express saving; but—left outstanding, included only the rights of those raiyats who happened to be in occupation at the date of the settlement. If there was at that time—as it seems abundantly clear that there was—an established custom or usage under which the resident raiyats, that is to say, the great mass of the cultivators,—for an agricultural population is essentially stationary in its habits,—under which the resident raiyats were entitled to hold at fixed rents, that custom or usage would, according to the ordinary principles applicable to the interpretation of statutes, be unaffected by the legislation of 1793, and would protect not only those who had taken up lands before that date but those who might take up lands at any subsequent date.

“We have, indeed, been told that it was part of the bargain between the Government and the zamíndárs that the latter should not only be exempted

from payment of revenue for lands which were then waste, but which might subsequently be taken into cultivation, but should be given full and absolute discretionary powers as to the mode of dealing with such lands, unqualified by any village-custom or local usage. But it would require extremely strong and clear words to make an enactment conferring such powers,—an enactment which would be inconsistent with all Indian notions as to the rights of a reclaiming occupier in the land which he brings under cultivation, and which would throw into, and keep permanently in, the category of khamar or private land the whole of the then vast area of the unreclaimed land of Bengal. It would require, I say, very strong and clear words to effect such a revolution; and I cannot in any of the Regulations of 1793 find words on which such a construction could reasonably be placed.

“And, even if any such right had been conferred, it would have been controlled and qualified by the express reservation of a power to legislate from time to time for the protection of the cultivators of the soil.

“No; in construing the documents connected with the Permanent Settlement, as in construing other documents of a like nature, general words must be read with reference and subject to specific rights and customs, and a bargain between two parties must not be treated as affecting the rights of any third party. Construed in accordance with these principles, the Permanent Settlement did not, of its own operation, prejudicially affect any rights of the existing generation of cultivators, any custom or usage tending to protect the rights of future generations of cultivators, or any power of the legislature to interfere from time to time for the protection of those rights.

“We may, therefore, I hold, proceed fearlessly and with a clear conscience to legislate in such manner as may seem most conducive to the interests both of landlord and of tenant, undeterred by any phantom which would bid us turn aside from the path of equal justice, and bearing in mind that, if we interpose to strengthen the powers of the landlord, we should not be doing equal justice if we did not at the same time take steps to maintain, to secure and to fortify the rights of the tenant.

“Our first object, then, must be to take care that the Bengal raiyats, as a class, shall be (I am using Sir Ashley Eden’s words) ‘secured in the enjoyment of those rights which the current law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the pressure of bad times.’

“To protect the raiyats as a class. But how is that class to be defined? I have often asked that question, and the answers which I have received remind me of the well-known answer which is said to have been given by a Cambridge undergraduate to a Board of Examiners who pressed him sorely to define the centre of a circle. He traced a circle with his finger in the air, pointed to the middle of it, and said ‘there.’ We all know in a general way what is meant by the expression ‘raiyat’; we all know, in a general way what we mean when we speak of the resident or settled raiyat, or of the resident or settled cultivator; but we cannot give any precise definition of the class without running a serious risk of including some whom we ought to exclude, and of excluding some whom we ought to include. An element of arbitrariness is necessarily inherent in every definition which we can possibly frame. We have seen that the authors of the Act of 1859, both when they spoke of a resident raiyat, and when they laid down the rule as to 12-years’ occupancy, did not mean to create new rights, but to describe existing rights, and that neither the phrase which they rejected, nor the rule which they ultimately adopted, precisely hit the mark. We are in the same difficulty now as the legislature were in then; and, whilst admitting that the definition which was then adopted is imperfect, and that any definition which we can devise now must be to some extent artificial, our object should be so to frame our legislation as to depart, as little as possible, from the notions and distinctions which are already established in the country and familiar to the people.

“Now, we find that there are two distinctions long and deeply engrained in the mind of the agricultural population of Bengal. The one is the distinction between the khudkasht raiyat and the paikasht raiyat,—the cultivator who, wherever may have been his place of residence, whatever may have been the length of time during which he had held any particular piece of land, was recognized as being in some sense permanently settled in a particular locality, and as having substantial, though imperfectly defined, rights in the land situate within that locality; and, on the other hand, the cultivator who was never fully recognized as properly belonging to, or sharing the rights of, the agricultural community, and always retained the character of an outsider, or almost an interloper.

“The other is the distinction between that portion of the land which, under whatever circumstances it was acquired or appropriated, and by whatever denomination it was known, whether as *sir*, *khamar*, *nij-jote* or *zeraat*, was recognized as being in a special and exclusive sense the private property of the zamindár, as distinguished from all the rest of the cultivated or cultivable area, which

may be called raiyatí land, and in respect of which the zamíndár's rights were merely to receive a share of the produce or its equivalent in money.

“The first distinction is a distinction between two classes of cultivators; the second distinction is a distinction between two classes of land.

“Now, the legislation of 1859 proceeded on the first of these distinctions, and endeavoured, though as we have seen with imperfect success, to define and protect the rights of the khudkasht or settled raiyat. But there is a great deal to be said for basing legislation on the second of these distinctions. We might, I think, very fairly say to the zamíndárs—‘This private, sír or khamar land is, and shall be, your own in a special and exclusive sense. You may do as you like with it: keep it in hand, or let it out precisely as you please. Of this land you shall be not only the actual but the absolute or exclusive proprietor. But as to the raiyatí land, there your proprietary rights are, and shall be, limited by the rights of the occupying cultivators. You shall have your due share of the produce, but we will adhere to the old law and custom of the country, and prevent you from interfering with the occupier as long as he pays rent at the established rate.’ The great advantage of basing the law on this distinction would be, that it would entirely get rid of the elements of irritation and conflict necessarily inherent in any rule which declares that rights shall be acquired by occupation during a specified period of time. It will be seen, from the papers which we shall lay before you, that the Government of India one time proposed to legislate on these lines, but in deference to very high authority, and to the suggestion that such legislation would involve too serious a departure from the principles contained in the Act of 1859, we have ultimately determined to embody in our Bill the twelve years' rule, with modifications which I will presently explain.

“I am now in a position to describe the principal provisions of the Bill which I am asking for leave to introduce. The Bill will be accompanied by a popular commentary in the shape of a full Statement of Objects and Reasons, and therefore I need not do more than dwell on its more important features.

“In the first place, it is not intended, and does not profess, to be a complete or exhaustive code of the law of landlord and tenant. It is merely a Bill to amend and consolidate certain enactments relating to that subject. It does not attempt to embody all the rules of the common law or the results of judicial decisions, and it expressly saves custom.

"The most important sections of the Bill are those which relate to the raiyat with occupancy-rights, but before reaching that point the Bill deals with two other subjects to which I must shortly refer.

"The first of these is the distinction between the khamar or private land, and raiyatí land or land destined for occupation by raiyats.

"The importance of this distinction arises chiefly from the circumstance that raiyats occupying land of the latter class will, under the Bill, enjoy a much larger measure of protection than those occupying land of the former class. Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country under the existing law to get into their own hands as large an amount of the raiyatí land as possible and convert it into khamar land, we have framed our definition so as to make it clear that the existing stock of khamar land cannot hereafter be increased, and have further enacted that all land which is not khamar land shall be deemed to be raiyatí land, and that all land shall be presumed to be raiyatí land until the contrary is proved.

"In Bihár, owing to the large extent of the khamar, or, as it is there termed, "zeraat," land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance. Accordingly, we have further provided for making, in some parts of the province, a complete survey and record of the existing khamar or zeraat, in order to preclude all possibility of future disputes on the point.

"Next in order comes a chapter dealing with the class of persons who are described in the Bill as tenure-holders, and who are practically middlemen between the zamíndár or principal rent-receiver and the cultivator. They do not, as a rule, cultivate the land themselves, but collect the rents and pay over to the superior proprietor an annual sum, which may be either fixed or liable to enhancement from time to time. There may be several degrees of such middlemen, each receiving rent from a person below him and paying rent to a person above him. And the amount of rent payable by them is determined by considerations similar to those which apply to the rent payable by an occupancy-raiyat.

"In dealing with this class of persons we have followed very closely the recommendations of the Rent Commission. They proposed to enact that, in the cases where the rent of a tenure or under-tenure is liable to enhancement (there are many cases in which it is not so liable), it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity, or, where no such customary

rate exists, up to such limit as to the Court may appear fair and equitable, but so that the profit of the tenure-holder shall not, in the absence of special circumstances, be more than thirty per cent. of the balance which remains after deducting from the gross rents payable to him the expenses of collecting those rents. And, to prevent the power of enhancement from working hardship, they proposed to provide that the enhanced rent should not in any case be more than double the previous rent; that the enhancement might, in certain cases, be made to take effect gradually; and that rent once enhanced should not be altered for ten years unless on account of alluvion or diluvion.

“On these and other points we have adopted their proposals, with certain modifications of detail. Thus, we have declared a permanent tenure to be heritable, devisable and transferable, and we have enacted that the holder of such a tenure shall not be ejected by his landlord except under a decree of Court passed on the ground that he has broken a condition on breach of which he is, under a written contract between himself and his landlord, liable to be ejected. It will be borne in mind that his interest is liable to sale, and in some cases to sale by a summary process. Lastly, we have provided for the registration in the landlord's register of all successions to, and transfers of, these kinds of interest.

“The best known and most important of these intermediate interests are those known as *patni* tenures. They are held at a rent fixed in perpetuity, but, in case of default, they are, under one of the old Regulations, liable to summary sale by a special process. We have devoted a special chapter to this class of tenures, but in dealing with them we have left the law substantially unchanged. We have not overlooked the various proposals which have been made for the amendment of the summary sale procedure, but we have thought that, as they touch only matters of detail relating to an institution of a very special nature, they would be best considered at the Select Committee stage of the Bill, when it is hoped that it may be found possible to simplify the form of the law very much without materially changing its substance. In the mean time, we have thrown the existing enactments into a schedule.

“We now come to the *raiya*t. I have said that there is considerable difficulty in defining the *raiya*t, and there is one particular class of *raiya*ts, namely, those holding at fixed and unalterable rates, whom we have found it convenient to take out of the category of *raiya*ts and include in the definition of tenure-holders. We have done this mainly for convenience of drafting, but we believe that the effect of our having done it will be of little practical importance, inasmuch as these tenants are, to all practical intents and purposes, on the same footing as tenure-holders.

“Setting these aside, who is a raiyat? We have been unable to frame more than a negative and incomplete definition of him. We propose, following the Bill prepared by the Rent Commission, to limit the term to tenants who hold land for purposes of agriculture, horticulture or pasture, or who have come into possession for such purposes. We are quite aware that cases may occur near the line of separation between the different classes interested in the land, in which a doubt will arise whether a tenant is a tenure-holder, a raiyat or a person holding under a raiyat. We believe, however, that this distinction is generally well understood, and that, save in exceptional cases, no difficulty will arise. However this may be, no complete definition has as yet been suggested which would not be certain to give rise to difficulties greater than those which it is intended to remove. If anybody can suggest a better definition than ours, we will gladly adopt it.

“I have said that one of the objects of our legislation is to give reasonable protection to the raiyats as a class, and in particular to recognise and confirm that right of occupancy conditional on payment of rent at the established rate which formerly appertained to the khudkasht, settled or permanent raiyat. Who, then, is the settled raiyat? We have seen that the Act of 1859 adopted as a test for determining this question the occupancy of land for twelve years. It has been held by the highest judicial authority that the provisions of the Act, with respect to the establishment of the right of occupancy, should be construed as cumulative, and not as exhaustive or exclusive of all other modes of establishing that right; but, as a matter of fact, the Act has come to be regarded as a Code complete in itself, and as superseding all other modes of establishing the right. Its effect has consequently been to injure seriously the rights of the old established raiyats by throwing on them the burden of proving, not merely that they have held for 12 years in the village or estate, but further, that they have so held in every one of the particular fields or plots in respect of which they claim to have rights of occupancy—a burden which, it need hardly be said, it is impossible for them, in the absence of any trustworthy agricultural records, to discharge. And, as regards the acquisition of rights of occupancy by new comers, a matter which is always regarded as absolutely necessary for the prosperity of the agriculturist class in this country, it becomes almost impossible under a law which enables the landlord to prevent it by the simple device of shifting the tenant from one holding to another before the period of twelve years has run out.

“It is unnecessary that I should state on the present occasion the various remedies which have been proposed for these evils. They will be found de-

scribed and discussed in paragraph 61 of one of the despatches which will be published—the despatch of the Government of India to the Secretary of State, dated 21st March, 1882. It is enough to state the amendment of the law which we have, after a very full discussion of the question, resolved to propose. That amendment follows, with certain modifications, a suggestion of the Famine Commissioners, and consists in making the acquisition of the status of the *khudkasht raiyat*, 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 twelve years, but on the holding of any raiyatí land (whether the same or not it does not matter) in the same village or estate for a period of twelve years whether before or after the passing of the Act. The raiyat may, by ceasing for one year to hold land as a raiyat in the village or estate, lose the status so acquired; but while it continues to adhere to him, he will, notwithstanding any contract to the contrary, be deemed to have acquired a right of occupancy in any raiyatí land held by him as a raiyat in the village or estate after this day—the 2nd of March 1883. No one can acquire the status of settled raiyat, and the occupancy-right which is attached to it, unless he has been a landholder, or he and his ancestors before him have been landholders, for at least twelve years in the same village or estate. Thus, mere squatters and nomads are effectually excluded. I should add that, in order to obviate the effect which the minute partitions of estates, so common of late in certain parts of the country, would have in reducing the area in respect of which a settled raiyat of an estate would enjoy his status as such, it is in effect provided that the estate shall, for the purposes of this portion of the Act, be taken to be the estate as it would have existed if no partition had taken place since the 1st of January 1853. All these provisions apply only to raiyatí land, not to *khamar* land.

“And we preserve the rights of existing occupancy-tenants by providing that every raiyat who, immediately before the commencement of the Act, has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when the Act comes into force, become an occupancy-raiyat of that land for the purposes of the Act.

“Now, we do not anticipate that these provisions will increase materially the area at present subject to occupancy-rights; indeed, if the statement which has been made by a high authority, that 90 per cent. of the raiyats in Bengal already have that right, is correct, any such increase would scarcely be possible; but what we hope for is, first, that a stop may be put to the vigorous efforts which are at present being made by landlords in some parts of the country to withdraw land from the operation of the right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has deter-

mined, and secondly, that where occupancy-rights do, as a matter of fact, exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat.

“It will be observed from what I have said that a right of occupancy is to be acquired by a settled raiyat holding raiyatí land “*notwithstanding any contract to the contrary.*” We consider it essential to carry the enactment to this extent. To quote again from the despatch of the Government of India to which I have just referred : ‘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.’

“I was not a party to this despatch, but I desire to express my entire concurrence with the opinion therein expressed as to the absolute necessity of preventing our legislation from being overridden by contract. We are fully justified in directing our Courts not to enforce contracts, the clear and manifest intention of which is to defeat the intentions of the legislature. On a matter of this kind an ounce of fact is worth a ton of theory; and I will try to give you an ounce of fact—a sample ounce—in the form of a so-called contract which, as I am credibly informed, has been imposed by a Bengal zamíndár on a Bengal raiyat :—

(1) *Translation of the Kabuliyat said to have been executed.*

To

Zamíndár.

I, son of , resident of ,
pargana , sub-registry and police-station
of , cultivator, do hereby execute this
kabuliyat.

I take the lease of bighás of land, more or
less, and yielding different rate of rents of village
and mentioned in the schedule below,

* * * * * * *

* an annual jama of Rs. . I will
pay the rent at your kachahri * accord-
ing to monthly* equal instalments noted at the foot.
If I fail to pay the rent on due date, I will pay
interest at the rate of † two pice per rupee per
mensem till date of realisation. I will not raise

* Monthly instalments are oppressive. They drive the raiyat to the money-lender before the harvest, and they enable zamíndárs to wrong the raiyat by bringing suits every month and saddling the raiyat with costs.

† i. e., 8 annas per rupee per annum, or $\frac{1}{12} \times 100$ per cent. = 8 $\frac{1}{3}$ per cent.

‡ Bamboo-clumps are real "necessaries" for a raiyat.

§ By section 21, Act X of 1871, the raiyat is only bound to pay half the road-cess. This is to exact the whole from him.

|| This is to avoid section 5, Act II of 1878, which only throws one-half public works cess on the raiyat.

¶ By section 3, Act VIII of 1862, all the dāk cess is payable by the zamīndār. By this he throws them on the raiyat.

** See sections 52, 55, Regulation VIII of 1793, and section 11, Act VIII of 1869. The imposition of such cesses is absolutely illegal.

†† One-fourth as wood. Not the value, or even one-fourth the value, of the tree.

‡‡ i. e., if the land is taken up for public purposes, the zamīndār is to get the price paid by Government; the raiyat nothing.

N.B.—The kabuliyat is given by the raiyat and remains with the zamīndār. The pattā is given by the zamīndār and remains with the raiyat. This latter document gives no details, so that the ignorant tenant never has an opportunity of understanding the nature of his rights and obligations; all these are only entered in the *kabuliyat*, which is in the custody of the zamīndār.

any objection to the payment of rent on the score of inundation, drought, fallows or any other cause. I will not delay to pay the rent. I will cultivate the land with my own hands, keeping the boundary intact in accordance with Your Honour's wish. You and your heirs are at liberty to enter into possession of the land if it is required by you and them. I and my heirs will never acquire a right of occupancy in the land. I will not sub-let, establish hāts or bāzárs, erect buildings, excavate tanks, make brick-fields, plant bamboo-clumps‡ and gardens, settle with korfa raiyats, or transfer or alienate the lands. If I do any of these acts, I and my heirs and assigns will be responsible for any damage that may thereby accrue. I and my heirs will pay, in addition to the rent, road-cess,§ public works cess,|| zamīndārī dāk cess,¶ and any other cess which Government may levy in future, together with any cess** which you may levy. I and my heirs shall enjoy the fruits only of existing and future trees on the land (i. e., such trees as I and my heirs may plant, or may have been already planted by me at your instance, and such as may be planted hereafter at the instance of you and your heirs). I will not cut any trees whatever. If required by you and your heirs, you are at liberty to cut trees on payment of one-fourth of the price of the wood.†† I will not raise any objection for abatement of rent on that score. If I do any damage to the existing bamboo-clumps, I and my heirs will be responsible. I will pay every kowri of the rent by the end of Chaitra. If I and my heirs fall into arrears, you and your heirs are at liberty to enter into khās possession, and will make a separate settlement as you and your heirs think fit, and I and my heirs will not raise any objection. I and my heirs will not claim any compensation‡‡ that may be awarded under Act X of 1870 and under any other law. To the above effect I execute at my free will this kabuliyat.

"(2) *Pattā*.

Rent-roll of raiyat, of village * pargana*
of zamīndārī lot bearing touzi No. * zila
* annual jama * * paddy, &c., village *,
land * rent and paddy, &c.

You shall enjoy the land paying rent from Pūnyā day to the end of the year, and having rights as per kabuliyat.

“This is the kind of document—contract I cannot call it—by which we do not intend that our legislation should be overridden.

“So much as to the mode in which the occupancy-right is to be acquired. Next, as to the incidents of the right when obtained. The most important of these are collected and enumerated in one of the sections of the Bill, which provides that they shall attach to the tenancy notwithstanding any contract to the contrary. They are briefly as follows:—

- (1) the raiyat may use the land in any manner which does not render it unfit for the purposes of the tenancy;
- (2) he may make improvements on it as provided by the Bill;
- (3) he must pay rent at fair and equitable rates as determined by the Bill;
- (4) he cannot be ejected except under a decree passed for breach of certain conditions, or for using the land in such a way as to render it unfit for the purposes of the tenancy;
- (5) he may sub-let the land;
- (6) his interest is to be transferable, subject to certain rights reserved to the landlord; and
- (7) his interest is to descend as if it were land.

“It will be seen that these rights include the rights commonly known in England and Ireland as the three F’s., fixity of tenure, fair rent and free sale. I will touch first on the last of these three rights—the right of transfer.

“The question whether the right of occupancy should be made by express enactment freely transferable everywhere, as it is at present held to be by custom throughout a very large portion of the area to which the Bill applies, has been most fully and carefully considered. It has to be looked at from two points of view, namely, first, from the point of view of the landlord, and secondly, with reference to the interests of the tenant.

“From the former point of view the question presents comparatively little difficulty. The landlord is concerned only to see that we do not allow an objectionable tenant to be forced on him against his will, and this we can readily guard against by giving him a right of pre-emption, or something equivalent to a right of pre-emption, in every case of transfer. We have accordingly provided that, in cases of voluntary sale, gift or bequest, the landlord shall have a

right to purchase at a price to be fixed by the Civil Court; that in the case of a sale in execution of a decree, when the landlord and any other person bid the same amount, the landlord shall have the right of pre-emption; and that, when an order is passed for foreclosing a mortgage of an occupancy-right, the landlord shall be allowed an opportunity of paying in the amount of the mortgage-debt and taking the place of the mortgagee. The only doubt that has been felt about these provisions is whether, in the case of a voluntary sale, the landlord should not be required, if he exercised his right of pre-emption, to pay the price at which the raiyat has actually agreed to sell the occupancy-right instead of a price to be fixed by the Court; but, on considering the difficulties by which the right of pre-emption would be clogged in cases of collusion between the vendor and purchaser, and in cases in which a spiteful neighbour might be willing to pay an exorbitant sum for an occupancy-right with a view to harassing the landlord, we have thought it best to put the case of voluntary sale on the same footing as those of gift and bequest.

“Looking at the question of transferability next from the point of view of the occupancy-raiyat's interest, the Local Government and the Government of India have come to the conclusion that, in the absence of evidence of any evil consequences which have already followed from such transfers, or which may be anticipated as likely to occur in the near future, it would be unwise to oppose the growth of the very strong tendency towards transferability which the prevailing customs show to exist in rights of this class in almost all parts of the country. The existence of such a tendency indicates—what, indeed, is clear from other evidence—that those most concerned regard the quality of transferability as an important incident of the right; and it cannot be doubted that the enactment of a law absolutely forbidding transfer would, even if it saved existing customs, be regarded as a hardship. I may add that, if the custom of transferability is so widely established as is stated by some very competent authorities, the operation of a law of this sort would be so limited as to be of but little importance.

“That the powers of transferring and sub-letting which the Bill recognises may in time lead to a state of things in which the great bulk of the actual cultivators would be not occupancy-raiyats but under-raiyats, with but little protection from the law, is indeed within the range of possibility; but, if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it. There is nothing in the present Bill which ought in any way to hamper them in doing so—nothing to affect the principle that, in an agricultural country like India, the great mass of the actual

cultivators of the soil, whoever they may be, and however they may have come into the possession of the land, must be protected by the law.

“It may be asked, what happens if a landlord, by way of pre-emption or otherwise, acquires an occupancy-right in his own land. The answer is, any tenant who subsequently takes the land from him is to have a right of occupancy in it. There is nothing in the Bill to prevent a landlord so acquiring an occupancy-right in land from keeping the land in his own hands and cultivating it by his servants or by hired labourers. All we propose to enact is that, if he chooses to let it to a tenant, that tenant shall at once acquire an occupancy-right. We consider this necessary in order to guard against the possibility of a landlord buying up on a great scale the occupancy-rights existing on his estate with a view to putting non-occupancy raiyats on the land. To a landlord who buys an occupancy-right, as contemplated by the pre-emption sections of the Bill, merely with a view to excluding an intending purchaser whom he objects to have as his tenant, there would be no appreciable hardship in the restriction.

“So much for free sale: now as to fair rents. It will be remembered that, under Act X of 1859, there were, putting aside the question of alterations in area, which we deal with separately, only two grounds on which the rent of an occupancy-tenant could be enhanced:

- 1st*, that the rate of rent was below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent; and
- 2nd*, that the value of the produce or productive power of the land had been increased otherwise than by the agency or at the expense of the raiyat.

“And we have seen that, in the Great Rent Case, the Court ruled that, where enhancement was claimed on the second of these grounds, the rule of proportion should be observed, namely, that the enhanced rent should bear to the previous rent the same ratio that the increased value of the produce or productive power bears to the value or power at the time when the previous rate was fixed.

“Now, whatever may be said for the rule of proportion on theoretical grounds,—and there is much to be said for it,—there is a general admission that in practice it has proved unworkable by the Courts. It has proved unworkable, because it throws on the Court in each individual case the necessity of undertaking elaborate and laborious inquiries into economical questions with which the Court is altogether incompetent to deal, and which have reference not merely to

the present time but also to past and possibly very remote times, for which no such evidence as could be acted on by a Court of Justice is likely to be forthcoming. Moreover, it necessitates enquiries, which are of such a nature that they could with advantage be undertaken only generally on a great scale and once for all, being, instead of this, undertaken over and over again in a most imperfect and unsatisfactory manner in individual cases.

“The result of this is that, though the right of the landlord to enhance is distinctly recognized by the law, and though definite rules are laid down for its enforcement, the law has become to a great extent a dead letter.

“The most important object of our proposals on this head is, while guarding and limiting the right to enhance in certain respects, to put it on such a footing that it will be readily enforceable in practice; and the chief means adopted for attaining this object is that of separating off the statistical and economical inquiries of a general nature, to which I have just referred, and providing for their being undertaken once for all on a large scale by Revenue-officers.

“We begin by providing that, except on account of an addition to the area of a holding by alluvion, a money-rent payable by an occupancy-raiyat shall not be enhanced except by a decree of a Civil Court, or by an approved and registered contract.

“I will speak first of enhancement by contract. We consider, for reasons which I have already mentioned, that it would be destructive of the objects of the Bill if occupancy-tenants were left perfectly free to deprive themselves by contract, or, I should rather say, by instruments having the external form of contracts, of the right to hold at fair and equitable rates secured to them by the law.

“But, on the other hand, we believe that there are cases in which both landlord and tenant are willing to agree to a reasonable enhancement of rent, and we think it hard that in such cases they should be driven against the will of both into a lawsuit. We have accordingly adopted a middle course by providing that a money-rent payable by an occupancy-raiyat may be enhanced by a contract in writing, approved of and registered by a Revenue-officer appointed by the Local Government in this behalf; we have directed that a Revenue-officer shall not approve or register such a contract until he has satisfied himself that it is fair and equitable; and we do not allow him to register any contract by which a raiyat engages to pay a rent more than six annas in the rupee higher than the existing rent, or more than one-fifth of the estimated annual value of the gross produce of the land.

“ Passing now to enhancement by decree of a Civil Court, we proceed on the assumption that there are, at least in some parts of the country, certain rates of rent generally recognized as the rates payable by occupancy-tenants for the various classes of land held by them. Where this is the case, we presume that it would not be very difficult for a Revenue-officer to ascertain those rates, and then, starting from them as a basis, and taking into account such changes in the productive powers of the soil and in the prices of produce as may have occurred since they were fixed, to prepare tables of the enhanced rates which, subject to allowance in exceptional cases, might fairly and equitably be demanded by the landlord for each class of land under the existing conditions. The Revenue-officer might further show in his tables the average gross produce of each class of land and its estimated value. Supposing this to be done, the Civil Courts would be relieved almost entirely of those economical and statistical enquiries which at present are involved in enhancement-suits. They would accept the rates and produce statistics shown in the tables as *prima facie* correct for all lands of the class to which the tables referred, and might restrict themselves to considering the comparatively simple and limited questions as to whether the particular lands in question in the suit belonged to the class alleged, and whether there were any exceptional circumstances connected with them which would require the rent to be fixed at a different rate from that set down in the table.

“ We are, of course, well aware that there would be many parts of the country for which, owing to the non-existence of recognized rates of rent, or to the great varieties of the soil, no such tables could be prepared, and further, that, even where it is possible to prepare such tables, their preparation must be a work of time. Accordingly, we have drawn our Bill so as to provide for two possible classes of cases, and for two kinds of enhancement-suits: suits to enhance money-rents where a table of rates has been prepared, and suits where a table of rates has not been prepared.

“ It will be convenient to deal, first, with the latter set of provisions. The cases in which a suit may be brought to enhance the money-rent of an occupancy-holding situated in a tract for which a table of rates has not been prepared are in the main the same as those provided for in Act X of 1859, the only difference of sufficient importance to call for notice here being that, for the purpose of estimating the increase in the productive powers of the land, or in prices on which a right to enhance depends, the Court is not compelled, as under the present law, to look to the time at which the rent was fixed, but, when that time cannot be ascertained (as it frequently cannot), or when the

productive power and the prices prevailing at that time are undiscoverable, may take, for the purposes of comparison, any other time which may appear to it fair and equitable.

“ We have endeavoured to supply a defect in Act X of 1859 by fixing the limits up to which the Court is to enhance in cases in which the enhancement is claimed on the ground of an increase in the productive powers of the land or of prices. We provide that, if the increase has been effected wholly by the agency or at the expense of the landlord, he shall be entitled to the whole benefit of it; that, if it has been effected partly by the agency or at the expense of the landlord and partly by the agency or at the expense of the tenant, the benefit shall be divided between them in such shares as, having regard to all the circumstances of the case, the Court thinks fair and reasonable; and that, if it is not proved that the increase has been effected by the agency or at the expense, either of the landlord or of the tenant, each of them shall be entitled to one-half the benefit: provided in this last case that the enhanced rent shall not bear to the previous rent a higher proportion than the increased productive power or increased prices bear to the former productive powers or former prices, as the case may be. Thus the rule of proportion, instead of being, as it is at present, under the decision in the Great Rent Case, the measure of enhancement in all cases, will merely supply a maximum limit in one of three possible cases. As it is not apprehended that landlords will often seek to press their rights of enhancement to the full extent, it seems unlikely that it will give rise to any considerable difficulty.

“ And, lastly, we have fixed a maximum beyond which rent cannot be enhanced in any case. My honourable colleague, Mr. Kristodás Pál, has, in one of his published papers, remarked on the necessity of allowing the raiyat a sufficient margin for cultivation and maintenance, and has expressed an opinion that, if the landlord's share of the gross produce were fixed at more than one-fourth, or 25 per cent., it would trench upon the very means of subsistence of the raiyat—would, in fact, be a starvation-rent. Now, it is not for the interest either of landlord or of tenant that starvation-rents should be recoverable; and accordingly we have limited the share of the gross produce which the landlord can take by means of an enhanced rent. We had originally proposed, following the recommendations of the Rent Commission, to fix the maximum limit at one-fourth, or 25 per cent.; but my friend, the Lieutenant-Governor, has recently obtained evidence tending to show that this limit would in some parts of the country be ruinously high; and accordingly we have, at his instance, altered it to one-fifth, or 20 per cent.

“Coming next to the scheme for enhancement by means of a table of rates, we have empowered the Local Government to direct a Revenue-officer to prepare for any local area, with the aid of assessors, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats, the average gross produce of the land, and the average value of that produce. The land is to be classified according to the nature of the soil, situation, means of irrigation and other like considerations; and in fixing the rates for each class regard is to be had—

- (a) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;
- (b) to the value of the average gross produce of land of that class, and the cost of raising that produce about the time those rates were fixed, or, where these matters cannot be ascertained for that time, about such other time as it may be fair and equitable to take for the purpose of comparison;
- (c) to the value of the average gross produce, and the cost of raising that produce at the time the table is prepared; and
- (d) to the following rule, namely, that, where the rate of rent for any class of land is raised on account of an increase in the value of the produce, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value.

“And no rate is to be fixed so as to exceed the share of the gross produce to which I have already referred.

“The table will be in force for such period, not less than 10 or more than 30 years, as the Local Government may direct, and while it remains in force it will be conclusive evidence—

- (a) that, except in two exceptional classes of cases, the rates shown in it for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies; and
- (b) that the statistics of gross produce and value given in the table are correct.

“The Bill lays down rules for the guidance of a Court in suits instituted to enhance the rent of an occupancy-raiyat in a local area for which a table of rates has been prepared; and a glance at these rules will show what an important simplification of the work of the Court will be effected by the table. The

general rule is that the Court shall enhance up to the rate shown in the table for the class of land in question, or, where maximum and minimum rates are shown for land of that class, as will occasionally be the case, to such rate, not higher than the maximum or lower than the minimum, as it thinks fit. It is only in certain exceptional cases that the Court will be required to go behind the rates. Those exceptional cases are of two classes :

“The first class comprises cases which may be described, with sufficient accuracy for my present purpose, as cases in which, owing to some improvement having been effected or having taken place in reference to the land since the commencement of the tenancy, the land has been raised from a lower to a higher class of the table. In these cases, the benefit of the improvement is appropriated to landlord or tenant, or apportioned between them on the principle which I have already referred to as applicable in other enhancement-suits.

“The other class of exceptional cases in which the Court will have to go behind the rates are cases in which the raiyat proves that, by contract or by custom or on some equitable ground, he is entitled to hold at a rate lower than that fixed by the table for land of the class to which his belongs; and, in cases of this class, the Court is required to fix the rent at the lower rate at which the raiyat proves that he is entitled to hold.

“I need only add that all suits for enhancement, whether under a table of rates or otherwise, are made subject to the three rules already referred to under the head of tenures, namely, that a rent shall not be enhanced so as to be more than double the previous rent; that the Court may order the enhancement to take effect by degrees for any number of years not exceeding five; and that, when rent has been enhanced, it shall not be again enhanced for 10 years. We consider that rules to this effect are necessary for the purpose of preventing sudden and ruinous enhancements, and vexatiously frequent alterations of rent.

“How far it will be possible to give effect to the provisions with respect to the preparation of a table of rates I will not venture to predict. The members of the Rent Law Commission appear to have entertained great hopes of those provisions being largely used, and they seem to have thought that, in some cases, if the rates were once settled by authority, landlords and tenants would soon be able to adjust their differences. On the other hand, the result of recent inquiries would seem to show that, in some parts of the country at least, the rates vary so much from holding to holding as to render the preparation of a table impossible or practically useless. It must, however, be pointed out that it will not follow that, because a table of rates has not been or cannot be prepared for a local area, the

landlords of that area will necessarily be reduced to the ordinary procedure by civil suit. They will, in many cases, be able to invoke the aid of a Revenue-officer for the settlement of their rents under certain provisions of the Bill, which I will notice in their proper place.

“The provisions for the enhancement of the rent payable by an occupancy-tenant are balanced by certain provisions for its reduction. The cases in which a claim for reduction is allowed are, with certain modifications of detail which it is unnecessary for me to notice, the same as under the existing law; that is to say, a reduction can be claimed only where there has been a decrease of productive power or of prices; and such cases are so rare that it has been thought unnecessary to lay down any elaborate rules for their treatment. We, therefore, simply provide that, when a case for reduction is made out, the Court may direct such reduction as it thinks fair and equitable.

“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 Bihár, 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 readjustment 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.

“These are the most important of the proposals of the Bill with respect to the rent of occupancy-tenants. I will not touch on the provisions which relate to the regulation and commutation of rent payable in kind, important as those provisions are, or on the sections which relate to the rights of a settled raiyat in his bastu or homestead land, but will pass on at once to the chapter dealing with what are called in the Bill ordinary raiyats, that is to say, raiyats holding raiyat land, but not having a right of occupancy in respect of it. If we are to accept as approximately accurate the statement, for which I believe my honourable colleague Mr. Kristodás Pál is responsible, that some 90 per cent. of the raiyats of Bengal already have occupancy-rights, this class will not

be numerous. Now, under the existing law as stated in Article 51 of Mr. Field's Digest, the rent of a raiyat belonging to this class can be enhanced only after service of a notice of enhancement; and, if, after receiving this notice, the raiyat elects to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent for it. And the principle on which we have proceeded in dealing with tenants of this class is that, while it is desirable to interfere as little as possible between them and their landlords, they should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and that the acquisition by them of the status of settled raiyats should be facilitated in every reasonable way.

"We accordingly provide that, subject to a certain maximum, which has been fixed for the rents of all raiyats and under-raiyats, and to which I shall presently refer, an ordinary raiyat shall pay such rent as may from time to time be fixed by agreement between him and his landlord; but, in order to check extravagant enhancements by the landlord, we provide that, if the landlord proposes an enhancement of the rent to which the raiyat does not agree, the landlord shall not eject him without paying him, besides any amount that may be due to him as compensation for improvements under the provisions of the Bill, a further sum by way of compensation for disturbance equal to a certain multiple of the yearly increase of rent demanded. *Ten* times the increase is the amount provided for in the Bill as it stands; but it need hardly be said that a figure of this sort is, at this stage of a Bill, entered only tentatively and subject to future consideration. The object in view is to fix a multiple of the increase high enough to deter the landlord from making an extravagant demand, but not so high that the raiyat would be induced by the prospect of obtaining it to refuse to accede to a reasonable enhancement.

"In addition to this we provide that a landlord shall not eject an ordinary raiyat except

- (a) for arrears of rent;
- (b) on the ground that the raiyat has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken some condition on breach of which he is, under the terms of a written contract, liable to be ejected; or
- (c) that he has refused to agree to an enhancement of rent on which the landlord insists.

"It is in this last case that the provision as to compensation for disturbance will apply.

"I spoke just now of a maximum rate for the rent of all tenants, whether raiyats or holding under-raiyats. I have explained that a raiyat is to be entitled to sub-let. We are well aware of the evils incidental to sub-letting, and of the risk that a tenant holding at favourable rates may, by sub-letting, convert himself into a rack-renting middleman. But the Government of Bengal did not see its way, and we do not see our way, to an absolute prohibition of sub-letting, or to such an upsetting of existing notions as would be involved in conferring the rights which are generally recognized as attaching to the raiyat, on the korfa or under-raiyat, who appears to be little better than a labourer, paying himself out of the produce of the field which he tills, and making over all the rest of that produce to the landlord. Sir Ashley Eden preferred to content himself with imposing some discouragement on sub-letting by limiting the money-rent of all raiyats and under-raiyats not having a right of occupancy to a maximum which he suggested might be fixed at 35 per cent. of the gross produce. This maximum was fixed with reference to the 25 per cent. maximum in the case of occupancy-raiyats; but as we have, at the instance of the present Lieutenant-Governor, proposed to lower the latter maximum to 20 per cent., so we propose to fix the maximum for ordinary raiyats at five-sixteenths or about 30 per cent.

"I have now touched on the most important of those provisions of the Bill which relate specially to particular classes of tenants; but, before leaving this part of the subject, I ought to say a few words about the subject of tenants' improvements, since the right to make improvements has been expressly mentioned as one of those rights which is attached to the status of an occupancy-raiyat.

"The question as to the right of a raiyat to make improvements and to claim compensation for them on ejection will, if the proposal to make occupancy-rights freely saleable in execution of decree is adopted, be of less importance in Bengal than in some other parts of British India. The great mass of the raiyats having a right of occupancy and not being liable to be ejected except under peculiar circumstances of rare occurrence, and the question of compensation adjusting itself when an occupancy-right is sold in execution of a decree, claims for compensation for improvements will be comparatively few. But the importance, from an economical point of view, of encouraging improvements is so great in this country that special provision has been made for the matter to meet the case of ordinary raiyats, and such cases as may from time to time occur of occupancy-raiyats being ejected from their holdings.

"The principle on which the sections of the Bill relating to this subject proceed is that that party to a tenancy whose interest in the land preponderates should have the preferential right to improve and take the full benefit of his

improvements; but that, if the party having this preferential right is unable or unwilling to avail himself of it, it should be open to the other party to make an improvement and reap the benefit of it.

“We accordingly confer on an occupancy-raiyat the preferential right to improve, and provide (subject to one exception to be presently noticed) that, if he does not avail himself of this right and the landlord desires to have any improvement made, he may call upon the raiyat to make it, and that, if the raiyat does not within a reasonable time comply with the request, the landlord may make the improvement himself. We enact what may be termed the inverse of these provisions for the case of the ordinary raiyat; that is to say, we give the preferential right to the landlord, and allow the raiyat to improve only if the landlord, on being requested by the raiyat to make an improvement, neglects within a reasonable time to do so.

“We have, however, made an exception to these rules in the case of one sort of improvement, namely, a dwelling-house for the raiyat and his family. We consider that this is an improvement which every raiyat—an ordinary as well as an occupancy-raiyat—should be entitled to make; and we further consider that it is not an improvement which a landlord should be empowered to force on a raiyat against his will. As regards this improvement, accordingly, we provide simply that any raiyat may make it; no right to make it, whether preferential or otherwise, being conferred on the landlord. When a landlord makes an improvement under these sections, he will be entitled to reap the immediate and full benefit of it in the shape of an enhancement of the rent under the provisions of the Bill relating to that subject. When a raiyat makes an improvement under these sections, he will, if ejected, be entitled, subject to certain exceptions which I need not notice now, to receive compensation for it. An occupancy-raiyat will further, while he continues to hold, reap the full benefit of his improvements, inasmuch as his rent cannot be enhanced on account of an improvement made by him. An ordinary raiyat, under similar circumstances, may possibly not be able in all cases to retain the full benefit of his improvements, but the check placed on the landlord by the provisions to which I referred just now will, as a rule, amply protect him in the enjoyment of that benefit.

“We do not think that a raiyat should be allowed to contract himself out of his right to make improvements of the class specified in the Bill; and, accordingly, the Bill makes void all stipulations in contracts providing either that a landlord may prevent a raiyat from improving or eject him for improving, or that a raiyat, when ejected, shall not be entitled to compensation for improvements.

“The remainder of the Bill is mainly concerned with provisions which apply to all classes of tenants alike.

“The object of some of the most important of these is to remove fertile causes of, or pretexts for, dispute and litigation between landlord and tenant, by providing means for ascertaining and determining the amount of rent payable by the latter to the former, and the dates at which instalments of rent are payable.

“We empower the Board of Revenue to fix the instalments in which rents are to be paid. This power is of considerable importance in the case of raiyats' holdings. Much of the harassment to which the raiyats are subjected is said to arise from the number of instalments in which their rents are payable; and, to remedy this, the Board is empowered, subject to certain reservations regarding agreements entered into, and customs prevailing, before the commencement of the Act, to fix the instalments in which the rents of raiyats are to be payable, so that there may not be more than four in each year.

“We require every landlord to give to a tenant paying him rent a receipt containing much fuller details than those prescribed by the existing law, and to keep a counterpart of every receipt so given; and we provide that, when a receipt does not contain the requisite particulars, it shall be deemed to be an acquittance in full up to date.

“We require every landlord to furnish to his tenant for each agricultural year a detailed statement of the account between them for that year, and to keep a counterpart of every statement so furnished.

“And, following the existing law as to receipts, we impose penal damages for refusal or neglect to give receipts or furnish accounts, and make it an offence punishable with fine to neglect to keep a counterpart as required by the Act.

“We believe that, if these provisions are fully enforced, much advantage will result to both parties. Not only will the tenants be supplied with proper evidence of the payments made by them and of the state of their accounts, but the landlords, if they keep their counterpart statements in a proper manner, will find them useful as evidence before the Courts.

“Among the commonest defences to a suit for arrears of rent are that the tenant has already tendered his rent and that it has been refused, or that the tenant did not know who was entitled to the rent.

“Under the existing law there is but one case in which a tenant can deposit his rent in a public office, so that the deposit may operate as a payment to his landlord, namely, when he is prepared to declare solemnly that he has tendered the rent to his landlord and that the landlord has refused to receive it.

“It has been found, however, that this affirmation has become a mere form; and we have thought it better to allow the tenant to deposit his rent whenever he has reason to believe that the landlord will not receive it. We also think it advisable that a tenant should be allowed to deposit his rent in two other cases, namely—

- (1) when it is payable to co-sharers jointly, and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and
- (2) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.

“This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits a certain discretion not allowed by the present law. He is accordingly given a discretion to refuse the deposit if he does not think the circumstances of the case warrant its being made, and a further discretion to pay away the deposit, if he thinks fit, to such one of several rival claimants as may seem to be entitled to it, but subject of course to the right of any person actually entitled to it to recover the amount from the person to whom it is so paid. As regards this last point, however, I should state that the officer will have power to retain the deposit if he thinks fit, pending the decision of the Civil Court as to the person entitled to it; and this latter course is doubtless that which he would adopt in all cases in which there might be any reasonable doubt as to the person entitled.

“There are a large number of other provisions which fall within this part of the Bill, such as the provision for the division or appraisal of crops where rent is paid in kind, the provisions for measurement of the land, and the like; but I need not refer to them now, as they will be found in most cases to follow closely the proposals of the Rent Commission, although in one or two cases we have generalized provisions which had been made specially applicable to Bihâr.

“Passing over this class of provisions, I proceed to the further proposals which we have made for supplementing, by the action of the executive authorities, the powers of the Court with respect to the settlement of rents.

“I have already expressed my apprehension that in many parts of the country the framing of a table of rates will be impossible. I should add 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, with a view to provide such a remedy, we have inserted in the Bill a chapter which is entitled *Of the Settlement of Rents by a Revenue-officer.*

“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 as to the quality of the soil, the estimated amount of the produce, or some other similar 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 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 desire 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 liable to enhancement or reduction by a Court, they will be *fixed* according to the principles embodied in the Bill, and so that no rent shall exceed the maximum prescribed 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 ascertained and recorded 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 ground 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 ten years.

“While it remains in force it will be conclusive (except as I will presently explain) 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 refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

“In most cases, he would probably decide the question on such evidence as might be readily available; but, whenever he takes this course, his decision will be liable to be challenged in a Civil Court on the ground—

- (a) that the tenancy does not exist, or that the tenant is not liable to pay rent, or

- (b) that the tenant belongs to a class different from that to which he is shown in the jamabandi to belong, or
- (c) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandi, or
- (d) that a rent different from that shown in the jamabandi has been fixed by contract.

“We believe that this list exhausts all the matters in regard to which a Civil Court may be regarded as a better tribunal than the Revenue-authorities; and, if this is so, the determinations of the Revenue-authorities in regard to all other matters may safely be made final and conclusive.

“We have by a separate chapter given to a Revenue-officer, acting under instructions from the Local Government, the narrower power not of fixing and settling rents, but merely of ascertaining and recording, within a specified area, existing rights and rates of rent; in other words, of framing what is known in other parts of India as a record-of-rights. The Local Government may apply the provisions of this chapter not only in cases in which it may empower a Revenue-officer to settle rents, but also in any other case in which the Governor General in Council may sanction the application of its provisions.

“I now come to that part of the Bill which deals with the procedure for the recovery of rents, and, in touching on this subject, I cannot express too emphatically my concurrence with the opinions expressed by the Rent Commission as to the extreme danger of summary methods of justice. ‘In order that justice may be done,’ they remark—

‘truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which, by precluding the production of evidence, may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a ‘regular suit’ to right himself, if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice, but of choking-off litigation; and we cannot recommend the adoption of any summary procedure for rent-suits which would involve even a partial renewal of it.’

“There is no royal road to the discovery of facts, and most short cuts are mere delusions. Let me illustrate this from an episode in the history of

modern Roman law as practised in Germany. The ordinary procedure for determining rights of possession was found to be tedious, and another form of procedure was devised which was supposed to be more expeditious and was called *summariū*. This, again, was denounced as dilatory, and was superseded by another still more summary form of procedure, which was christened '*summariissimū*.' The great jurist Savigny tells us that he once took part as judge in a trial which was being conducted according to the form of procedure known as *summariissimū*. At the time when he sat, this trial had lasted some twelve years. Several faculties of jurists had delivered their opinion about it, and how much longer it was likely to last it was impossible to say.

"I have studied most, if not all, of the numerous suggestions which have been made for abbreviating the procedure in rent-suits, and I must say that the result is not encouraging. Most of the suggestions are open to one or more fatal objections: either they are based on an obvious fallacy, or they sacrifice substantial justice to despatch, or they proceed on an imperfect and erroneous diagnosis of the disease.

"The fallacy to which I refer is the fallacy of supposing that by shortening your code of procedure you shorten the procedure itself. The Code of Civil Procedure contains a number of provisions which may be useful in certain contingencies, but which are not required, and therefore are not applied, in ordinary cases. By striking out these provisions from a code of procedure for any special subject, such as rent-suits, you materially shorten your law, but you do not shorten by one jot the length of a trial in ordinary cases, and you create opportunities for doubt and delay in exceptional cases.

"The second objection applies to all those numerous suggestions which, however ingeniously they may be disguised, substantially involve a shifting of the burden of proof. Take a common rent-suit. A, the landlord, says that B, the tenant, owes him so much money as rent. B says he does not, and the Judge has to decide which is right. Now, it would be extremely convenient to A if he could have the money which he claims until B proves that it is not due. Possession, we all know, is nine points of the law; and the advantages of possession, in cases of disputed rights, have always been appreciated. I was shown the other day a document which forms an amusing illustration of the importance which is attached to possession not merely in rent-suits but

in other forms of litigation. It was a notice of appeal in a fine case, and it ran as follows :—

‘Your Honour may be right, I may be wrong; I may be right, and Honour wrong: let Honour give me back the fine, and then at Day of Resurrection, when all hearts will be open, if I am wrong, I will most gladly, Sir, return your Honour the money.’

“The appellant in this case has translated into his own artless language the same thought which consciously or unconsciously lies at the root of all proposals to shift the burden of proof in disputed rent-cases.

“But the truth is, that most of the panaceas which have been suggested for protracted rent-suits proceed on an imperfect diagnosis of the disease. They do not go to the root of the matter. The reason why rent-suits are apt to be long and troublesome is not because the procedure is defective; but because the rights involved are obscure and uncertain, and the facts are difficult to ascertain. No amendments of procedure will cure these evils. What are the features of an ordinary rent-suit? There is nothing mysterious or exceptional about it; nothing which requires the application to it of principles different from those which are applicable to an ordinary demand. It is desirable that not only rent-suits but all kinds of suits should be as short and simple as is compatible with the due administration of justice: it is not desirable that a rent-suit more than any other suit should be simplified at the expense of justice. Take the course of an ordinary suit for arrears of rent. A sues B for a specified sum of money which he claims to be due from B to A. He must, as in the case of other money-claims, satisfy the Court on three points: first, that the amount which he claims is actually due; secondly, that he is the person entitled to the money; and thirdly, that the defendant is the person liable to pay the money. The defendant either appears and pleads, or he does not. If he appears, he usually raises one of three pleas: either that the amount claimed is excessive, or that the amount claimed has already been paid in whole or in part, or that the plaintiff is not the person entitled to the amount claimed. Now, as to the first plea, I believe there is no reason for doubting that it is often well founded, and that a suit for arrears is in many cases a suit for enhancement in disguise. But, if a landlord wishes to avoid being harassed either with this plea or with the plea of payment, the remedy is in his own hands. He should keep his accounts and receipts in such form and with such regularity as would justify a Court in accepting them as evidence without suspicion. As for the plea under which a landlord’s title is disputed, there is no doubt that it raises very difficult questions, but I suppose no one would seriously argue

that a defendant is not justified in raising it, when it can be raised in good faith; and it is quite certain that no tinkering of the Code of Civil Procedure will facilitate the proof of a landlord's title. There is, indeed, one mode in which that proof might be facilitated, and it is a mode which we have been recommended by high authority to adopt, and that is, the establishment of a general register of titles. Such a register, if it is to be of much use and to effect much more than is effected under the present system of registration, must, I take it, include all subordinate interests in land. But the preparation of such a register would be an expensive and tedious as well as a formidable task; and I do not know that either landlords or tenants have expressed any strong desire that it should be undertaken, or would welcome the increased taxation which it might not improbably involve.

“So much for the cases in which the defendant opposes and defends his case. But he very often allows judgment to go by default, and in such cases the plaintiff complains that, when he comes to apply for execution, he is stopped by the plea that the summons in the suit has not been duly served. Well, it is very hard on a plaintiff that he should be stopped by a plea of this kind, when it is put in merely for purposes of delay. But it is equally hard on a defendant that he should be sold up without an opportunity of making his defence. In all matters relating to the service of legal notices and processes in this country, there is, I fear, a great deal of negligence and dishonesty, but there is no reason why we should assume that this negligence or dishonesty is always on the side of the defendant; and there is no sound reason why the rules as to the mode of effecting service, which have been found necessary and sufficient in other cases, should be dispensed with in the case of rent-suits.

“I have touched on these points not for the purpose of showing that the existing procedure is incapable of improvement,—for we propose to make certain improvements in it,—but for the purpose of guarding against any exaggerated notions of what may be accomplished in that direction, and of showing that what is really wanted in the interest of the landlord is not so much the simplification of judicial procedure as the extra-judicial ascertainment and simplification of rights.

“What, then, are the remedies which we propose to give to the landlord for the recovery of undisputed rent?

“In the first place, we allow him to exercise the power of distraint in a modified form. The chapter relating to this subject may be said to be the result

of a compromise. The Rent Commission, concurring with the Bihár Rent Committee, proposed to abolish the existing law of distraint as an offset of English law, of which the efficiency was impaired by the legislation of 1859, and which had been abused in Bihár and not always applied in a regular manner in other parts of the country. To this strong objections were urged, and the procedure provided by this chapter was then devised by the Government of Bengal as being likely to secure to the landlords most of the advantages afforded by the existing law, without exposing their tenants to the evils now complained of.

“The modified power of distraint which it is now proposed to allow can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by and be the property of a sub-lessee of the tenant; and it may be exercised, though the produce has been stored, provided it has not passed out of the possession of the cultivator. The landlord cannot himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment into Court of the amount of the demand. Any sum paid into Court will be retained for one month, with a view to the possibility of the owner of the distrained property claiming damages as for a wrongful distraint, and on the expiration of that period it will be paid to the landlord.

“We have inserted in this chapter sections directed against illegal distraint and interference with crops. One of these sections provides in effect that any person who, otherwise than in accordance with the provisions of the Bill or some other enactment for the time being in force, distrains any produce of a tenant's holding, or interferes with the harvesting of a crop, shall be deemed to have committed criminal trespass within the meaning of the Penal Code, and further imposes a penalty, which may extend to three months' imprisonment or two hundred rupees fine, on any person who benefits by, or is interested in, the commission of any such offence if, having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission.

“Coming now to the procedure in an ordinary suit, we have endeavoured to embody in the Bill all those modifications of the ordinary procedure proposed by the Rent Commission and the Government of Bengal which seem likely to expedite, in any material way, the disposal of suits between landlords and tenants.

“ We have provided that, in such suits, service may be effected by registered letters; that the summons shall, as a rule, be issued for the final disposal of the case; that no written statement shall be filed without the leave of the Court; that the provisions of the Code of Civil Procedure relating to interrogatories, discovery and affidavits shall not apply; that, whether an appeal lies or not, a single memorandum of the substance of the evidence, such as is prescribed by the Code for unappealable cases, shall suffice; that, as a rule, execution may issue on the oral application of the decree-holder at the time the decree is passed; and that the sections of the Code which enable a judgment-debtor to obtain a suspension of an order made for the sale of his immoveable property, and certain sections which provide for the transfer of decrees to the Collector for execution, shall not apply.

“ We have also taken away the right of appeal in petty cases involving no question of title or of a right to enhance or vary rent.

“ I should observe that the final jurisdiction in this class of cases will be exercised only by specially selected officers, and that a power of revision is reserved to the District Judge.

“ Then, we have added a new section, which is intended for the benefit of a landlord in a suit for an arrear of rent, when, as sometimes happens, the defendant admits that the arrear is due, but pleads that it is due not to the plaintiff but to some rival claimant. In such a case, it seems only reasonable that the tenant should pay the amount of the rent into Court; and the Bill accordingly provides that the Court shall refuse to take cognizance of his plea unless he does so.

“ We have also framed a section relating to relief against forfeitures, which is based on a similar section in a recent English Act, the Conveyancing and Law of Property Act, 1881. It enacts that a suit for ejectment of a tenant, on the ground of his having forfeited his interest by breach of a condition or the like, shall not be entertained unless the landlord has given the tenant an opportunity of paying compensation and remedying the breach when it admits of remedy, and that, when a decree is passed in such a suit, it shall not be executed until the defendant is allowed a similar opportunity of repairing or atoning for his wrongful act.

“ We hope 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 to which I have referred, none have been suggested which the Government of India would be prepared to accept. As to the possibility of

devising any effectual procedure analogous to that employed in the case of 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 as I have already remarked, against it.

“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 trustworthy 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 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 are 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.

“The truth really is, that facilities for recovering rents in Bengal should be sought for, not so much in novel forms of procedure as in a trustworthy 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.

“If this view is correct, the provisions of the Bill with respect to the preparation of tables of rates, settlement of rents, and framing of records-of-rights, and those which relate to receipts and accounts, may reasonably be expected to remove most of the difficulties of which the landlords now complain.

“I am drawing to a close of my summary of the Bill, and the only other part of its provisions on which I need touch is that which relates to the sale of

transferable holdings in execution of a decree for arrears of rent. The peculiar feature of the new procedure prescribed by Chapter XV of the Bill is that tenures sold in execution of decrees for arrears of rent accruing on them will be put up in the first instance subject to incumbrances, and, if the amount then bid is sufficient to liquidate the arrear, will be sold subject to incumbrances. If, on the other hand, the amount bid is not sufficient to liquidate the arrear, they will be put up and sold with power to avoid incumbrances.

“These provisions will apply of their own force only in the case of tenures; but, as there are in some parts of the country occupancy-holdings of great extent, and in most respects similar to tenures to which it would be reasonable to apply the same rules, the Local Government is empowered to extend the system to occupancy-holdings in any part of the province it thinks fit.

“Such, then, are the outlines of the Bill which I ask leave to introduce. We claim no merit for originality in our proposals; we are but building on the foundations which others have laid, following the lines which others have traced. And it would be presumptuous to suppose that, in trying to work out a problem of exceptional difficulty and complexity, we have not fallen into errors of omission, inaccuracy or inconsistency. The Bill will be carefully scrutinized in many quarters, and I have no doubt that the aid which we shall receive from our critics will materially assist us in removing blemishes of this kind. But, whatever degree of perfection we may be able to give to the form of our work, we cannot, I fear, flatter ourselves with the hope that our substantial proposals are such as are likely to meet with universal acceptance. We find ourselves in the presence of conflicting claims; claims which, if pushed to their extreme on either side, must produce, have produced, bloodshed, anarchy and misery. We have endeavoured to hold an even hand between the two parties, and to define and adjust their rights in such a way as may be most conducive to the common interests of both and to the welfare of the country at large. But that either claimant should accept with equanimity anything less than what he conceives, rightly or wrongly, to be his due, it would be inconsistent with what we know of human nature to expect. Nor, again, do we suppose that, by this or any other legislation which we can devise, we are likely to settle, permanently and once for all, the eternal question of landlord and tenant. We find ourselves face to face with patent and glaring evils, evils which are crying out for a remedy; we have endeavoured to apply such a remedy as appears suitable to the present circumstances of the case, but we know well that we cannot absolutely prevent the recurrence of similar evils in the future. Sufficient for the statesman if he

can grapple with the problem of to-day : for the distant future he must leave posterity to provide. And as we cannot foresee the distant future, so we cannot recall the distant past. We cannot, if we would, restore the zamindar and the raiyat to the positions which they occupied at the time of the Permanent Settlement. The India of to-day is a different country from the India of 1793, and requires different legislation. The utmost that we can endeavour to do, and what we have endeavoured by the present Bill to do, is so to legislate for her as to preserve whatever is best in the spirit of her ancient institutions."

His Excellency THE PRESIDENT said :—" I believe it will be in accordance with the general understanding, and I think it will be the best course which I can suggest to my hon'ble colleague for the Council to pursue, that, after the very able statement of my hon'ble and learned friend, no discussion should take place upon this question at present ; because it is obvious that, in a matter of this magnitude, members of Council would naturally desire to have time to consider that statement, and the Bill with which it is connected ; and therefore what I would propose is this—that we should, when the motions now before the Council with regard to this measure have been passed, take the further consideration of it on Monday, the 12th, and, if it should be necessary to adjourn the debate, on Tuesday, the 13th of this month. The delay till Monday will give sufficient time, considering how fully the Bill has been discussed and how long the matter has been before the public, to enable us to take the further discussion of this Bill on that day, it being clearly understood that no other steps will be taken upon it now ; so that the public will have ample time—some eight months—to consider the whole question and make all representations to the Government before the Bill goes before a Select Committee.

"The only other remark which I would desire to make is this. The Government propose to give to members of Council, and to the public at once, all the papers connected with this case. As a rule, the Secretary of State objects to the publication in India of despatches to and from himself, but I have obtained Lord Kimberley's permission in this case, regarding it as one of exceptional importance, to publish at once, and without waiting for their being published in England, the despatches which have passed between the Government of India and the Secretary of State on this question ; so that the papers which will now be given to the public will be full and complete.

"If my hon'ble colleagues accept the proposal which I have made, no further discussion will take place now. The Bill will be published, and we will take up the question again on Monday, the 12th of March."

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 *Gazette of India*, and in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the law relating to the Survey, and the Examination and Grant of Certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels. He said :—

“ A case having occurred in Bombay which showed that the Bombay law relating to the survey of steamships was not in harmony with the English law on the subject, it was thought desirable to amend the Bombay law. When, however, the question of legislation came to be considered, it appeared that there were no less than seven local Acts relating to steamships. Bombay, Bengal and Burma each had its special law regulating the survey of these ships, while there was no law on the subject in the Presidency of Madras. The multiplicity of laws relating to the survey of steamships, it was thought, could not but be inconvenient to shipowners whose ships traded between different Provinces. For instance, Act XVI of 1871, which is in force in Burma, requires every steam-vessel plying on any of the rivers or waters of British Burma, except steam-vessels plying between a port in British Burma and a port not in British India, to be surveyed twice a year. In the same way, the Bombay Act, II of 1864, as amended by Bombay Act IV of 1873, requires every British steam-vessel not holding a Board of Trade, British Indian or Colonial certificate, carrying passengers between any port of the Presidency of Bombay and any other port, to be surveyed twice a year; and the Bengal Act, V of 1862, as amended by Act I of 1868, also requires the survey twice in every year of all steam-vessels plying on any of the rivers or waters within the province of Bengal, except steam-vessels which may ply between some port within that Province and some port not in British India. Under these laws, a steam-vessel which was surveyed in Bombay might, apparently, be required to undergo a fresh survey on arrival in Calcutta, and another survey on arrival at a port in Burma. As legislation is necessary, it is, therefore, clearly expedient to have one uniform law relating to the survey of steam-vessels applicable to the whole of British India.

“ Besides providing for the survey of steam-vessels, the local Acts provide also for the examination of, and the grant of certificates to, engineers, and for holding investigations into explosions occurring on board steam-vessels. In these matters, uniformity in the law is desirable.

“ After consulting the Local Governments concerned, the Government of India decided to legislate so as to provide one law relating to the survey of sea-going steamships, the examination and grant of certificates to engineers of those ships, and the investigation into explosions occurring thereon. It was, however, found at the same time necessary to legislate in like manner for steam-vessels plying on rivers and inland waters, inasmuch as the provisions of the local Acts related, to a certain extent, to those vessels as well as to sea-going vessels, and it was considered advisable to deal with sea-going and inland steam-vessels in separate Bills—the Inland Steam-vessels Bill and the Indian Steamships Bill—so as to keep the law relating to merchant shipping—a law liable to be affected by legislation in England—entirely separate from the law regulating inland steam-vessels, which is a matter solely within the scope of Indian legislation.

“ The Inland Steam-vessels Bill, which I now ask leave to introduce, will repeal the seven local Acts relating to steamships which are now in force, and it will be drawn so that it may be brought into operation at the same time as the Indian Steamships Bill.

“ The Bill will provide for the whole of British India a law regulating the survey of steam-vessels plying on inland waters; the grant of certificates to masters and engineers of those vessels; inquiries into casualties; and the suspension and cancellation of masters' and engineers' certificates.

“ In its main provisions the Bill will follow the existing law so far as it goes. The points in which it is proposed to change the law, and which require notice, are briefly as follows: It is proposed to extend the term, for which the certificate of survey is to last, from six months to one year; but the Local Government will be enabled, under certain circumstances, to cancel or suspend a certificate of survey. To meet local requirements, power will be given to Local Governments to exempt any specified class of inland steam-vessels from all or any of the provisions relating to survey.

“ The Bill will provide for the grant, without examination, of a certificate as engineer to a person who possesses a certificate granted under the Imperial Merchant Shipping Act, or an equivalent certificate, and will also provide for

the grant of certificates of service to engineers who have served for a certain time in certain steamships, or have obtained the rank of first class assistant engineer in Her Majesty's service. With regard to investigations into casualties, and the cancellation and suspension of the certificates of masters and engineers, the Bill will in the main follow the Merchant Shipping Act, 1883, which has recently been passed.

"It is further proposed to make provision in the Bill to regulate the carriage of dangerous goods on passenger steamers and to prevent accidents from fire. The Governor General in Council will be empowered to declare what shall be deemed to be, for the purposes of the Act, dangerous goods, and persons will be prohibited from taking those goods on board except under certain conditions. The Local Government will also be enabled to make rules for the protection of inland steam-vessels from danger by explosion or fire."

The Motion was put and agreed to.

INDIAN STEAMSHIPS BILL.

The Hon'ble MR. ILBERT then moved for leave to introduce a Bill to amend the law relating to the Survey of Steamships and the Grant of Certificates to Engineers of those Ships. He said :—

"This Bill, as I have already pointed out when asking leave to introduce the Inland Steam-vessels Bill, will provide for the whole of British India one law regulating the survey of sea-going steamships, the examination of, and grant of certificates to, engineers of these ships, and investigations into explosions occurring thereon. It is proposed to follow the English law with respect to the class of steamships for which certificates of survey will be required; to extend the term of those certificates from six months to one year; and in other respects to re-enact, with a few unimportant modifications, the existing law."

The Motion was put and agreed to.

The Council adjourned to Friday, the 9th March, 1883.

R. J. CROSTHWAITE,

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

CALCUTTA;
The 2nd March, 1883. }

*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 9th March, 1883.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, R.A., 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 Rájá Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds,

The Hon'ble H. S. Thomas.

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

The Hon'ble B. Miller.

The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.

The Hon'ble J. W. Quinton.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the law relating to the Survey, and the Examination and Grant of Certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Reynolds and Miller 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 *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

STEAMSHIPS BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the law relating to the Survey of Steamships and the Grant of Certificates to Engineers of those ships, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Reynolds and Miller 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 *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and Statement of Objects and Reasons, be published in the *Gazette of India*, and in the local official Gazettes in English and in such other languages as the Local Governments might think fit. He said :—

“ This publication is a necessary stage—and it clearly ought to be an early stage—in the progress of a Bill ; but, under the Rules of Business as they stood before the recent alteration, the Council could not have ordered the publication of a Bill until a motion that it be referred to a Select Committee or some equivalent motion had been put and carried. However, under the new rule which was passed the other day, the Council may direct the publication of a Bill at any time after leave to introduce it has been granted. The effect of passing this motion, which I now make, will be that this Bill will be published in the usual manner, and that the various Local Governments will have the same opportunity of expressing their opinions on the provisions of

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT. 133

this Bill as they have of expressing their opinions on the provisions of any other Bill.

“I give these explanations for the purpose of correcting some misstatements which have been made with respect to the course which the Government have adopted, and proposed to adopt, in dealing with this measure. It has been alleged that we are pushing the Bill through the Council with unusual and improper haste. There is no foundation for this statement. The Government never intended to pass the Bill into law during the course of the present Calcutta session. They have dealt, and they always intended to deal, with this measure in accordance with the ordinary rules of business; and, in dealing with it, they have not departed from the usual course of procedure, except in one particular, namely, that, in order to give the public the earliest possible notice of the nature of their proposals, they sent copies of the Bill and the accompanying papers to some of the leading Journals before any formal order for publication of the Bill had been made by this Council.

“To substantiate this statement let me recapitulate shortly the several stages through which this measure has passed, both before and since its introduction as a Bill into the Council. It originated with a proposal for legislation which was made by the Government of Bengal to the Government of India in the month of March, 1882. That proposal was, in the month of April last, communicated in the ordinary way to other Local Governments for their opinions. On receipt of those opinions, the Government of India considered whether legislation should be undertaken, and, if so, what form it should take. Having come to a conclusion on these points, they submitted their proposals—the proposals which are embodied in the present Bill—to the Secretary of State in Council. The then Secretary of State, Lord Hartington, informed us that these proposals had been very carefully considered by him in Council, that he agreed in the conclusions at which we had arrived, and that he sanctioned the introduction of a Bill embodying the proposals which we had submitted. Accordingly, the Home Department issued instructions to the Legislative Department to frame a Bill, and the Bill, when framed, was placed in charge of the Legal Member of Council, who, I believe, always takes charge of Bills amending the Procedure Codes. I obtained leave to introduce the Bill on the 2nd of February, I introduced it in the following week, and the papers containing the opinions of Local Governments were, I believe, sent to the newspapers within three days after the introduction of the Bill. Since then the Bill has not been carried through any further stage.

“It has been also alleged that the Bill originated in the opinion of an adviser not sufficiently acquainted with the circumstances of Indian life, the reference being obviously to myself. Now, I do not wish to disclaim or lessen in any way my share of responsibility for this measure, but to say that it originated in any opinion given by me is to say what is not in accordance with the facts. The letter of Sir Ashley Eden was received by the Government of India before I landed in this country. It was sent round to the various Local Governments before I took my seat as a Member of this Council, and I never heard anything about the subject at all until after the replies of the Local Governments had been received by the Government of India. My duty then was simply to form the best conclusion I could after seeing what had been written on the subject, and hearing what was said on the subject, by persons who had an acquaintance with the country which I never affected or claimed to possess. The conclusion to which I came on the materials before me was, that we ought to legislate, and that we ought to legislate on the lines on which this Bill has been framed. That opinion I still hold. But the Bill is the Bill, not of the Legal Member of Council, but of the Government of India, and, that being so, it will, I think, be more meet that I should, on the present occasion, leave to the Head of the Government the task of explaining the policy of what is a Government measure.

“Accordingly, I shall confine myself exclusively to the legal aspect of the measure. But I do not intend to waste your time by reference to any of the so-called legal arguments purporting to show that we have no power to alter the law in the mode in which we propose to alter it. I do not anticipate that my honourable friend Mr. Evans will venture to use any such argument. He is much too good a lawyer to do so. For he knows as well as I do that about the legal power of the Legislative Council to pass this Bill there is not, and cannot be, any question.

“What I propose to do is to give you a dry simple statement shewing the jurisdiction which is, under the existing law, exercisable by the Courts of this country in cases affecting European British subjects, and the mode in which it is proposed to alter that law by the present Bill. It is necessary that I should do this, because the scope and effect of the Bill have been much misunderstood or misrepresented, and I observe that an important London paper has alleged that we are running a tilt against a rule which, as a matter of fact, we do not propose to touch, the rule, namely, which limits the extent of the criminal jurisdiction exercisable by Magistrates in the mufassal over European British subjects.

“Let me begin by explaining what is meant by a European British subject. The term ‘European British subject’ is defined by the Criminal Procedure Code (section 4) to mean—

- (1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain or Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal :
- (2) any child or grandchild of any such person by legitimate descent.’

“It will be seen that the definition is somewhat arbitrary and artificial. It includes persons who are neither European nor British. It excludes persons who may be in all essential characteristics Englishmen, but who are not of legitimate descent.

“Such being the European British subject, let us see what is the nature and extent of the jurisdiction exerciseable over him in this country in civil and criminal cases.

“First, then, as to the jurisdiction exerciseable over European British subjects in civil cases. That jurisdiction is precisely the same as that which is exerciseable in the case of persons not being European British subjects. Section 10 of the Civil Procedure Code enacts that—

‘no person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of the Courts.’

“No person is exempted from that jurisdiction by reason of his being a European British subject; no person is disqualified for exercising that jurisdiction by reason of his not being a European British subject. A Native Judge has the same civil jurisdiction over a European British subject as any other Judge, and may exercise that jurisdiction in such a way as to affect not only his property, but his reputation and his person. He can give judgment against him in a suit for fraud or libel; he can send him to prison for debt; can punish him for contempt of Court; and can issue a warrant for his arrest in case of his non-attendance as a witness.

“So much as to jurisdiction in civil cases. Next, as to jurisdiction in criminal cases. I will deal first with the jurisdiction of the High Courts, including in that expression, not only the High Courts at the Presidency-towns of Calcutta, Madras and Bombay, but the High Court at Allahabad and the Chief Court of the Panjáb at Lahore. The criminal jurisdiction of these Courts is unlimited. No person is exempted from it by reason of race or place of birth. No person is disqualified for exercising it by reason of race or place of birth.

Any person may exercise the jurisdiction, whether he is a European British subject or a Native of India. And a Judge of the High Court, whether he is a European British subject or not, is by virtue of his office a Justice of the Peace within and for the whole of British India.

“Then, as to Presidency Magistrates. Here, again, there is no exemption, no disqualification, based on race or place of birth. Any Presidency Magistrate, whether a Native of India or not, can try or commit for trial any European British subject, and can pass any of the following sentences :—

- (1) Imprisonment for a term not exceeding two years, including solitary imprisonment;
- (2) Fine not exceeding one thousand rupees;
- (3) Whipping.

“Lastly, as to the criminal jurisdiction of ordinary Magistrates and Judges in the mufassal. Here there are distinctions between cases affecting European British subjects and other cases, both as to the extent of the jurisdiction which may be exercised, as to the privileges of persons subject to that jurisdiction, and as to the persons qualified to exercise the jurisdiction.

“As to the extent of the jurisdiction. A Magistrate cannot sentence a European British subject to more than three months' imprisonment, or Rs. 1,000 fine, or both. A Court of Session cannot sentence a European British subject to more than a year's imprisonment, or fine, or both. And neither a Magistrate nor a Court of Session can sentence him to the punishment of whipping.

“Then, the European British subject has certain special privileges as to the mode of trial, the right of appeal, and the right to apply for release from custody.

“He may claim to be tried by a mixed jury or a mixed set of assessors, not less than half the number of jurors or assessors being either Europeans or Americans, or both Europeans and Americans.

“If he is convicted on a trial held by an Assistant Sessions Judge or a Magistrate, he may appeal either to the High Court or to the Court of Session at his option. He can appeal against small sentences of fine or imprisonment from which there is no right of appeal in ordinary cases, and if he is unlawfully detained in custody he can appeal to the High Court for an order directing the person detaining him to bring him before the High Court.

“ And lastly, he cannot be tried by any Magistrate unless the Magistrate is a Justice of the Peace, a Magistrate of the first class and a European British subject ; he cannot be tried by any Sessions Judge unless the Judge is a European British subject ; and he cannot be tried by any Assistant Sessions Judge unless the Judge is a European British subject, has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered by the Local Government to try European British subjects.

“ The privilege of being tried by a mixed jury, or mixed assessors, belongs to all Europeans and Americans ; the privilege of being tried by a European British subject belongs to the European British subject alone. Now, of all these various rules, the only one which we propose to alter is that which relates to the race qualification of the Judge. We have left untouched the limitations on the sentences which may be inflicted by the Judge. We have left untouched the right to trial by a mixed jury or by mixed assessors ; we have left untouched the right to apply for release from illegal custody. The single alteration which we propose to make is this. We propose to substitute, for the disqualification arising from race, a qualification depending on tried personal fitness. We propose to say that a very small number of specially selected Native Magistrates may exercise that limited and qualified jurisdiction which can at present be exercised only by persons who fall within the extremely arbitrary and technical definition of European British subjects.”

The Hon'ble MR. QUINTON said:—“ It cannot be denied by the most earnest opponents of the present Bill that there is a strong array of official opinion in support of it. The measure which it embodies originated with the Government of Bengal. The Governments of Bombay, Madras, the North-Western Provinces and the Panjáb, the Chief Commissioners of the Central Provinces, of British Burma and of Assam, and the Resident at Haidarábád, who is *ex officio* Chief Commissioner of the Haidarábád Assigned Districts, have all written in no qualified terms expressing their approval of it on the grounds of public policy and administrative convenience.

“ It is unquestionable that the Bill, if passed into law, will deprive the European British subject in the interior of being tried in certain cases by a Magistrate or Judge of his own race. I say ‘ in certain cases,’ for, as the law at present stands, there is nothing, should he be unfortunate enough to be committed to the High Court, to prevent his being tried by a Native Judge of that tribunal. Whether this partial deprivation of a peculiar privilege be one which State policy and the interests of good administration demand, is the question

this Council has now to determine—a question which the heads of all the Local Governments have answered in the affirmative.

“The policy of the British Government in India for many years has been to throw open to Natives of the country, proved to possess the necessary qualifications, offices in the public service which were at first reserved exclusively for Englishmen. The progress of education, the gradual adoption among the better classes of Natives of India of European standards of honour, integrity and truthfulness, the increase of intelligent interest in public affairs exhibited by the leaders of Native society, have all tended to break down the barriers which obstructed their advancement to the higher appointments of the administration. Successive opportunities of such employment have of late years been afforded to Native gentlemen, which have placed within their reach seats on the benches of the High Courts, and admission to the Covenanted and Native Civil Services. This last privilege will, except in cases of manifest incapacity, lead to the bench of the Sessions Court and to the magisterial and executive charge of districts.

“It is scarcely needful for me before this Council to dwell on the importance of this charge. District-officers have been rightly called the eyes and ears of Government. They are in their districts the outward and visible representation of British authority,—often but a dim and distant shadow,—and upon their efficiency, and on the respect and confidence they inspire, depend the reputation, the influence, and, perhaps in the last resort, the existence, of British rule in India. They are entrusted with weighty judicial and executive functions, and have in their hands powers which may affect the welfare and happiness of hundreds of thousands of human beings; for they, and they only, can adequately represent and secure a hearing for the wants of their people. Similarly, Sessions Judges preside over the administration of criminal justice in areas co-extensive with, or larger than, those of districts, and have powers of trying all offences, even of a capital nature, committed by persons residing within their jurisdiction.

“To these high offices, for reasons of State policy* which cannot now be questioned, Her Majesty’s Government has thought it good that Natives of India should be admitted; and the Bill before the Council is only the natural outcome and complement of that policy. It simply invests the holders of them, when they happen to be other than Europeans, with powers hitherto inseparable from these offices.

“It is much to be regretted that this cannot be done without depriving Englishmen in India of a privilege, however small, which they have hitherto

possessed, but that it must be done, sound policy and good administration alike seem to me to require.

“With what fairness can Government, which has held out to Natives prospects of reaching the highest posts in the public service, which induced and encouraged them to incur the labour and expense of qualifying for such appointments, turn round upon those persons now, who have satisfied all the requirements for high office, and say—‘We make you Sessions Judges and Magistrates of districts, but we find you wanting, by reason of your descent, in the qualities essential to the discharge of a portion of the duties which devolve upon you in those capacities, and for the performance of those duties you must give place to others junior to you in the service’?”

“Is such treatment likely to conciliate or win public esteem and confidence for Sessions Judges and Magistrates, to strengthen their hands in the execution of their offices, or to promote that good feeling and cordiality between European and Native Civilians which are indispensable to their working efficiently together? It is obvious that it must produce effects the direct opposites of these.

“No, My Lord. I believe it is now too late to stop short. We cannot retrace our steps, and, as the change now in contemplation must be made sooner or later, and, when it is made, appears fated to arouse passions which we all deplore, the sooner it is made the better.

“The warmth of feeling which has been called forth by the publication of the Bill, and the excitement to which it has given rise, seem to me very disproportionate to the results which may be reasonably expected to flow from it. The number of Native Civilians employed under each Local Government is very small; the localities where there are persons likely to be affected by the Bill are not numerous. Years must elapse before the few Native officers to whom the Bill refers can reach the qualifying offices or prove their fitness to be nominated as Justices of the Peace; and the Local Governments have, under these circumstances, full opportunity for giving effect to the proposals under the most favourable conditions. Notwithstanding all this, it has been assumed, in the vehement discussions which have taken place outside this Council chamber, that the present proposal is one to subject European residents in the interior of the country to the jurisdiction of all Native Magistrates—an assumption altogether unfounded. No Deputy Magistrate, no Honorary Magistrate and no Extra Assistant Commissioner, which classes comprehend nearly the entire Native Magistracy, can be nominated under the Bill.

“Similarly, much of the heated declamation which has been resounding in our ears can only spring from the idea that all distinctions of law between Europeans and Natives of India are to be abolished ; but what are the facts ?

“The Bill leaves altogether unaltered the main provisions of the law, that for heinous offences European British subjects must be tried before the High Court, that for grave offences meriting a punishment of imprisonment of less than one year’s duration they are to be tried before the Court of Session, and that the accused, if he pleases, can require that half the number of the jury or assessors at such trials shall be Europeans or Americans. The only change made is, that a Magistrate trying a European British subject for petty offences or enquiring into graver charges against him, and that a Sessions Judge presiding at his trial on such charges, shall not of necessity be a European, though such Magistrate, unless a Magistrate of the district, must have satisfied Government of his ability to discharge the duties of a Justice of the Peace.

“It is difficult to find any intelligible reason why an officer of sufficient judicial ability to be appointed a Presidency Magistrate should, when promoted or even transferred to a district beyond the Presidency, forfeit powers which he had been found to exercise in a satisfactory manner ; or why a Native gentleman who has proved his fitness for the Bench of the Sessions Court should be declared disqualified from presiding at a trial of a European British subject, when the accused can have the advantage of a number of his countrymen on the jury or among the assessors.

“In several districts of the Lower Provinces of Bengal, where the cry of opposition has been loudest, and where the Bill, if it passes, is likely to have the most extensive operation, trials before Courts of Sessions are by jury.

“The arguments which might justly have been urged a quarter of a century ago, arising from the inaccessibility of Courts in the interior, and their seclusion from the fierce light of public opinion, were discussed and answered in the debate in this Council in 1872, in the speech of Lord Napier of Merchistoun, quoted on a previous occasion by the hon’ble and learned member who introduced this Bill ; and, if anything further were wanted, I have but to point to the countless letters and telegrams in the columns of the newspapers arriving every day from different parts of the country, as evidence that, where Europeans in India are concerned, things cannot now be done in a corner.”

The Hon'ble KRISTODÁS PÁL said :—" My Lord,—I think I would best consult the interests of the Bill if I should say as little as possible on the subject. I am convinced that I cannot do better than leave it to your Lordship, as the responsible head of the Government, to enunciate the reasons and policy of this measure. I cannot, however, allow this occasion to pass without saying that I look upon this Bill as a legitimate and logical development of the progressive policy which characterises British rule in this country, and that, its principle being sound, just and righteous, my countrymen feel a deep interest in it.

"None, my Lord, can regret more than I do the ebullition of feeling which this Bill has caused. Considering the innocuous character of the Bill, I confess I did not expect it, nor did the Government, I believe, anticipate it. Had it not been for the great and important principle at stake, I would have been the first to counsel the withdrawal of the Bill, rather than oppose the wave of feeling which has risen against it. I have too strong a faith in the character of John Bull to believe for a moment that he will carry to the bitter end his opposition to a noble attempt to establish that equality in the eye of the law which the history of his own country, and the teachings of his own political system, so loudly proclaim. I was young when the hurricane of the Sepoy Revolt burst over the country in 1857, but I well recollect how feelings were torn asunder by the sad events of those days, how furious was the rage of denunciation, and how terrible the voice of vengeance. And yet, when the storm of the Mutiny subsided, the feeling also subsided, and not a few of those who had stood forth as uncompromising enemies of the Natives now stepped forward as zealous champions of their cause. It has been my good fortune to work with many of them, and to profit not a little by their advice, assistance, co-operation and example. Who could for a moment say that the Anglo-Indian of the Mutiny days was the Anglo-Indian of the succeeding days of peace and progress? This is my experience of the character of honest John Bull.

"Pride of race—I use the phrase in no offensive sense—is a commendable feeling. It is an honest and honourable pride. It has been the mother of good deeds, valiant acts, patriotic exertions and national glory. But there is a higher and nobler pride, that of fostering human happiness under beneficent law, raising the weak and lowly to the level of the strong and high, and making equal law and equal justice the basis of political paramountcy in the world. It is to that noble feeling I appeal. All Englishmen, whether in India or in England, I humbly think, should rejoice that, within the century and a quarter they have ruled India, they have effected such a complete revolution in the

Indian mind, both intellectual and moral, that Indian Magistrates are found fit to be trusted with the administration of the laws of the land, not only over their own countrymen, but also over the members of the ruling race. This is a work of which England may justly feel proud—this is a consummation over which all Englishmen may well rejoice.”

The Hon'ble Mr. MILLER said:—“My Lord, I can hardly imagine a subject likely to be brought up for discussion in this Council concerning which I should speak with greater unwillingness than this Bill. If there ever was a matter to which the proverb ‘Least said soonest mended’ applied, it is this one. To speak will lead to misunderstanding, and so also will the keeping silence. To the best of my judgment I choose the lesser evil, for there have been misunderstandings enough, for which, however, I cannot feel that I, or those for whom I speak, are in any way to be held responsible.

“No subject for many years has evoked in India so deep or such united feeling on the part of the European community as this Bill. In the presence of a feeling so strong, and I cannot help saying also so powerful for mischief, it is an infinite pity that a measure of this nature, which deeply affects the material interests, as well as the sentiments, of Europeans, should have been introduced without any attempt made beforehand to ascertain their views.

“The disappointment on our part would have been excited under any circumstances, but recent events intensify and attract attention to it; for we have of late been hopeful that the former policy on the part of Government, of relying solely on information derived through official channels, would be relaxed, and that the views of the non-official community would be sought for and weighed more than has been hitherto the custom, and we have been encouraged to form opinions, and at times even taunted with having none.

“The fact that a measure on which, if on no other, the European community in, and connected with, India think strongly and think together, should have been introduced without a word of warning, leads reasonably and properly to disappointment, and tends to throw discredit on the profession of Government when they say they wish to know our views.

“But, from what I and many others have seen of your Lordship and of your Lordship's Government, we are led to believe this must have arisen from some misapprehension; and that, when it is made plain that on this subject the interested class, whom alone the proposed alteration of the law would practically affect, not only have an opinion, but are practically unanimous in

it, as regards this measure,—when this, the true state of affairs, is discovered,—the Government may see their way to withdraw their calamitous proposal.

“ On this subject I can confidently say the European non-official community think together. I only wish there were less positive proof. I wish it were still a matter of opinion, and that the opinion alone could be accepted; for the very fact of asking the public in a public way to state their views is injurious to the best interests of India. There is hardly another subject which could call the widely scattered, in places solitary and isolated, Europeans in this country so unanimously together as a proposal to subject their personal liberty to Native tribunals in the Mufassal; for the proposal threatens them in all ways—their liberty, their reputation and the stability of their property. The trade organizations in all parts of the country agree in this view: from Karáchi, from Bombay, although the planting interest is entirely absent in those parts of India; in Madras and Rangoon the same response is made; and in Bengal and in Southern India the Europeans in the Mufassal speak practically as one man.

“ It seems to me to be altogether a fallacious argument to say that the proposal is at most a trifle. In the first place, it is not a trifle to deprive the European of his most cherished right. The first sign of an inclination on the part of Government to deprive him of his right to be tried by a fellow countryman excites him far beyond what actual immediate danger justifies; and it is not a trifle to stimulate feelings of distrust and indignation in the minds of Europeans in the country against the Government; for this indignation and distrust is not brought into effect directly against the Government, as would be the case in England, but affects rather the country itself and the Natives.

“ If means were being sought to stir up and inflame those race antipathies which it is the noble ambition of your Lordship's administration to efface, a more effective one than this 'trifle' could not be found. It is not a trifle; for, if by mischance a Native Sessions Judge or a Native District Magistrate were to misjudge an European and condemn him to imprisonment on grounds which were afterwards proved to have been erroneous, it is perfectly certain that more positive, immediate, I may say, instantaneous, harm would be done to this country than could be repaired in half a dozen years. It is not a trifle; for one of the most common crimes, I will not say one of the ingrained customs, of this country is the fabrication of false evidence in the Courts of law. Perhaps, the hon'ble and learned member who introduces the Bill may think I am only uttering one of the common Anglo-Indian fossilized prejudices; but I would appeal to universal Indian experience to bear me out. False evidence is cheap. One single miscarriage of justice through the medium of false evidence sworn

before a Native Magistrate will do more infinite mischief, by driving English workmen and English capital out of the country, than the united efforts of Government and of all the guarantees they can offer can repair in a quarter of a century.

“ If a trifle, then, why in the name of common sense provoke all their animosity for the sake of it? It is difficult in a matter like this to appeal to experience that is purely English. This country is full of anomalies, and it is difficult for the English mind, unaccustomed to the facts of Indian life, to discover how it is that a practice which is submitted to without demur in a Presidency-town should be so bitterly resisted in the Mufassal. The answer is simple. A public opinion, a Press and legal assistance are at hand here. There, there is nothing but a Judge to condemn and a jail to confine. English enterprise—and on this side of India at least there is very little enterprise of any kind except English—is largely concerned, and English capital largely invested in this country, especially in Bengal. The indigo factories, the tea gardens, and the consequent inducement to that migration of population which is so urgently needed in parts of India, mills and mines, are all supported by English capital, and the tendency has been to increase this. It has begun to be recognized by European capital that India most wants to buy what England most wants to sell, namely, material for increasing the trading power of the country; and a stimulus has lately, under the auspices of your Lordship's Government, been given to the inward flow of capital.

“ But there is one thing that European capital will not do. It will not entrust itself to Native Indian management. It is hopeless and useless to say this is the result of prejudice. Possibly it is prejudice. But the result of the prejudice is a tangible factor, which cannot be denied, cannot be ignored, and which must in fact be acknowledged. Capitalists will not entrust their money to Native management, and they are satisfied the feeling is well founded. I will not give reasons for this, for I do not wish to give unnecessary offence, but I ask your Lordship to take note of it.

“ Capital employed in the Province is invested on the faith of European agency, but such agency is expensive and is not employed in greater strength than the circumstances of the case render positively necessary. A practice exists in the Mufassal—I am not drawing on my imagination, I am not uttering an Anglo-Indian prejudice, I am stating a fact which is known to every zamíndár as well as to every raiyat, to every official European equally as to non-officials who ever engaged in litigation, that the practice of bringing false charges to injure rivals or to gratify a grudge is a common practice. This

is a fact of which European capital has to take account before it allows itself to be locked up in India, and capital reflects that, if an European manager is removed from the charge of the enterprise on which he is employed in the Mufassal at a critical moment and imprisoned on a false accusation, the loss and damage may be overwhelming.

“No Native criminal tribunal in the Mufassal can, under these circumstances, command the confidence of our employés. Anything that touches the personal safety of our European employés in the Mufassal reflects back again on us, and, if it threatens their safety, it deters the inflow of capital. It is said this is all prejudice. We think it to be fact. Capital is sensitive, and, when you deprive the investor of one of the safeguards on which he mainly relies, namely, the right on the part of his employés to be tried by one who, whatever may be his knowledge of the criminal law, is at least a fellow-countryman and capable of understanding, as one of ourselves, our own feelings, it is of no sort of use to assure that capitalist that what he looks upon as a safeguard is only an ‘anomaly’.

“It is only eleven years ago since Sir James Stephen addressed this Council on the same subject that is now before us; and, in allusion to the law which had then been decided upon, but which it is now proposed to alter, he used the following words:—

‘I need not remind the Council of the extreme warmth of feeling which discussion upon a measure of the nature excited at no distant date, nor need I insist on the great importance to the Government of the country of the existence of harmony between the Government and the general European population.’

“These words still hold true. In what respect have circumstances changed since they were spoken? Is a compromise in itself more objectionable now than it was then; or are the facts which rendered the whole law a tissue of compromise in any manner or in any degree of manner different?

“The Europeans who have capital in this country do not think so, and they look in vain to anything that has been stated in advocacy of the Bill for reasons which justified a change in the law. A compromise the whole law is, and a compromise it must remain until the conditions of daily life in this country render a simpler law admissible.

“Is this compromise,—the least objectionable, the least actively offensive, of any that are to be found within the four corners of the statute-book—highly valued by the section to whom it applies? We have the traders’ and planters’ association from every part of India answering with one voice. I think it is a

most regrettable thing, the idea of being called upon to answer the question had ever to be proposed to them; but of the fact of their reply there is no sort of doubt.

“My Lord, the exasperation of race that is now going on is terrible and deplorable. Enough harm has been done, and yet the exasperation is increasing every day. It has not done so yet, but it is leading to a sense of insecurity. If the Government depart from Calcutta to Simla, leaving the population of Bengal ‘to stew in the juices of mutual animosity’ engendered by this most unfortunate proposition, the mischief, which will not be prejudice, but a fact, not imaginary but tangible, may become beyond repair; and I call upon those of your Lordship’s Council who have served their years in the country, and who have more than a theoretical knowledge of the people, to tell your Lordship frankly that I have not overstated the case. And of yourself, I would earnestly beg, in the interest of that concord between the races which you have so much at heart, to withdraw this Bill, which satisfies no one, and which, with the smallest amount of good, does almost the largest possible amount of harm.”

[The spectators present here applauded the last speaker by loud clapping of hands.]

His Excellency THE PRESIDENT said :—“It is a rule of this Council, and of all legislative assemblies in the world, that those persons admitted as spectators should not applaud on either side any of the sentiments delivered, and it is my duty to enforce that rule. I am quite sure that those gentlemen who have applauded on this occasion did so from forgetfulness, but it is a rule which must be observed; and, although sentiments are felt on one side or the other, they must not be expressed.”

The Hon’ble MR. EVANS said that the motion for publication was purely formal. It was only a strong sense of public duty, and a strong conviction that the present deplorable state of things ought to be put an end to at once, that led him to speak at this stage of the Bill. The question raised by this Bill, as stated by the hon’ble mover, was whether they “could with safety, and ought in justice, to re-open the settlement or compromise of 1872.” Mr. Ilbert had admitted, practically, that he was bound to show three things—

- (1) necessity for disturbing the settlement of 1872;
- (2) that the new settlement proposed was a durable and stable one; and

- (3) that the new scheme was one conducive to the "effectual and impartial administration of justice."

He (MR. EVANS) emphatically denied that any one of these propositions was made out. There was no administrative necessity; there was no element of finality or durability in the proposal made, and he challenged any one to say that justice would be "more effectually or impartially administered" under the scheme proposed by this Bill.

In order to explain the compromise of 1872, he was obliged to take the Council back to 1857, to show how the matter really stood; and how and why the settlement of 1872 was come to.

In 1857, European British subjects in Bengal had the right to have their criminal cases (with a few small statutory exceptions) tried by the old Supreme Court. This led to grave inconvenience in bringing down prisoners and witnesses from very remote places on trifling charges.

All persons in India were now in civil cases subject to the ordinary Courts, and no person was exempt from the jurisdiction of any Civil Court, by reason of birth or descent. The Penal Code was then about to be passed, making one body of criminal law applicable to all Her Majesty's subjects in India. And it was proposed, as a complement to the Penal Code, to introduce a Criminal Procedure Code on the same broad principle, enacting that no person should, by reason of birth or descent, be exempted from the jurisdiction of any Criminal Court. This would have swept away at one stroke the right or privilege of European British subjects to have any special tribunals, or special privilege as to the constitution of the tribunals, by which their liberties and their lives could be declared forfeited. There was a great outcry against the proposal and violent public feeling. Meetings were held, and a petition, signed by 1,100 European British subjects in Bengal, was presented to the Legislative Council. They objected to all the proposed tribunals, as incompetent, and to those presided over by Natives, as utterly unsafe.

Sir A. Buller, a Judge of the old Supreme Court, spoke in Council in March, 1857, advocating a compromise. He admitted the grave inconvenience of bringing all charges against European British subjects to be tried by the Supreme Court. But urged that this practical difficulty could be met by the practical remedy

Debate of 1857.

of making them triable only by the Sessions Courts—not by the Magistrates' Courts or the Subordinate Courts presided over by Natives.

Sir A. Buller urged that they were practical men, living in a land full of anomalies, which they must deal with practically. He said the Magistrates' Courts, though they gave the Natives far better justice than they ever had before, would give the European British subjects far worse justice than they had been used to. He did not think it was right to give poorer justice to the European British subjects to avoid an anomaly, if they could give them as good justice as before, without hardship to the Natives. As to the Native tribunals, he thought the European British subjects were right in objecting to them on the additional ground of race antagonism.

The Chief Justice, Sir James Colville, supported him, and drew attention to the well-known habit prevailing among Natives in the Mufassal, of endeavouring to get rid of rivals by deliberately framed false criminal charges, supported by false evidence, and said the combination of executive and judicial functions in the person of the Magistrates prejudiced and biased their minds, and rendered the Magistrates' Courts in India very unsatisfactory tribunals.

Sir B. Peacock, the Legal Member of Council, said that though he had introduced the Bill he would consider the arguments. No division was ever taken on this question.

The Mutiny broke out with all its horrors, and race feeling rose to a fearful pitch. The Court of Directors withdrew the question from the Council, and it was resolved to continue the former system of having European British subjects tried solely by the Supreme Court.

In 1859, there was, however, another debate, which showed that Sir Barnes Peacock had been taught by the Mutiny the danger of carrying abstract principles to their logical conclusion in India, without regard to consequences. Sir Barnes Peacock inserted in the Code a provision disabling Natives in the Mufassal from even committing European British subjects for trial. Mr. Harington (a most able and experienced Civilian) thought this unnecessary. He said he had never advocated the *trial* of European British subjects by Natives, but he thought they might be allowed to commit; and he taunted Sir Barnes Peacock with having at first advocated the sweeping Bill of 1857, and having now gone to the

Debate of 1859.

opposite extreme. Sir Barnes Peacock replied that he had never committed himself to it, and that, even if he had done so, it was unfair of Mr. Harington to remind him of it. After the Mutiny he claimed the right to change his mind, and boldly avowed he had done so. Sir Charles Jackson, a Judge of the old Supreme Court, agreed with Sir Barnes, and pointed out the practical necessity of providing special tribunals for this particular class of persons, and showed the utter fallacy of arguing that because Natives were allowed to act as Justices in Calcutta, and to commit Europeans, therefore, it was practically safe to let them do so in the Mufassal. The Criminal Procedure Code of 1861 was eventually passed, leaving criminal jurisdiction over European British subjects practically as it was before.

Code of 1861.

Years rolled on, the echoes of the Mutiny grew fainter, and, in 1871, a revised Criminal Procedure Code was being prepared by Sir J. F. Stephen.

He was in Calcutta at that time, and knew both Sir J. F. Stephen and Mr. Stewart, and, speaking from memory, without any notes of what passed, he would give the Council his impression of the state of things that led to the settlement of 1872. The influx of a poorer class of Europeans from England and Australia had rendered it an intolerable inconvenience to send them all for trial to the High Court in Calcutta for petty offences, and even gave practical immunity for petty crimes. The moderate and sensible men among the European British subjects fully recognised the necessity for giving some jurisdiction to some Mufassal Courts, and the Government pressed urgently for it.

State of things in 1871.

The amount of jurisdiction proposed to be given to the Mufassal Courts over European British subjects was three months' imprisonment to be inflicted by a Magistrate's Court, and one year to be inflicted by a Sessions Court.

The European British subjects could not successfully object to the jurisdiction of the Sessions Judge, provided he was a European, as his duties were purely judicial. But they could well object to the jurisdiction of the Magistrates' Courts, for the reason touched on by Sir James Colville in 1857, that is, the combination of executive and judicial functions in the same person. The Magistrate was head of his district, had to keep the peace, to see that crime and lawlessness was detected and put down, to hold secret inquiries, to act as practical head of the Police, to decide on ordering prosecutions to be insti-

tuted, and then, when his mind had been thoroughly saturated and biased by the result of secret inquiries and police reports, to try the accused.

Further, Sir J. F. Stephen was very anxious to introduce by his new Code summary trials, as in Petty Sessions in England, in which there should be no regular record of evidence, save such précis of it as the Magistrate might record in his judgment.

Sir J. F. Stephen justly feared a strong onslaught by the European British subjects on Magistrates' justice. He knew, and all knew, that the finances of India could not afford the severance of the executive and judicial functions of Magistrates, which the interests of justice loudly called for.

The European British subjects were likewise entitled to object to summary trial without a proper record of the evidence, as tending to nullify in practice the much prized right of appeal to the High Court in all cases, which they possessed and still possess.

But there was, further, the danger, nay the certainty, of a fierce agitation by the European British subjects against being subjected to the criminal jurisdiction of Natives in the Mufassal. Any proposal to do this would (it was well known) revive the fire of race hatred and the memories of the Mutiny, which had been waning and dying out slowly, and do much to interrupt cordial relations between Natives and Europeans, and between the European community and the Government of India.

Sir J. F. Stephen was quite willing to concede that European British subjects should not be tried by the ordinary Native Deputy Magistrates, and in this all responsible Government officials agreed with him, and still agree. But Natives had begun to enter the Covenanted Civil Service, and the European British subjects utterly objected to entrust their personal liberty to Natives, whether covenanted or uncovenanted.

This was the problem which Sir J. F. Stephen and Sir John Strachey, and the other experienced men who made the settlement of 1872, had to decide—“ Was it worth while, for the sake of asserting the principle (if principle it be) that all Covenanted Civilians should be empowered to try Europeans as soon as they became full-power Magistrates, to risk the explosion which would inevitably have ensued, and which would have done incalculable mischief. Bearing

in mind that it was admittedly impossible, and politically dangerous, to carry out in its integrity, in the Mufassal, the broad principle that no man should be exempted from the jurisdiction of any Criminal Court by reason of birth or descent; and, further, bearing in mind that every one connected with Government was agreed that it was necessary to sanction a similar anomaly in the case of Uncovenanted Magistrates, and to enact in effect that full power Uncovenanted Magistrates, who were Europeans, might try the European British subjects, but that the Uncovenanted Magistrates, who were not Europeans, should not have that power. The strong practical intellects of Sir J. F. Stephen and Sir John Strachey perceived that, to risk such evils to avoid this petty anomaly, which caused no practical inconvenience, after sanctioning so many departures from the only broad principle which could be appealed to, would indeed be to strain at a gnat after swallowing many camels. They knew also the strong practical objections which exist to entrusting this jurisdiction to Natives.

Accordingly, they informally proposed to the European community, through the non-official members, that, if they would consent to submit to the jurisdiction of the Magistrates' Courts and to the summary trials without opposition, they (Sir J. F. Stephen, Sir J. Strachey and others) would agree that no Natives, not even Covenanted Civilians, should have power to try European British subjects. The European community, to whom the proposals were informally made, assented, and the arrangement was embodied in the report and resolution of the Select Committee.

This arrangement was come to, so far as he remembered, during the interregnum between the lamented death of Lord Mayo and the arrival of Lord Napier of Murchistoun, when Sir J. Strachey, as senior member of the Council, practically officiated as Viceroy, and it had Sir J. Strachey's fullest approbation, as appears by his remarks in the debate of 1872.

It was a wise, a statesmanlike compromise, and he felt well assured that the present Government of India, had they had the least idea of the lamentable results that would arise from endeavouring to upset it, would never have brought in this unfortunate Bill.

The debate of 1872 had been entirely misunderstood by Mr. Ilbert in his speech introducing the Bill, and Mr. Ilbert had unconsciously misrepresented the attitude of Sir J. F. Stephen and Sir J. Strachey in that debate.

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All the opponents of the compromise in that debate admitted the principle, that only Natives who had become Europeanised in thought, and thoroughly acquainted with European manners and customs, could be permitted to try Europeans. So that a great portion of the proposals in the present Bill were directly opposed to the opinions of the eminent authorities who were appealed to, and relied on in support of it. In particular, so much of the present measure as provided that all Sessions Judges, whether Covenanted Civilians or not, should try European British subjects, was opposed to all authority.

Subordinate Judges from the Uncovenanted Service were now being promoted for their legal ability and aptitude in trying civil cases to be Sessions Judges. Many of them were men of high caste, saturated with caste prejudice, and had never been brought into social contact with Europeans, and were totally ignorant of their manners, customs and habits of thought. This was also the case with the Natives now being admitted into the Covenanted Service under the new statutory rules, without competition and without going to England.

The Commander-in-Chief, in that debate in 1872, although he advocated the admission of Europeanised Native members of the Covenanted Service, yet was altogether opposed to the trial of Europeans by the Magistrates' Courts in the Mufassal, and had moved an amendment to confine the jurisdiction over European British subjects to the Sessions Courts, as suggested in 1857 by Sir A. Buller. The silence of Mr. Stewart, the non-official member, during the debate on the compromise, was due to a desire not to say things which are best left unsaid unless there is necessity, and to the assurance of Sir J. F. Stephen that a majority of the Council would stand by the compromise, and it was, he believed, the effect of the compromise which led Mr. Stewart to go against the Commander-in-Chief in the division on the subsequent amendment.

He made these observations as they were necessary to a correct understanding of the nature of the settlement of 1872 now sought to be re-opened. He did not put forward that compromise as anything legally or morally binding on the present Government; but he thought it was hard on the European British subjects to take away by a separate Act that concession by which their acquiescence in many of the provisions of the Code had been obtained, leaving in the Code provisions and powers which they were not prepared to entrust to any Native Magistrate in the Mufassal. He thought in fairness such a proposal should only be brought on when there was a general revision of the Code.

The power to direct prosecutions on suspicion and then try the case summarily, without record of evidence and without (in a large class of cases) any right in the accused to cross-examine after charge framed, unless the witnesses happened to be present in Court, were instances of powers which European British subjects were not prepared to entrust into the hands of Natives.

He hoped it was not likely that any Local Government would be so indiscreet as to appoint a Native Magistrate to any district where Europeans were strong and numerous, (a fact, if he was right, which went to show how useless the Bill was); but these powers in the hands of Natives would render the position of the lonely pioneers of European enterprise in remote places untenable and unsafe.

The next question was—

What was the necessity for reopening this burning question? None of the Local Governments consulted had complained of any administrative inconvenience. The reason there was no complaint was not far to seek. Only 11 Natives had entered the Covenanted Civil Service, by competition in England, from 1864, when the first of them arrived in India, to the present day, and he had the authority of the *Statesman* for saying that the import had now ceased, owing to a change in the rules at home. Of these eleven one had left the service under circumstances which he need not advert to; one had gone to Madras and was dead. The remaining nine were thus distributed:—two were in Bombay; one, a young Parsee, a very junior officer, was in the North-Western Provinces; and the remaining six were in Bengal. There were none in the rest of India.

The Circular inviting confidential opinions from the Local Governments was sent out on the 28th April, 1882, when Mr. Rivers Thompson was Lieutenant-Governor of Bengal, and it was singular that that circular was not sent to Bengal, and that no opportunities had been given to the Government of Bengal to consult its officers and the High Court on the subject.

He spoke subject to correction by His Honour the Lieutenant-Governor, who was present, but so far as he (as an outsider) had been able to gather, the opinion of the bulk of the Bengal officers and of the High Court was against the measure, and, so far as he could learn, no administrative necessity had arisen

in Bengal, or was likely to arise. It was impossible to allege the existence of administrative necessity in the rest of India arising from the presence of three men only, one of whom only would, so far as he could learn, be immediately affected by it and have the power conferred on him of trying European British subjects. The statutory Native Civil Service had very recently been created, and it would be years before the question of investing them with the power became a practical one.

As to stability and durability—

Stability and durability. The settlement proposed had no single element of stability or durability. It proceeded on the principle (if it could be said to have any real principle in it) of allowing the Local Governments to determine the fitness of individuals to be Justices of the Peace, (Justices of the Peace alone being empowered to try European British subjects) while the area of selection was to be restricted and not left open as in the Presidency-towns, where any fit person might be selected.

Having enunciated this principle of personal fitness (to be judged by the Local Government), the hon'ble and learned mover found himself face to face with this difficulty. Everyone was agreed that it was not desirable to vest Uncovenanted Native officers with this power. They, therefore, must remain disqualified.

But, as the law now stood, Government was empowered to invest any Uncovenanted Europeans with the power, and had largely done so. There were now from 20 to 30 Uncovenanted European Deputy Magistrates, with first class powers in Bengal, who were Justices of the Peace, and had power to try European British subjects. The Uncovenanted Europeans were fit, and, so far as could be learnt, had exercised their powers impartially and efficiently, but it was an anomaly.

This difficulty was solved by disqualifying all Europeans who were not Covenanted Civilians from being Justices of the Peace in the Mufassal, and practically confining, with a few exceptions, the office of Justice of the Peace to ordinary Covenanted Civilians, whether Native or European, and to the Native Civilians admitted under the new statutory rules.

What principle was there in this? certainly not the principle of *fitness*, for no allegation was made against the fitness of the class it was proposed to exclude, that is, Uncovenanted Europeans. There was a difference of race and moral standard. The effect of it was to disqualify the Uncovenanted Natives. This was a fact. It could not be got rid of. This Bill attempted to hide or disguise the unpleasant fact by disqualifying the Uncovenanted Europeans against whose fitness there was no complaint. Thus, an apparent symmetry was produced at the expense of depriving Government of the services of a class of men who have been admitted as Justices of the Peace since the thirty-third year of His late Majesty, King George the Third, to the acknowledged advantage and convenience of the public service.

But his hon'ble and learned friend said there was a principle in this. His hon'ble and learned friend had apparently discovered that there was no privilege of European British subjects as to tribunals to be considered, but a "class of offences" which, from "the circumstances in which they were usually committed" by European British subjects, required to be dealt with by the higher class of Magistrates only. And it was to be presumed that it was this discovery which he considered justified him in disqualifying all Uncovenanted European British subjects from trying so "troublesome and difficult" a class of cases.

The only answer to be made to this was, that it had no basis of fact. There was no "class of offences," but there was a class of persons always liable to be accused of crimes, and who sometimes, but rarely, committed crimes.

Individuals of this class were, owing to the circumstances of the country, often "difficult and troublesome" to try. From the nature of things they must be far more "troublesome and difficult" for a Native to try than for an European to try. This class of persons was at present entitled to special tribunals, or to a special constitution of the tribunals by which they are to be tried.

This Bill attempted to disguise the fact—to allow this class to retain all its anomalous privileges as to tribunals (except the one now in question), and to justify such retention, not on the real ground, but on an imaginary ground, that is, that the offences this class commit are of such a character that Government is justified in enacting for the more "effectual and impartial administration of justice" that none but Covenanted Civilians shall try them, with a few exceptions based on no principle.

The Native Press utterly declines to accept this as final, and many of the Native papers, as the *Amrita Bazar Patrika* of March 1st, give it but very faint support, on the ground that the other anomalies are much more objectionable and inconvenient.

There can be no element of stability or durability in such an illusory settlement as this.

The object of these proposals was said by his hon'ble and learned friend Effectual and impartial administration of justice. to be the effectual and impartial administration of justice. On this point it was enough to say that the proposal was to disqualify a class of men against whose effectual and impartial administration of justice no complaint had been made, and to substitute a class (the Native Statutory Civil Service) whom Mr. Duthoit, Judicial Commissioner of Oudh, declared, in his confidential communication, to be utterly unfit to hold the scales of justice impartially, in cases where Europeans are concerned, and to be often saturated with caste and class prejudices, and who were not necessarily at all Europeanised. Even the *Statesman* (15th February) condemned this class as inferior to many of the Native Deputy Magistrates. Tried by this test, this measure fails on the face of it.

Many of the supporters of this measure were not prepared to go further than Sir Barrow Ellis' amendment in 1872, that is, in effect, to invest with these powers only the nine Covenanted Civilians elected by competition in England; but his hon'ble and learned friend had confessed, as he (MR. EVANS) understood him, that it would be mere tinkering to stop there, and that the Government would not be justified in re-opening the settlement of 1872, unless they could go further and propose a permanent and durable settlement of the broad question.

There was another test which he would suggest when any change in a tribunal was proposed,—that is, that the tribunal, as re-constituted, should, if possible, have the respect and reverence of the class from which the accused are drawn, and should (if possible) be regarded by the accused and his class as a satisfactory tribunal. This is a cardinal point in the administration of criminal justice. It would be waste of words to demonstrate that the proposed measure utterly fails to stand this test.

He failed to see any sufficient reason for proceeding with so unnecessary and useless a Bill on the face of so strong and intense a feeling as existed, a feeling in which the whole European community in India were practically unanimous.

He was not oppressed by the wonderful "unanimity" of the confidential answers of the Local Governments consulted. Bombay stood in a very peculiar position, with comparatively a small Mufassal, and a small European population in it. The voice of experience in Madras was against it. Even the Governor thought it was a pity to introduce it now. Sir A. Lyall said it would not for many years become a practical question in the North-Western Provinces. The others had nothing to do with it as a practical question, as a measure which would come into immediate operation.

A number of one-sided extracts from the debate of 1872 were sent with the letter of Sir A. Eden and Mr. Gupta's note, and these gentlemen had, he ventured to think, given opinions without sufficient consideration on points which to them must have seemed more abstract than practical. He excepted Mr. Elliot in Assam, who pointed out the need of caution, and Mr. Howell in the Birárs, who showed the grave nature of the issue raised. But it was sufficient to say that all who had given opinions in favour of the change were mistaken as to the feelings it would arouse, and had apparently made no enquiries among the class to be affected.

The voice of Bengal was absent. He could not accept Sir A. Eden's letter as a demand by the Government of Bengal for legislation. Considering the circumstances under which it was written—on the eve of departure, and without any consultation of officers or of the High Court—he looked on it as the individual opinion of Sir A. Eden, suggesting a consideration of the subject at a fitting time, and recording his own opinion. He knew there were in it the words "the time has come." But on the whole he thought it was more a record of individual opinion than a demand for immediate legislation.

Sir A. Eden's views on the subjection of Europeans to Mufassal Courts had never been in harmony with that of the bulk of Europeans in Bengal, official and non-official, as appears by what took place in 1857, when he came into collision with the Judges of the Supreme Court. But he had too great a respect for Sir A. Eden's tact and administrative ability to think that he would

have initiated legislation on this subject without trying to ascertain the views of his officers and the High Court and the European community. So much for the "consensus" of opinion.

Then it was said, how can Europeans object to Native Magistrates in the Mufassal and yet suffer them in the Presidency-towns? The power and influence of the European community—the blaza of publicity—the Press—the Bar—the presence and powers of the High Court—are sufficient answers. Besides, the Presidency Magistrate's functions are strictly judicial, and the practice of deliberately attempting to ruin rivals or enemies by cunningly concocted false charges, which is still as common as ever in the Mufassal, is practically unknown in Calcutta.

Argument to show the difference between the Presidency-towns and the Mufassal was unnecessary. His hon'ble and learned friend had just explained to them that in the Presidency-towns no person was, by reason of birth or descent, exempted from the jurisdiction of any criminal tribunal, and he had just read a long list of the anomalous exemptions accorded to Europeans in the Mufassal. It was not proposed to abolish any of these exemptions, except the one dealt with by this Bill. No responsible adviser of His Excellency, who had any knowledge of the country, could be found, who would propose the abolition of these exemptions or the extension to the Mufassal of the broad principle that Europeans should be subject to all the Criminal Courts in the Mufassal exactly the same as Natives are. So long as this was so, it was waste of time to combat any argument drawn from a fancied similarity between the Presidency-towns and the Mufassal.

Then there was the alleged slur on Natives; but he denied that any set of judges, any more than assessors or jurymen, were entitled to complain of the privilege of the accused as to his tribunal as a slur on them. If there was to be any question of slur, the large class of Uncovenanted Europeans who were disqualified by this Bill might well complain. He himself, though a Justice of the Peace in England, and now qualified to be a Justice of the Peace in Bengal, Bihár and Orissa, would be disqualified by this Bill.

But the question before them that day was not a pure matter of argument. The reality and intensity of the feeling against the Bill was patent, and was one of the main points they had to consider as practical legislators.

He felt it his duty to offer some remarks on the reasons for this at the risk of giving pain.

First.—There was a reason, of which all would admit the weight. It was most desirable that a Criminal Judge should be able to put himself in the place of the accused, so as to judge of the probability or improbability of his having committed the alleged offence. This was desirable everywhere, but especially in India. Criminal trials here generally proceeded entirely on oral evidence. The lamentable untruthfulness and untrustworthiness of the bulk of Native oral evidence had been repeatedly commented on by the Privy Council, and was well known to all. It was, therefore, particularly necessary that the Judge should be in a position to try such evidence by the test of its probability or improbability. But, if he was alien in thought and moral standard, and ignorant of the manners, customs and habits of the accused, how could he put himself in his place?

It was to this power in the Judge, of putting himself in the place of the accused, that the lonely planter in the Mufassal, confronted with a false charge and false witnesses, and far away from help, mainly trusted for protection.

He might be told that defect was exhibited by Europeans in trying Natives. It was so, but that was no reason for introducing the same defect into the trial of Europeans. We had given the Natives an administration of justice immeasurably superior to anything they ever had before. The unswerving uprightness, probity and intense desire to do impartial justice shown by European Judges had been an education to the people of the country, and they constantly showed their appreciation of it by asking to have their cases transferred from Natives to Europeans.

The second factor was race antagonism. This feeling, which had been fanned into a fierce flame by the horrors of the Mutiny, was slowly dying out, but it was most unwise to stir the embers while so many of the generation who went through the Mutiny were still alive. The vitality of that feeling had been lamentably illustrated by the outbreak with which this Bill had been greeted.

The third and most serious consideration was that dwelt on by his hon'ble friend Mr. Miller. The Europeans did not trust the Natives as they trusted fellow Europeans. He knew many upright and honourable Natives. But the broad fact remained that the bulk of the Anglo-Saxon race in India looked upon the Natives as men bred in a degrading idolatry, and surrounded from their infancy by influences most adverse to truth, uprightness, honour and

every quality which Englishmen most revere, and which they demand especially in a Criminal Judge. They think that many centuries of Christianity, and of free political life, have given them a moral fibre not to be found among Natives, especially Natives of Bengal.

Can it be wondered at (unless Christianity is a sham, and the belief in national character a delusion) that they refuse to recognise as an Englishman a Native who has spent two or three years in England.

When passed, the effect of this Bill would be to establish tribunals for Europeans which they objected to and refused to respect. There was a vast difference between civil and criminal law. Broadly speaking, the one affects the purse, the other the person. We might be willing to have Natives educated at the expense of our purses; we were not willing to have them educated at the expense of our persons. Every conviction of a European in the Mufassal under these circumstances would be looked on as unjust, and would revive the bitter and violent animosities which they all knew were raging around them that day.

Some said the agitation was a mere flash, and referred to the Black Act of 1836 in Macaulay's time; but a reference to Trevelyan's life of Macaulay would satisfy anyone that the circumstances were widely different, and that no inference could be drawn from the one to the other. That was a Calcutta agitation; this was universal over India. That was about appeals being transferred from the Supreme Court to the Sadr; this was a far graver matter. Besides he thought any Government which proposed to deal with the present European community as "a mere handful of settlers," whose protests might be treated with contempt, would be forgetting the difference between 1836 and 1883.

Was this Bill likely, in any view of it, to remove any evils comparable in magnitude to those it was creating and would create?

This measure would have the effect of giving the power to Uncovenanted Subordinate Judges, when promoted to be District Judges, to try Europeans, though they might be utterly ignorant of their thoughts, ways and customs.

It would give this power to nine Covenanted Civilians who had been to England, but whom the Europeans in India declined to accept as Englishmen.

It would give this power to the new Native Statutory Civil Service who are declared by Mr. Dutoit to be utterly unfit, and who also are, or may be, Uneuropeanised and ignorant of Europeans. These persons may or may

not form a useful machinery for governing Natives, selected, as they often are, on account of the influence and social position of their families. But they are quite unfit to be Criminal Judges over Europeans.

It was a measure which had exasperated Europeans to the highest degree, and had interfered with their growing cordial relations with the Natives and destroyed the harmony between the European British subjects in India and the Government, and would do so to a much greater extent before it was passed. It was a measure which provided a machinery for producing periodical outbursts of race feeling whenever a European was convicted by a Native in the Mufassal—outbursts which would do immense harm and might lead to disastrous results.

It was a measure for which there was no necessity and one which touched almost the only point which was capable of uniting the whole of the Europeans in India as one man against the Government.

It was a measure which could, in any view of it, do little or no practical good, while it had already done and would do incalculable harm.

It was a measure which Government would never have introduced had they known the strength of the feeling against it.

He, therefore, implored the Government to show the truest form of courage by confessing an error of judgment and withdrawing the Bill at once.

The Hon'ble MR. THOMAS said:—"My Lord, the hon'ble and learned member on whom, by force of his position, has devolved the duty of being the mover of this Bill, has stated emphatically, and re-asserted it on behalf of the Government, that the only object of its introduction is 'to provide for the impartial and effectual administration of justice.' It is a high claim,—a claim so high that every Briton is predisposed, without a thought, to bow to it instinctively, for a love of impartial and effectual justice is ingrained in him. Impartial and effectual justice is just what is in the very nature of every Briton to give to everyone within his power the wide world over. There is a danger, therefore,—a serious danger,—that, heralded with so high a claim, this Bill may be accepted without sufficient examination; and for that very reason it is the more desirable and necessary that it should be stripped of any adventitious advantage it may derive from such heraldry. For we all love justice, and an equal love of justice will surely be conceded to those who, like myself, may venture to traverse this Bill. Presuming that so much will be conceded, we shall commence our examination of the Bill on more even terms, and, bearing in mind that the test by which we are invited to try this Bill is, that its object is 'to provide for the impartial and effectual administration of justice,' I will ask, first, what, in prosaic business

detail, are the actual particulars in which the dispensation of justice to British subjects is to be improved, so that it shall be more effectual, more impartial, than it has been heretofore? and what the means by which it is to be effected? The answer is supposed to lie in the Bill: there we find that it is by the entrusting of it to Natives of Hindustan that it is to be better done than when it was entrusted to Englishmen. Natives of Hindustan, Foreigners and strangers,—strangers in great part, some more, some less, some altogether—strangers to the social customs, the nice ideas of chivalry and honour, the thousand and one Western strains of thought and surroundings which underlie the springs of action of the British subject; some only partially acquainted with the very language of the Englishman; men who, at best, and but limitedly, have mixed only with one class of European, the educated and more refined class,—they are to be entrusted with the trial of Europeans, the majority of whom are likely to come from classes of which they know practically nothing, whose only English, too, is an English sufficiently different from anything they have seen in a book, or heard from the lips of any educated European; sufficiently different to throw them out completely, to utterly prevent their getting sight of the point which shall show them the animus which is its gist, the depth and tenor of the provocation which is its justification or its palliation; men who, from want of converse with them, are incapable of appreciating the weight to the individual of the punishment they are called on nicely to apportion; men who have never been on board a ship in their lives; men—Brahmins for instance—whose very religion makes it a sin for them to experience a sea voyage, a sin for which they will be excommunicated; men who are under every possible disadvantage in forming any adequate conception of the necessity, for crew and passengers and cargo, that the commander of a vessel, leagues at sea, without Police or Court within months of him, should be complete master; the necessity—the absolute necessity—that his word should be law; men without a conception of the hardships of the sea, of the numerous petty means of tyranny open to a captain,—how can such men weigh rightly the use and abuse of power at sea? How can such men judge rightly between rough men of few words—rough captain and rougher seamen, using, too, a nautical jargon that is worse than Greek to them? And yet we are invited to pass this Bill, in the expectation that the administration of justice to British subjects will, in the hands of such men, in the hands of Natives, be more effectual, more impartial, than if it is left, as heretofore, to Englishmen.

“All this, I may be told, applies equally to the trial of Natives of this country by Europeans, as it does to the trial of Europeans by Natives. But, I venture to say, it does not. Europeans in India are compelled to learn the

languages of the country; they have to learn them before they are even appointed in England; they have to still further qualify in them in this country before they can be promoted: the Natives, who are to try Europeans, are not so compelled. It is specially provided by Statute that the great and increasing majority of them are to be appointed without such examination. Again, Europeans in this country pass their lives among the classes they have to try, the criminal classes of all shades, the labouring classes, the agricultural classes, as well as the better classes; learning their patois, their habits of thought, and their religion or their superstition; learning everything that underlies their springs of action; walking his fields with the farmer, the jungles with the junglemen; listening to their tales of joy and grief; sympathising with and labouring for them; present at their festivities; leading their combined action for any good; hunting, shooting, fishing with them; carried by them by day and night in travel; ever accessible to them in camp or Court; speaking direct as man to man with them; caring, aye, and exerting themselves to the sacrifice of health and even life, for them in famine; and walking daily amongst them, seeing to their village sanitation and the provision of medical treatment when they are dying around them of cholera; making it the one object of their lives to sympathise with and work for them. Such, my Lord, is the life of a district officer. By such means does he qualify himself to enter into the case of the Natives committed to his care. It is no fancy sketch. I have been through it myself, and it is being gone through every day in India by hundreds. Such are the means by which Englishmen have qualified, and continue to qualify, themselves to do justice to the people among whom they live. Will anyone assert the same, or anything approaching the same, of the Natives of this country that are to be entrusted with jurisdiction over British subjects? Have they lived among captains and seamen, soldiers and engineers, mechanical engineers and surveyors, planters and merchants? What have they in common? They are absolutely a sealed book to them, and will be, for they shun them. Only the better class of Englishmen do they know anything about—only the educated official whom they have to meet in business. Of that class only, from whom will never come the subjects of trial, have they any knowledge at all; and even that knowledge is very superficial, and is only what the European chooses to give them, not what they search for for themselves, as we do among them. They do not court knowledge as a duty with a view to be in a position to do justice as the European does; they do not throw open their houses to us as we do to them. Their very religion forbids it; their very religion disqualifies them for ever having an intimate knowledge of the inner life of the European; and, if the fact is so even with the better classes of Europeans in all but the Presidency-

towns, and to a large extent even there, it is still more so in connexion with the classes of Europeans from whom criminal cases are likely to come. For that class of Europeans they studiously avoid, not only on religious grounds, but also because they are afraid of them. The courteous Asiatic does not understand their rough ways; and there is no reason why they should ever understand them, for there is nothing to bring them into every-day contact with such men. They do not seek to know anything about them, and yet they wish to try them. It is surely irrational! And apart from not seeking, as a duty, to comprehend the habits of thought of the classes they may have to try, there is nothing accidental even to throw them together. They have no subjects of common interest.

“But I will withdraw the statement that, disqualified though they are, and, in accordance with all their preferences, will continue to be, they irrationally wish ignorantly to try Europeans,—I will withdraw it because it is not mine, but an imputation of their own countrymen, an imputation cast by a very few, who grasp at power, an imputation that I believe to be utterly without foundation among the masses. My belief is, and I speak from some little experience of Mufassal life, that the very great majority of Native officials in the Mufassal,—and it is only the Mufassal that the Bill deals with,—the very great, the almost unexceptional, majority would infinitely prefer not to have the white elephant that the Bill proposes to give them. It is only just to say that they are conscious of their disqualifications to try British subjects, and do not want to have to do what they cannot do to their own satisfaction; they are conscious that the Englishman is far more competent to try his fellow rightly, and they would infinitely prefer to leave the difficult task to him; they are content to be left to try only their own countrymen whom they do understand.

“But we have not yet got to the bottom of the incongruity; there is still a lower depth, and one that touches Englishmen, as indeed it touches all manly men, very home. I allude to the wives and daughters of our land. If the Native who is to try has but a very partial knowledge even of the better classes of Englishmen with whom his business compels him to mix outwardly, and a much less, if any, right knowledge of the lower class of Englishmen from whom he is free to keep away, still less has he any knowledge of the ladies, of the wives and daughters of their families. And yet he is to try them; for the term British subject, be it remembered, includes both sexes, and the English lady as well as the British sailor and the British soldier is to be subjected to the jurisdiction of Asiatics. A false complaint lodged by her ayah or Indian lady's maid, by her tailor that sits daily in her verandah, by any one of the household servants, grooms or coachmen, whom, as mistress of the house, she has to

order on her husband's behalf,—a false complaint by any irrepressibly obtrusive hawker, who comes unbidden into the very verandah in which she is sitting and will not leave it,—a false complaint by any outside petty cobbler who has been paid his due, but thinks to get twice his due by means of vociferating clamour amounting even to menace, in a manner quite inconceivable to, and incredible by, those who do not know this country,—a false complaint by any of these may any day subject English ladies and English women to be tried by Foreigners. These are no ideal pictures. They are every-day circumstances of middle class Mufassal life, unexperienced, perhaps, by the well-to-do, but well known to their poorer unofficial brethren. Patience outlives the provocations, and nothing comes of them, because there is the certainty of a fair trial in the background, and the Court is the Court of a countryman. But when it comes to be known, as it will be known if this Bill passes, that anyone can summon an English lady before a Native, and that, right or wrong, she will, in 99 cases out of 100, pay any fine rather than appear, and it is borne in mind that, even if she does appear and answer to the charge, the complainant has more than satisfied himself with the sweets of the annoyance he has caused,—when this comes to be known, there is hardly room to doubt that complaints of this sort will become distressingly numerous. The position of English ladies and English women, left alone in their houses while their husbands are in Court, or camp, or office, or workshop, will be very distressing even in the bare contemplation. The security, and the feeling of assurance of security, which they now have, in trial by a British Magistrate, will be gone from them, and they will be subjected to the jurisdiction of Asiatics.

“I have cursorily alluded to the falsity of the complaints; but only most cursorily, both because I took it for granted that the proneness to false complaints in the Mufassal was well known, and also because I shrunk from dwelling on that side of the question—I shrunk from it, because unwilling to make unkindly imputations. But now that it has been stated by one hon'ble member that such is not his experience in the Mufassal, and the hon'ble and learned member to my right (Mr. Evans) has advanced opposite experience, I feel bound to say that my experience of the Mufassal, extending as it does over nearly a quarter of a century, is entirely in accord with that of Mr. Evans, that false complaints and false evidence are common in the Mufassal. I speak not of what may be called exaggerations and hard swearing; I speak of deliberate machinations, that are perfectly staggering and appalling to the European; of rehearsals held in the presence of all the witnesses, that they may be thoroughly tutored in all details; of dress rehearsals, so to speak, held just before the trial, and in the very precincts

of the Court to refresh memory. I could instance a case in which a poor man was hired to take a blow from a billhook, and all the witnesses were present to see and testify to the blow in all detail, only instructed to substitute an European for the Native striker of the blow. I could produce volumes of such evidence, but time will not allow. And I have no desire to do more than is absolutely necessary to bring that side of the question forward, and have only been constrained, as I have said, by the conflict of opinion.

“And why, let me ask for Britons, as they will ask,—why are they to be thus subjected to the jurisdiction of Asiatics? Not on account of any necessity of the case; not because it cannot be helped; not because the Natives wish it, but because—yes, that is what we are asked to expect—because the justice thus provided through the medium of the Asiatic will be more impartial, more effectual, than that dispensed by the Englishman himself; that is what the proposal comes to; that is what the Bill says in effect; and my business is with the Bill, the people to be tried by it, the people to be empowered by it. The only object of the Bill is ‘to provide for the impartial and effectual administration of justice,’ and that is the test by which I am invited to try it. If it be said that I rather overstrain the argument by applying the claim of impartial and effectual justice to the people to be tried by the Bill, and not, as was meant, to the magistrates and judges who are to administer it, then I plead in answer that such words should never surely be said with reference to any but the persons who are to experience in their proper persons whether the justice meted out is or is not impartial and effectual; that they have no applicability to anyone else, least of all to the mere machinery, the judges and magistrates, who only give life and existence to the Bill, and are merely the means by which the more impartial and effectual administration of justice is to be provided.

“Whatever may have been said elsewhere on the other phases of the Bill as it affects Natives, by removing an anomaly and a stigma, it cannot be that the claim by which we are invited to try the Bill, that of providing impartial and effectual justice, can have been put forward with reference to anything but the quality of the justice administered to the people who sought it, that is, to the complainant and accused. The question of anomaly and personal stigma is perfectly distinct. We shall come to that separately hereafter, but at present we have only to do with the claim that the Bill ‘provides for the impartial and effectual administration of justice.’

“To the Englishman at home, who knows not this country, it may even seem that it does so provide; but when the Bill is examined in the light of the experience of those who have spent their lives in the study and the service of

this country and its people, who can throw upon the Bill the light of actuals rather than of theories, it is then that it becomes apparent that the circumstances of the position afford no real foundation for the expectation that the administration of justice to British subjects will be either more effectual or more impartial for being entrusted to Foreigners and strangers rather than to fellow-countrymen—to Natives rather than to British subjects.

“ But this, I may be told, is my idea—only my idea. Let the Native speak for himself. I shall quote, my Lord, from the *Madras Native Opinion*, a newspaper edited by a Brahman of considerable culture, a Native who has the interests of Natives, the interests of his country, very much at heart. He writes in a leading article of that paper, dated 14th February, 1883:—

‘ Let us take, for instance, the case of a Deputy Magistrate of the first class who is called upon to try a case between two Europeans, one, say, a Covenanted Civil Servant, and the other a merchant or a planter. The case may be one of assault or defamation, and have arisen out of some episode at a ball, a club-room or a dinner party. Now, if the Deputy Magistrate happens to be a Brahman (as almost all of those on the Madras establishment are) who has not been in Madras, and whose knowledge of English is but limited, what a predicament the poor man is sure to be in? He cannot possibly understand the allusions which will be made, and the conventional terms used in such a case, and he cannot very well engage an interpreter to explain what is meant! We leave our readers to imagine what the result will be, and what satisfaction the Magistrate’s decision is likely to cause to the litigant parties.’

“ And in a subsequent issue the same Native editor says—

‘ We must not lose sight of the fact that, while nothing is easier than for the European to obtain evidence or information on such matters in Native society as he might not know, the Native Magistrate is very differently placed. The *Munsifs* and clerks of an Anglo-Indian Magistrate are Natives of the country, and if they are not able to supply it themselves they can easily obtain for their master any information the latter may need in connexion with the disposal of cases. Now, to whom can the Native Magistrate turn when he has an Englishman brought before him?’

“ And this Native editor is not alone in his opinion of the unfitness of his countrymen to try British subjects; but I must revert to the objection that, if it is right in theory for Europeans to try Natives, it is right also for Natives to try Europeans; and again I will say that, in my humble opinion, it is not so, because the case is not parallel. It is not as if Englishmen were asking to have authority to try Natives, as Natives are asking for jurisdiction over British subjects. The whole history of our Law Courts in India shows the fallacy of such an argument. Englishmen have no desire to try Natives because they are Natives. Indeed, they would never have tried them at all if they had been capable of trying themselves, and our whole aim ever since we came to this

country has been steadily in the direction of fitting them to try their own countrymen; and as we have found them more and more qualified, so we have gone on extending their jurisdiction over their countrymen, or, in other words, resigning to them more and more of the judicial work in connexion with their own countrymen that we had in earlier years to do for them.

“Thus falls to the ground the argument that, if Englishmen try Natives, so, in fairness, ought Natives equally to try Englishmen; for, as we have seen, the Englishman does not want to try Natives, and is getting rid of the duty and consigning it to their countrymen as fast as he legitimately can. The Native also, with a few exceptions, does not want to try Englishmen, and is not qualified to try them even if he wished to.

“Once more, this same history of our legal dealing with India, if examined a little more closely, will fully explain the seeming anomaly of British subjects being exempted from Native jurisdiction, the seeming anomaly of which so much has been made. When we came to this country, did we find equitable law courts in which Englishmen and Natives could alike obtain equal justice? did we upset them and introduce this anomaly in favour of our countrymen? No. We found Surája Dowla, and the Black Hole, and the like of that. There was no such thing as law and justice. The land was a land of violence, of systematic and periodical marauding, of constant blackmail, of daily uncertainty of life and property, in short, of all the many forms of anarchy and misrule and lawlessness which I may not stay to dwell upon. It is matter of history, and it still lives in proverbs, customs, castes, tenures, structures, which point to the then every-day existence of a state of things for which there was no remedy but to sweep it clean away. It was for us, a mere handful of strangers, to introduce law and order, and to import into this country as much justice as was possible in the circumstances. We were too few in number to give to every Native with our own hands as good justice as we were accustomed to in the land from which we came; but we were enough to mete it out to our own countrymen, from whom there probably was not more than a case or two in a decade; and not only were they entitled to have no less a scale of justice than we were able to give them, but in the earlier days it was more, perhaps, to the interest of the Native than of any one else that Britons should be tried by Britons, who had both the courage and the mind to enforce law and order on their own countrymen, and to put down with a strong unwavering hand any disposition to take advantage of being members of the dominant race. Other than Britons there were none in the early days, because all other Europeans were deported. Thus it came about that Britons in India have till now been

under the jurisdiction of Britons, and there was, and is still, *no necessity* for their being under any other jurisdiction.

“ With the Natives, however, the necessities of the case were very different. It was impossible that the few and far between Englishmen should, in their own person, try all the teeming millions of Natives over such wide areas. The attempt would have been too extravagantly quixotic. They did the closest they practically could to it. In short, they aimed at the same thing for both; they aimed at giving the Native, as they gave their countrymen, the very best justice in their power to give; and while they gave the Briton the same as he had been accustomed to in the land of his nativity, they gave the Native of India a very great deal better than he had ever seen or heard or dreamt of before. And this they did by keeping the graver cases in their own hands, by deciding the intermediate cases on reports accompanied by the record, and leaving only minor cases to the decision of Natives. Then they fostered education, and they imposed examinations on candidates for public service, and subsequently they enhanced the scope of those examinations; and as they gradually qualified the Native for the right exercise of power, they entrusted him with more and more of it, till now we have Natives on the High Court Benches. I confess it puzzles me, my Lord, to see how any one can say that the tendency of legal administration in India has not been uniformly and without anomaly in the simple and single direction of giving the best form of justice possible in the circumstances to all classes, Briton and Native alike. With Britons we started at the top, because, from the paucity of their numbers, it was possible to do so. With the Natives this was impossible, because of their countless numbers, and their unmanageable areas, compared with the mere handful of Englishmen that have governed this vast Empire. So we started as near as we could to the same point, and, keeping it ever in view, progressed steadily as circumstances allowed, always towards the same end. The progress has ever been upwards and the principle uniform. There has been no anomaly whatever, and there is no anomaly now in the sense urged in favour of this Bill. But to turn round now and progress downwards, by placing the British subject under a tribunal of less competency to do him justice than he already enjoys, and we have readily at command, and to do that for no better reason than to remove a fancied anomaly, that would be an anomaly indeed.

“ The anomalous nature of present arrangements’ is one of the reasons put forward for the introduction of this Bill. Rightly examined, the anomaly lies, not in Natives having less jurisdiction out of Presidency-towns than they have in them, but in their having jurisdiction over British subjects anywhere. The anomaly lies in having made an exception of Presidency-towns. The anomaly lies in having, in Presidency-towns, departed from the simple principle

on which we had uniformly proceeded, of ever giving to both races the best justice practicable in the circumstances, in proceeding downwards instead of upwards. Remove that anomaly, and the position is logical and clear. But to set up that anomaly, and to base on it the claim to surround it with so many more anomalies that it shall cease to stand out singly as a marked anomaly, is to lead us blindly into a maze of anomalies in which we can never see our place to stop.

“ If we must needs turn aside to such trifles as anomalies, and legislate on what I will take leave to call such very secondary grounds, then, to be consistent, we ought rather to wipe out this first great anomaly, have done with the whole side issue, and revert to first principles—logical principles. But there is no need for this, and all I wish to say on this point is, do not let us bring the existence of one anomaly forward as a reason for justifying the creation of more.

“ I submit, my Lord, that if we want to avoid anomalous positions and preserve logical action in the future, there is no point at which we can so safely call a halt as where we now are. The hon'ble and learned mover of the Bill, in summing up the principles which have guided the framers of the Bill, says—and I cordially agree with him in the principle—‘ that, if this question is re-opened, it ought to be settled on a permanent and stable foundation.’ I agree with him, because it is a corollary that, if it cannot be ‘ settled on a permanent and stable foundation,’ it ought not to be re-opened. I submit, my Lord, that there is no landmark that can be called permanent about the position which the Bill takes up. It gives Natives the same jurisdiction over British subjects as Englishmen exercise over the same class of criminals, but that is not the same jurisdiction as is exercised over Natives; it is a modified quantity of jurisdiction amounting only to imprisonment for one year in the Mufassal; and, while the distinction in the quantity of punishment awardable to British subjects and Natives is maintained, it cannot be said that the Bill has brought us to the point to which it is claimed to have brought us, that of impartiality, of the removal of race distinctions, and specially of finality. Sir Ashley Eden—though I doubt whether he used the words advisedly—certainly does use the words ‘ full powers,’ and that means the powers of life and death, of transportation for life, of imprisonment for 14 years. When the Native Judge in the Mufassal exercises such powers over the British subject, then we shall have removed ‘ race distinctions’; then we shall have arrived at impartiality and finality. But not till then. If the advocates of the Bill are not prepared to go as far as that, then admittedly they are not prepared to conduct us to what alone will justify the re-opening of this question, a settlement ‘ on a permanent and stable foundation’.

“Again, there is no element of finality that I can trace about the persons selected for the exercise of jurisdiction over British subjects.

“There is no such self-evident cause as can stand as a landmark why others should not equally be selected. Indeed, for my part, I think a Deputy Magistrate who has been for years associated with Europeans, who has had a long magisterial training as a Tahsildár Magistrate, who has his judgment mellowed by years, who, at the very outset of his career, had to pass qualifying examinations, and who has eventually been promoted for tried efficiency, is eminently better qualified to exercise such powers than a young man under 25, appointed without like examination, without trial, and without magisterial training or converse with British subjects; and such are the Native Civil Servants constituted under the statutory rules. If, then, the Native Deputy Magistrates, who are in hundreds all over the Presidencies, are obviously preferable to one of the classes named in the Bill, it follows that the settlement made by the Bill is not ‘on a permanent and stable foundation.’ I do not see how anyone, be he Native or European, can well think that this will be a final settlement. On the contrary, well nigh everyone outside these walls seems to look upon it as a mere beginning, as the opening of a door, as the introducing of a principle; and that is why there is so much agitation and anxiety about it—and that is why I, for one, my Lord, have indented so largely on your Lordship’s patience. What I feel is, that this Bill will lead us into a hazy illogical position, with no distinct landmark to stop at; whereas, if we stand where we are, we have a defined line and a reason for it in Presidency-towns. If once we leave them and go half way down hill on the road to inferior justice for British subjects, we can never stop till we reach the bottom; and that bottom, where is it? It is deeper down even than our own Native Courts. It carries us into Native Courts in Foreign States. When once we have admitted that in our own Courts Natives are to try Britons, we can no longer insist that in Foreign Courts Britons shall not equally be tried by Natives; and so we shall have created another anomaly that will have to be wiped out. We shall not have arrived at finality; we shall have to go on and rescind the Act, not so long ago enacted, by which Britons were exempted from Native jurisdiction in Foreign States.

“Once more, the same hand that sweeps away anomalies and partialities so as to lead us to a settlement that shall be final, introduces, by the same stroke of the pen, an incongruity and a piece of race partiality that, to my thinking, is more glaring than any which it removes. The effect of the amendment of section 443, by the elision of the words ‘and an European British subject’, is, not only to admit the Native to jurisdiction over British subjects, but by race distinction to bar the Briton, so that, if, for instance, the learned and hon’ble

member to my right (Mr. Evans),—distinguished member though he is of the Calcutta Bar; if the Lord Chief Justice himself—were to elect to offer their services gratuitously for the trial of their countrymen in Calcutta or elsewhere in India, as they might do, and as so many do in England, they would find that, by the Bill we are asked to pass, they would be legally disqualified by reason of their race. In spite of their having the highest possible qualifications, in legal knowledge, in knowledge of the classes to be tried, to wit, their fellow countrymen, they would be legally barred by race distinction—barred solely because they are Britons, barred in the interests of the more effectual and impartial justice to be administered by Natives, stigmatised—if we are to use such a poor argument at all—stigmatised, in order that no stigma may be cast on Natives; and this, we are told, is an element of finality. The barring of the Briton is to be final.

“But casting to the winds such very secondary ideas as legislating for a stigma, neither is it convenient in practical every-day work that every Briton, simply by reason of his being a Briton, should be barred from jurisdiction over Britons. At certain ports, far distant from the seat of any Magistrate, it is convenient that the master attendant should have jurisdiction in trifling cases over the seamen frequenting the port. That will not be possible when all Britons are legally disqualified by the proposed amendment of section 443.

“As the word ‘stigma’ has been forced upon us, and we are called on to consider it in the course of this discussion, let me take the opportunity, before parting with the word, to say that, in considering their *circumstantial* disqualifications for trying Britons, I cast no manner of stigma on Natives—no more, in fact, than if the Commander-in-Chief, there, were to stigmatise me as unfit to command a brigade, or even a company. And even if it were a sort of fancied stigma not to be allowed to try a class of cases you were not calculated to be exactly the best man to understand; even if it were a hardship equal to being tried by a man who was not calculated to understand your case, and the hardships on both sides being equal—which, of course, they are not and never can be,—we were cast on the horns of a dilemma and had to choose between them, there still need not be a moment’s hesitation about the choice, for the persons affected by the one hardship are in thousands, if not tens of thousands; whereas those affected by the other fancied hardship may be numbered on the fingers. On the principle, therefore, of the greatest good of the greatest number, there should not be a moment’s hesitation about abandoning a Bill that legislates for the few against the many.

“To sum up the above objections and apply them to the Bill. Not only does this Bill not ‘contain in itself’, as is claimed for it by the hon’ble and learned mover, ‘the elements of stability and durability,’ but it is pregnant with exactly the opposite elements, and, therefore, by the corollary of that very proposition, this question ought not to be re-opened.

“Looking once again at the reasons given for the re-opening of the question, I find it is commended to us on the ground that ‘the time has come.’

“It is a set phrase, ‘the time has come;’ but there may be two views about its applicability. The time when we are doing all we can to induce English capital to come to this country seems scarcely the time to scare it away with inferior justice to the Englishman. Tell the English capitalist, who is prepared to send his sons and his money out to this country to be large employers of labour in coffee, tea, or cinchona estates; in gold, iron and other mines; in cotton or jute mills and so forth,—tell him that, if any one of the several hundred men, women, and children employed by his son lodges a complaint against him, ‘the time has come’ for his son to be tried by a Native,—I have a shrewd suspicion that he will have very different ideas about the time. He will not stay to ask what like the Native is, whether qualified or not. He will be apt, I think, to have strong opinions—some might call them prejudices—which we will have to put up with if we want him to bring his capital, for in that, at least, he is master of the situation. He will turn his back on us and send his sons and his capital elsewhere. And in the main he will be in the right; for, whether the planter gets justice or not at the hand of the Native Magistrate is rather a secondary consideration; the mere fact of his having, on some trifling charge, had to appear before and be tried by a Native Magistrate, of the same caste and family, perhaps, as one of his own writers or contractors, will so lower him to their own level in the eyes of his two or three hundred coolies, that he will not be able to command their respect any more. It can answer no useful end to judge of these things, by European ideas; we must take them as we find them in this country; and such, I am convinced, would be the effect on the mind of the Indian coolies and their maistries. I am convinced of this; because I have moved not a little amongst planters and their labourers, and made it my duty to acquaint myself with their position, as much as with that of any other farmers and their men; and now it is equally my duty to represent their interests here to the best of my poor ability; for their interests are the interests of the country, and it will be a dark day, indeed, for India if British energies, British intelligence, and British capital leave it in disgust. In a less degree, also, it will be an evil day for India if British energies, intelligence, and capital are discouraged from continuing to flow into it. It is a consideration of no

small moment that the planters of Assam, of the Nilgiris, of the Wynaad and other places, with the lákhs of rupees that they bring into this country, should not be discouraged, which, I am convinced, they will be if this Bill passes. I specially allude to planters, because, settling, as they do, in isolated positions, each a lone man among a hundred, they are specially trusting in, and specially entitled to, the best justice we can give them, a style of justice that shall give them a feeling of security.

“One word more about the time having come from another point of view. If any of the above reasons for not subjecting Britons to Native jurisdiction have any weight, and had weight to sway the majority in 1872, surely they can only have *increasing* weight as the number of British subjects in the country increases; and in that sense the time, instead of having come, is, if anything, more remote than it was in 1872.

“When this matter was discussed in 1872, there were no Native gentlemen in this Council. Now there are four hon’ble members, and they are called upon to decide with us on the liberties of the British subject. The appeal to try this question by ‘impartial justice’ is addressed to them as well as to us; and there is a side of the case which specially addresses itself to them. They are better able, perhaps, than we are to appreciate the value to them of the special concessions made to them,—concessions made, some of them, in the very face of Western notions of justice,—concessions simultaneously denied to our own countrymen. I will touch with a word only, lest I should offend, such things as dancing girls, child marriage, child widowhood for life, plurality of wives, exemption on account of rank from appearance in Court, exemption on account of sex from appearance in Court—exemptions that we do not accord to our own Princes and our own ladies. Natives are the best judges of the value to them of these and like privileges, and, accordingly, they have been allowed, and rightly allowed, to be the judges: their voices have ever prevailed; their wishes have ever been scrupulously regarded, the only test applied being, will it do any positive injury to anyone else to concede these privileges? If it will not, then, by all means, let us liberally concede them. This has been the principle that has guided the concessions to Natives. Is it not fair to let the same equitable principle govern the grant of concessions to Europeans? Britons are the best judges of the value to them of the privilege of being tried by Britons, a privilege of which they seem to think so much; and if it will not do any positive injury to anyone else to let them have the privilege, then, by parity of treatment, by all means let them have the privilege. This view of the case will, probably, commend itself to the minds of Natives as an impartial one. Again, what would Natives think if, with

the cry of justice to a class amounting to one half of India—the down-trodden females—in the interests of morality or any such like cry which an English philanthropist might raise, we ran a tilt at their time-honoured institutions? I imagine they would say at once that it was legislating for an idea, was uncalled for and provocative. By parity of reasoning, the great mass of Englishmen look upon this attack on their privileges as equally uncalled for. If the attack is not justifiable in the one case, neither is it, I submit, in the other. Far, far be it from us to disturb the mind of the Asiatic with even the breath of a suspicion of any interference with his time-honoured valued privileges that do no positive injury to anyone else. By parity of treatment, far be it from him to deal by us otherwise than as we have dealt by him.

“While I have contended above that trial by Briton by Briton is only a natural sequence of the impartial effort to give to Briton and Native alike the best justice in our power to give, here, I have called it, for argument’s sake alone, a privilege, and even as a privilege have shown, I think, that it has a claim to be honoured; a claim, too, based strictly on the very test by which we are invited to try the Bill, that of impartiality.

“But what I have said above has been simply comment on the reasons given for introducing the Bill. The reasons for not going on with it, though few and simple, are, to my mind, more forcible.

“The first reason is of itself enough to throw out any Bill. It is not wanted. With the exception of a fanciful few, fidgetting impatiently after an idea, nobody wants the Bill. Nobody, European or Native, wants the Bill for any practical good that it will do him.

“On the other hand, there are very large numbers who, whether rightly or wrongly is a secondary matter here, are nevertheless, as a matter of fact, vehemently, aye vehemently, opposed to the Bill, and they come of a class, too, on whom all the best interests of India are immeasurably more dependent than they are on any other class. It is an obvious fact of which we cannot but take count, and their vehement feeling in the matter has led to the rousing and bringing prominently forward of the very feeling which the Bill was meant to lay—race antagonism—feeling given expression to in the Native Press, and thus disseminated, in much more violent and provocative language than Britons have indulged in. Now that it has been unmistakeably seen that the Bill has roused and keeps on intensifying the very feelings it was meant to allay, the Bill, if it is to be consistent with its aim, ought, I submit, to be withdrawn.

“That it is wanted for administrative convenience, as has been alleged, is a mere loose statement, which five minutes reference to the criminal statistics of the country would conclusively falsify. Theoretical positions may be set up, but so absolutely is fact against theory in this matter that I will not waste time on it.

“Though I have urged above that, in effect, the Bill does not give what it professes to give, I never meant to imply that, in theory and in the minds of the framers, it was not honestly, generously intended and expected that it should and would give it. Who would doubt it? Not doubting it, I venture to urge that the same soul of honourable, generous impartiality which lay behind the idea that prompted the Bill, should equally impel the advocates of this Bill to abandon it, now that it is unmistakeably clear that the Bill will not forward, but will positively thwart, their liberal intentions. I am not one of those who cannot admit honourable, high-minded intentions in those who think differently; nay, rather, I venture to make an appeal to those very intentions to which I pay all honour. If it is manly in an individual to admit a well-intentioned error, and he only rises in our estimation for the generosity of the admission—and none but the mean-spirited will impute it to weakness—may not a Government also, conscious of its strength, do the same with advantage, advantage both to its own credit and, what is of much more importance, to the interests of the great country committed to its charge? By the introduction of this Bill, the Government has made it abundantly plain that it entertains the most liberal intentions towards the Natives of India; that it has placed beyond a doubt; that surely will henceforth be accepted on all hands without a question; and that having been demonstrated, surely the Government is in the best possible position for saying in effect, if not in word, to the peoples of India—‘Though we entertain these unquestionable sympathies, yet, in the course of the ventilation which this Bill has undergone, we have come to know that the passing of the Bill will not compass for you the advantages we had aimed at, but will, on the contrary, injure you seriously, by rousing a deep feeling of race antagonism in a class on which all your best interests are immeasurably dependent for justice, intelligence, capital, energy, progress in civilization, commerce, agriculture and all the material elements, of peace, plenty and health. Though in an infinitesimally minor degree, the Government itself also is not without indebtedness to the martial loyalty of the class that strengthens Her Majesty’s forces in India by the supply of some ten thousand volunteers of all arms. We have accordingly resolved, in the best interests of the very people for whom this Bill was introduced, to abandon it.’ If the Government can do this of its own motion, it will, I submit, take

a high stand indeed in the calmer judgment of posterity; and it can well afford, in its conscious strength, to think cheaply of any such petty charge as having yielded to clamour; for, in the eyes of the wise and generous, it will be judged to have yielded, not to clamour itself, but to the light cast by the expression of feeling elicited by the ventilation of the Bill, or, to speak more correctly, not to have yielded a jot, but adhered, under the new light thrown, to its own previously expressed intent of allaying race antagonisms.

“If the Government can do this, not in Council here, but of its own motion, then a thousand times *bis dat qui cito dat*. The sooner it does it, I submit, the better. If the Bill is understood to be only postponed till November, then the deplorable—the very deplorable—feelings that have been roused on both sides will only smoulder deeper and wider till the November discussion fans them again into flame; and then, if the Bill is carried by the Government, voting as a Cabinet, and not individually, as on the discussion of this point in 1872, the feeling will not pass away with the passing of the Bill, but will sullenly live for years to come and burst out afresh whenever a case in point arises. I hardly like to dwell on the depth and growing intensity and breadth of the feeling of race antagonism that has been raised. I only feel bound to touch the warning note, that it is a matter worthy of the gravest consideration of Government.

“The Government has only very recently taken additional steps for the better ventilation of Bills, with the avowed intention of availing themselves, in the interests of the country, of the better light shed by such increased ventilation. Here, then, in the deep and widespread agitation and vehement expression of strong feelings, is the very light they have courted. Will they cast aside the very light they have courted on the very first exhibition of it? Will they not rather recognise that it is the very light they courted, and, in consonance with their own previously expressed policy, rather use it in the best interests of the country? Surely they are in an advantageous position for doing so without risk of being misunderstood.

“Both in respect of having unmistakably demonstrated their liberal intentions towards Natives, and in respect of having expressed a desire, for the public good, to obtain and be guided by the views of the people legislated for, and also in respect of both acts being quite recent, the Government are surely in the best possible position for promptly withdrawing this Bill of their own motion. Indeed, if they do not, they will even seem to stultify their own professions.

“Yet another course is open to the Government, a medium course that will probably satisfy the moderate minded on both sides, giving the Native the coveted brevet rank, and still practically retaining to the Briton his freedom,—a course also that will lead us into no illogical positions, and meet all fancied administrative difficulties—that of making the jurisdiction proposed to be given to Natives permissive only on the Briton positively waiving his right to be tried by a Briton. But in such case it would have to appear on the first summons that the Briton had the right, and he would have to endorse his election to appear or not to appear before a Native, and the jurisdiction should not be extended beyond the cases now contemplated. But this is only suggested as a compromise not without dangers; and the much more satisfactory and manly course would be to abandon the Bill.

“Having taken upon me to tender this my humble opinion of the best course to be pursued with this Bill, I wish to submit that it is in no spirit of factious opposition to the Government; indeed, I knew not till very recently that the Bill was to be regarded as a Cabinet measure, if indeed it is to be so regarded, as the hon’ble Law Member tells us to-day, and herein I must plead my newness to the rules of this Council. I thought it was put forward as an important measure on which the Government were anxious, as in 1872, to obtain the unfettered opinions of everyone present; and if I have erred in too candidly submitting mine, I trust it may be recognised that I have been influenced by no spirit of factious opposition; far from it. I have said what I have said only in true loyalty to the Government. Being called here, I felt bound, on a point of such vital interest to the country, to place my views, for whatever they might be worth, at the service of Government. If they were worth nothing, the labour was mine only, and they could be cast aside. If they were worth anything, and served by a feather’s weight even to influence the decision of Government, then I should rejoice indeed to have spoken freely, as I feel earnestly, in behalf of what I humbly believe to be the best interests of the country in which I have spent my life, and which I have as truly at heart as the liberal-minded framers of the Bill. In this light, and aiming in effect at the same final ends as do the framers of the Bill, I shall trust, though a seeming opponent, to be eventually recognised as a true coadjutor.”

The Hon’ble MR. REYNOLDS said:—“My Lord, I shall not detain the Council with more than a very few remarks, but I wish to take this opportunity of expressing my cordial approval of the principle of this Bill. That principle is clearly explained in the Statement of Objects and Reasons, and has been

further explained to-day by the hon'ble member in charge of the Bill. It is simply this, to do away with all judicial disqualifications which are based upon mere distinctions of race. What we have to look at in a Judge or a Magistrate is, not his colour, but his character; not his pedigree, but his ability and his integrity. I was a member of the Select Committee last year on the Bill to amend the Code of Criminal Procedure. The question of the exceptional position of European British subjects under the criminal law was raised in the course of the discussion upon that Bill; but it was brought before the Council in a form, and at a stage of the proceedings, which precluded us from taking it into consideration, except at the risk of deferring the passing of the Bill to another session, and thus delaying the introduction of those useful reforms which have now become law in the amended Code of Criminal Procedure. But a promise was then given by the Government that the matter should not be lost sight of; and I presume that the Government had this promise in mind when it was determined to introduce the present Bill.

"I not only accept the principle of the Bill, but I entirely approve of the system on which it is proposed to carry that principle into effect. This is a Bill for levelling up, not for levelling down. It does not take away from Englishmen the cherished right of being tried by their peers, but it declares that a Magistrate shall not be precluded from being deemed the peer of an Englishman merely because he happens to be a Native. In the criticisms which have lately been poured out upon the Bill, it has been confidently asserted that this is a measure for removing a mere sentimental grievance; for dealing with a difficulty which may arise at some future time, but which has not yet assumed a practical shape. The authors of those criticisms must have been imperfectly acquainted with the facts of the case. In August last, Mr. Romesh Chunder Dutt, a Covenanted Civil Servant, was appointed to officiate as Magistrate and Collector of Balasore, and he has now been again appointed to officiate as Magistrate and Collector of Bâkirganj. Mr. Dutt is an officer of some distinction in the service to which I have the honour to belong. He stood second in his year at the final examination in England; he is a barrister-at-law; he has filled subordinate appointments with credit; and he has written ably and successfully on economic questions in Bengal. It is something more than a sentimental grievance that such a man, who is thought competent to hold the chief executive charge of a district, should remain under a legal disqualification for exercising the powers of a Justice of the Peace. Such a disqualification hampers the Government in the selection of its officers, and weakens the hands of justice, and I should rejoice to see it removed from the Statute-book.

“ If, therefore, the motion before us to-day, instead of being merely a motion for the publication of papers, had been a motion to refer the Bill to a Select Committee, I should have had no hesitation in voting in favour of it. I do not say that I am entirely satisfied with the provisions of the Bill. I feel considerable doubt whether the first section has not been too widely drawn, and whether it would not have been better to restrict the operation of the measure to officers, whether Covenanted Civilians or not, who might be actually appointed to be Sessions Judges or District Magistrates. But points of this kind do not touch the principle of the Bill, and the Select Committee would be the proper place for their consideration.

“ It is, of course, a further question whether, in view of the determined opposition which this measure has encountered, it would be prudent in the Government to make any further attempt to pass it into law. It appears to me that this is primarily a question for the Executive, but I imagine it is quite within the competence of this Council, as a legislative body, to say that, though the abstract principles of a measure may be equitable and right, it would be impolitic and inopportune to make them part of the law of the land. That, however, is not a question which we are called upon to consider to-day. If the present ferment should subside; if the passions which have been aroused, and the misrepresentations which have been made, should disappear before a calm consideration of what the Government really proposes to do, and what the effects of its legislation are likely to be, I should gladly give my vote, when the time comes, for passing into law a measure based upon the principle of this Bill. But if, on the other hand, postponement and reflection should intensify the feeling which undoubtedly exists to-day; if it should be made clear that the deliberate verdict of the European community in India is opposed to any such legislation as this; if the appeal to Philip sober, which is now to be made, should be dismissed on the merits of the case,—the Government would undoubtedly incur a serious responsibility by asking this Council to pass the Bill.”

The Hon'ble DURGÁ CHARAN LÁHÁ said:—“ My Lord, this Bill, in my humble opinion, is a move in the right direction, and I deeply regret the feeling which it has evoked.

“ It seems to me absurd to suppose that the Native officers who were deemed qualified to hold the responsible post of Magistrate and Judge, and to sit in judgment upon millions without distinction of rank, were not competent to exercise jurisdiction over European British subjects in criminal matters.

“ As to race prejudice, which has been already referred to, I for one think that it has little or no existence in fact. With the progress of English educa-

tion and increased intercourse with Europeans, I am glad to say this feeling has no place in the minds of educated Natives, and that any apprehension as to failure of justice in their hands appears to me wholly groundless.

“What is this change, after all, that the Government propose to introduce? It is to give the same powers to a few selected Native Civilians that Englishmen holding the same position already possess. These Native gentlemen have had to pass the same examinations, and are considered by Government competent to perform the same executive duties, as their brother Civilians. If we refuse to put them on an equality as regards judicial powers, we shall, I maintain, be casting an unnecessary slur upon them, and lower them in the eyes of the people whom they have been deputed to rule. Much better, I say, not have introduced them into the service at all, than, once having done so, impugn their probity by saying ‘You shall perform all the duties belonging to the office of an ordinary Civilian, except that of having judicial powers in criminal cases over any European.’ We must remember that it is only proposed to invest those Native Civilians who have proved themselves to be of unexceptionable probity with the power in question, and, looking at the safeguards that are to be maintained against any possible failure of justice, can any Englishman honestly say that he is afraid that his countrymen will run any greater risk of being unfairly treated at the instance of a Native Judge than they will at that of a fellow-countryman? A Native Civilian would naturally be always most careful and anxious to see that no injustice should happen in the case of a European, as he would know that he would be accused of race hatred or incompetence should any fault be found with his judgment.

“It has been said that the passing of the amendment will prevent the introduction of British capital and enterprise into this country. I cannot bring myself to believe that anything of the kind will ever happen. The same argument was employed when Act XI of 1836, bringing our European fellow-subjects within the jurisdiction of the Mufassal Civil Courts of the East India Company, was passed, and we now see how the predictions then made have been wholly falsified.

“The Government of this country has, I am aware, my Lord, been of a most liberal and lenient description for many years past; and all educated Natives are, I am sure, deeply sensible of the great debt of gratitude they owe to the English nation for the conciliatory spirit which has been shown by the rulers of this country, when they might, with impunity, have acted in so very different a manner. The aim and object of the English Government has, I believe, been to make the people of this great Empire loyal and contented.

subjects of our Most Gracious Queen ; and this object has hitherto been gained by the wise policy pursued by your Lordship and your predecessors, of treating all Her Majesty's subjects, whether Natives of this country or Europeans, as far as has been possible, with equality."

The Hon'ble SAYYAD AHMAD KHÁN said :—" My Lord, as this is probably the only opportunity which I shall have of expressing my views on this important measure, I am anxious to offer a few observations. I am aware, my Lord, that this Bill has been the subject of much discussion by the public Press, and has given rise to excited agitation among the non-official section of the European and Eurasian community, who feel that their liberties are imperiled by the proposed law. I have not the smallest wish to assign unworthy motives to the agitation ; and far be it from me to say that the views which that agitation represents should not be duly considered by the legislature. Never has the Indian legislature been more anxious to consult the views and feelings of the public regarding legislative measures than the present Government of India. With every wish that the views put forward by the European and Eurasian community should be duly considered, I confess, my Lord, I cannot help feeling deep and sincere regret at the attitude which the agitation against this Bill has adopted. Vehement and somewhat unmeasured language has been used by the agitators against my countrymen. I sincerely deplore this circumstance, as much for the sake of the leaders of the agitation themselves as for the sake of the feelings of my own countrymen. And here, my Lord, permit me to express a sincere hope that my countrymen will in no part of India follow the example of those who think that the vehemence of public demonstrations is the best way of submitting arguments and claims for the consideration of the legislature. The people of India, strongly as they feel in favour of the justice, the wisdom and the expediency of this Bill, need no demonstration in favour of the measure ; and, if I know the views of the leaders of Native society, I cannot be far wrong in prophesying that the people of India will not resort to any public demonstrations in support of this Bill. They are content to leave the measure to be decided upon its own merits. As a Native of India myself, with every wish for the success of this Bill, I hope my countrymen will adhere to their present determination to watch the progress of this Bill with calm and respectful silence.

" My Lord, it is not unintelligible to me that the non-official European and Eurasian community, separated as they are by the distance of time and space from those influences which secure the progress of political thought in England, should in the circumstances of India attach exaggerated importance to distinctions of race and creed ; that they should upon such occasions emphasise the fact

of their belonging to the ruling race; that they should claim for themselves especial provisions in the general law of the land. My Lord, all this is intelligible to me; but, at the same time, I cannot help feeling that a good deal of the opposition offered to the Bill arises from inadequate information in regard to the history of Indian legislation in matters of a similar nature, and from a misapprehension of the small change which this Bill proposes to make in the existing law. My Lord, I do not claim to be an authority on questions of constitutional law; but I may safely doubt the legal accuracy of the contention, which has been put forward elsewhere against this Bill, that the European and Eurasian subjects of the Queen Empress in India have any such constitutional rights as would place them above the jurisdiction of the Indian legislature. As an humble member of the Indian legislature myself, I would repudiate any such limitation. We derive our powers from the great Parliament of England; and, so long as we do not exceed those powers, it seems to me erroneous to doubt the legislative authority of this Council in all matters connected with India. History repeats itself, and we have in the present agitation against this Bill a repetition of the arguments and sentiments employed by the alarmists of many years ago, when Native Judges presiding in the Courts of the East India Company were empowered to try civil suits to which Europeans and Eurasians were parties. My Lord, I hope I may, without fear of contradiction, say that the exercise of civil jurisdiction by Native Judges in cases to which Europeans are parties has not given rise to any injustice, not even to complaint on the score of national differences. The truth is, that the fears of the alarmists of those days were unfounded, and their prophecies were bound to prove false. At this moment, throughout British India, Native Judges exercise civil jurisdiction over Europeans in a manner which certainly is not open to the charge of being influenced by race distinctions. But then, my Lord, it is sometimes urged that civil jurisdiction is vastly different to criminal jurisdiction; that the former affects property only, but the latter affects personal character and liberty; and that, whilst the European and Eurasian community may be willing to subject themselves to the civil jurisdiction of Native Judges, it does not follow that they should do the same in criminal matters. My Lord, I confess I am unable to see the reason upon which such distinction is based. The decrees of Civil Courts can reduce a man from opulence to poverty, and there are some branches of civil jurisdiction which not only relate to personal relations, but include the power of personal arrest, and, in the interests of justice, authorize a procedure similar to that provided for Criminal Courts. The process of arriving at conclusions as to the facts of civil cases is much the same as in criminal cases. The same law of evidence in India regulates the investigation of truth in Civil and Criminal Courts. The

judgments of Civil Courts may stain the reputation and ruin the character of parties nearly as much as sentences passed by Criminal Courts; and it seems to me that there is no substantial foundation for drawing a distinction in principle between judicial powers of the two classes of Courts, or for attaching greater importance to one class of jurisdiction than to the other. If probity, justice and absence of race bias are found among Native Judges in civil matters, it is difficult to perceive why the same qualities should not mark their administration of criminal justice in cases in which Europeans and Eurasians are concerned. As I understand the existing law, all Native Magistrates already exercise jurisdiction in criminal matters in cases in which Europeans are complainants and seek redress from the Courts as injured parties. I have never yet heard that European British subjects have any objection to resort to Native Magistrates for redress; indeed, they do so without any hesitation. If this is so, there seems no reason why the same confidence should not be shown to those tribunals in cases in which complaints are brought against European British subjects. Counter-charges are not uncommon in criminal cases. Magistrates competent to give redress ought to be competent also to award punishment; and it seems unreasonable and unfair for any section of the community to say 'We will go to Native Magistrates for redress, but we will not submit to be tried by them.' Indeed, my Lord, it is hardly necessary to say that, even under the existing law, Natives of India exercise a good deal of criminal jurisdiction over European British subjects. Even outside the Presidency-towns, I believe it is not a rare occurrence that European British subjects, appearing as defendants before Native Magistrates, waive the exceptional privilege accorded by the existing law. There is no judicial disqualification based on race distinction in the powers of the Native Judges of the High Courts and Magistrates in Presidency-towns; and I need have no fear of contradiction in saying that Native officers, when entrusted with criminal jurisdiction over European British subjects, have performed their duty with honesty and efficiency, and without any bias arising from distinctions of race or creed. Indeed, my Lord, in educated minds, employed in the solemn and sacred duty of administering justice, the claims of humanity at large to the protection of law, and the dictates of conscience, leave no room for any other considerations. In the neighbouring island of Ceylon, which forms a part of the vast Empire of Britain, I believe I am rightly informed, Native Magistrates and Judges exercise criminal jurisdiction over European British subjects. Judicial disqualifications based on race distinctions are unknown in that country. Yet British capital and British commercial enterprise, far from being driven from that island, have had considerable scope in that colony. The interest of coffee-planters in Ceylon is, so far as I know, in no sense inferior to the interest of

indigo-planters in Bengal; and the people of Ceylon are in no sense less Asiatic than the people of India. Nor would their staunchest patriot in Ceylon claim for his countrymen a higher position in the scale of civilisation than he would concede to the people of India. Yet the existing law of British India in regard to criminal jurisdiction over European British subjects is behind the law of Ceylon, and, my Lord, I do not think it unreasonable for the people of India to feel that the time has arrived when the necessity of improving the law has become urgent.

“ So far, my Lord, I have endeavoured to show that the proposed law is no innovation in principle, that the fears of the opponents of this measure are exaggerated and ill-founded, and that the example of Ceylon furnishes a practical illustration of the argument that the removal of judicial disqualifications, based entirely on race distinctions, will not be attended by any injury to the sacred cause of justice. And, my Lord, I may here repeat that the scope of the Bill seems to have been greatly misunderstood by the promoters of the agitation against it. As I understand the Bill, it does not propose to invest every Native Magistrate with power to try European British subjects. It is only in the case of those Natives of India whose recognised probity and ability have enabled them to achieve positions in the Judicial Service equal in rank to English officers of the higher order that the Bill proposes to remove judicial disqualifications based on race distinctions. The number of such Native officers is very limited; and the Bill cannot, therefore, in any reasonable sense, be regarded as precipitate or calculated to cause any serious practical change in the present machinery of the administration of justice.

“ But, my Lord, putting aside these considerations, it seems to me that there is much fallacy in the argument which attaches so much significance to race distinctions. What the people obey in countries blessed with a civilised Government is, not the authority of individuals, but the mandates of the law. So long as the law is just, impartial and humane; so long as the proper administration of that law can be secured, the nationality of those who carry out the law should be of no consequence even to sentimentalists. What requires respect, submission and obedience is the authority of the law, and not that of individuals, and even those who regard the people of India as not entitled to equality with themselves might, if they only consider the question calmly, feel that Native Magistrates are only the servants of the State, charged with the duty of carrying out the behests of the law. It is the duty of the State to provide for the proper administration of the law. To secure this object, the State has to choose the best available agency, and it seems a somewhat untenable and unjust proposition for any subjects of the State to insist that, in the choice of officers,

Government shall confine itself to any particular race or section of the community. The whole question raised by the Bill, in my humble opinion, practically amounts to what I have just said. It is a matter the principle of which requires no new decision. The question was discussed and it was decided, and decided nobly, when the magnanimity and justice of England accorded to the people of India rights of employment in the service of the State on the same footing as Englishmen themselves. That noble decision has, in recent years, received practical effect, and administrative expediency requires the moderate change which this Bill proposes.

“But, my Lord, this Bill has in its favour considerations of a higher order than even administrative expediency. I allude to those noble principles of freedom, justice and humanity which have their home nowhere as much as in the bosoms of the nation which first came forward to release the slave from his thralldom; which first announced to the people of India that, in matters of constitutional rights, distinctions of race and creed should have no place in the eye of the law. Never in the history of the world has a nation been called upon to act up to its principles more than the British in India. The removal of disabilities under which certain sections of the community laboured in England in regard to constitutional rights sinks almost into insignificance in comparison to what England has already done in India. The history of Indian legislation is the history of steady progress, of well-considered reforms, of a gradual and cautious development of the noble principle that between British subjects the distinctions of race, colour, or creed shall make no difference in legal rights; that whilst, on the one hand, British rule enforces submission, and expects loyalty and devotion from the people of India, on the other hand, it accords to them rights and privileges of equality with the dominant race. My Lord, I am convinced that it is on account of these noble principles, remarkable alike for their justice and for their wisdom, that the British rule has founded itself upon the hearts and affections of the people—a foundation far more firm than any which the military achievements of ancient conquerors could furnish for the domination of one race over another. History teaches the lesson that nothing is more destructive to the prosperity of a country than that race distinctions should be maintained between the rulers and the ruled. No one can be more anxious than myself that friendly feelings should grow even more than they have already done between the English nation and the Natives of India. Providence has thrown the two races together in a political and, I hope I may also say, social union, which will grow firmer and closer as time goes on. My Lord, if I believed that the legislative measure incorporated in the Bill will prove destructive to the growth of friendly feel-

ings between the two races, I should have deprecated the introduction of the measure. But I can take no such view. I am strongly convinced that, so long as race distinctions find a place in the general law of the land, so long will there exist obstacles to the growth of true friendly feelings between two races. The social amenities of life arise from political equality, from living under the same laws, from being subject to the same tribunals. The caste system in India would, perhaps, never have held its ground so long, if the legislators of old had not framed one law for the Bráhmaṇ and another for the Súdra. Whatever the exigencies of former times may have been, I hope, my Lord, that a century and a half of British rule has brought us to that stage of civilisation when there is every reason for minimising race distinctions, at least in the general law of the land. My Lord, I, for one, am firmly convinced that the time has come when the entire population of India, be they Hindú or Muhammadan, European or Eurasian, must begin to feel that they are fellow-subjects; that between their political rights or constitutional status no difference exists in the eye of the law; that their claims to protection under the British rule in India lie, not in their nationalities or their creeds, but in the great privilege, common to all—the privilege of being loyal subjects of the august Sovereign whose reign has brought peace and prosperity to India, and made it a place suitable for commercial enterprise, and for the pursuit of the arts and sciences of civilisation. My Lord, as this is probably the last occasion on which I shall ever address the Legislative Council of India, I cannot conclude my observations without saying that your Lordship's administration is to be heartily congratulated upon having brought forward a measure which, I am convinced, will go a great way to remove invidious race distinctions, and ultimately promote good feeling, mutual respect and sympathy between the rulers and the ruled in this land of many races and many creeds."

The Hon'ble MR. HUNTER said:—My Lord, after very careful consideration, I feel constrained to support this measure. In doing so, however, I hope that I shall not disregard either the expressions of disapproval which have reached us from without, or the arguments which have been so skilfully arrayed against the Bill in Council to-day. I agree with the opponents of the measure, that there is a body of personal law peculiar to European British subjects in this country—a law which accords to them highly-prized exemptions and privileges. I agree that there is likewise a personal law peculiar to certain classes of our Native subjects—a law which is equally valued by them. I agree that, as we have respected the exemptions and privileges secured to our Native subjects by their personal law, so we are bound to respect the exemptions and privileges enjoyed by European British subjects

under their personal law. I am prepared to go further, and to maintain that, in the early days of English rule in India, the personal laws of the various classes formed the main body of law administered in our Courts. The history of Anglo-Indian legislation is the history of the absorption of these personal laws peculiar to classes into a common system of law applicable to all. By this process of absorption, the personal law of each class has been gradually but steadily curtailed. It is this process of absorption which supplied what the Marquis of Wellesley termed the "active principle of continual revision" that struck him as the salient feature of the Bengal Regulations in 1805. During the last 80 years the process has gone on at an accelerated pace, until the special privileges now left to the Natives of this country, and the peculiar exemptions still claimed by European British subjects residing within it, are a mere fragment of the privileges and exemptions which those classes severally enjoyed when Lord Wellesley delivered his Discourse. At each important stage in the process, there has been an outcry from the class whose personal law it has curtailed. Indeed, no class of men can be expected to part with their special privileges without opposition. It seems to me that a Government is bound to listen with great respect and sympathy to such an opposition, and that it ought to refrain from such changes, except when they are clearly demanded by the common weal. But when such a change becomes really necessary for the better administration of the country, then I hold that Government is bound to make it; however much it may regret that it has to purchase a benefit for the whole body of its subjects, at the cost of the natural resentment of a section of them.

The curtailment of class distinctions which this Bill will effect is no isolated act. It forms one of a long series of measures absolutely inevitable in moulding the laws of the various races, from which our administration of justice in India started, into a common body of law applicable to them all. Permit me for a moment to remind the Council how this process has affected our Hindú and Muhammadan subjects. The Charter of 1753 expressly exempted suits between Natives from the jurisdiction of the English tribunals, then styled the Mayor's Courts.* The Governor General guaranteed in 1772 their own laws to the Natives, and provided that Maulvís and Bráhmans should attend the Courts to expound those laws†. By the Statute‡ of 1781, the British Parliament secured the Hindús and Muhammadans, not only in their law of inherit-

* Charter of George II granted in 1753.

† Plan for the administration by Warren Hastings, 1772, Rule 23, afterwards incorporated in the first Bengal Regulation, dated 17th April, 1780.

‡ 21 Geo. III, c. 70.

ance, succession, &c., but also in "all matters of contract and dealing between party and party." The same Statute guaranteed to them their domestic law of the *patria potestas*; and the punitive sanctions of caste. It provided that no act done, and therefore no penalty inflicted, in consequence of caste rules should "be held and adjudged a crime, although the same may not be justifiable by the laws of England."

I shall not detain the Council by a further enumeration of the guarantees granted to the Natives of this country, or of the legislative process by which those guarantees were one by one infringed. The Natives still retain a large portion of their domestic law and certain privileges, such as the exemption of women of position from appearing personally in Court. But in the ordinary affairs of business they have been brought under English-made law. The Maulvi or Bráhmán assessor has no longer a place in our Courts. For Native law and usage in dealings "between party and party," we have imposed the Code of Civil Procedure and the Contract Act. We have weakened the *patria potestas* by curtailing the punitive powers of the head of the family, especially in regard to the female members. We have undermined the sanctions of caste by treating as offences the graver penalties inflicted for breaches of its rules, notwithstanding our express pledge to the contrary. We accepted the system of the Muhammadan criminal law; we have substituted for it a system of criminal law of our own. Special classes have had their ancient privileges curtailed in a special degree. The Hindú law accorded to the Bráhmans a status which enabled them to exercise spiritual powers, yielding lucrative temporal results. We no longer permit the employment of these spiritual powers for compulsory purposes. If a Bráhmán erected a *kurh*, and some credulous old woman killed herself thereon, our regulation law tried him for murder. If he enforces a debt, or extracts a charity, by fasting outside a man's door, the English Magistrate locks him up in jail. We have deprived the sanctity of Brahmanhood of much of its pecuniary value, and subjected its spiritual terrors to the Penal Code.

In all this the Government has done wisely and well. In doing so, however, it has had again and again to encounter a clamorous but quite natural opposition from those whose ancient privileges or personal law it curtailed. I shall not cite instances where the gain to the community at large was beyond question, but one in which the necessity for a change seemed doubtful to many. There are no branches of the Native law more solemnly guaranteed to the Hindús than those which deal with marriage and inheritance; and there is no principle more clearly established than the deprivation of rights to family property in the case of a Hindú becoming a convert to another religion. Yet a

series of *Lex Loci* Acts, initiated in 1832, and ending within our own experience, have repeatedly interfered with the most cherished feelings of the Natives in these matters. In each case since 1842, the Natives have struggled against the change. With them, inheritance is not a mere question of gain or loss in this world, but involves the safety of the souls of their ancestors, and their own happiness or misery in the future life. They have pleaded Parliamentary guarantees, the solemn declarations of the Indian Legislature, the established usage of a century of British rule. With one temporary exception, they have pleaded in vain.

The personal law and exemptions peculiar to European British subjects in India have undergone scarcely less important curtailments. The legal status of the non-official Englishman in India commences, for practical purposes, with the Charter of 1813.* During the preceding half century, the English non-official in rural Bengal had passed through various stages, as an interloper, a licensed adventurer, a subordinate agent of the East India Company, and a partner, recognised or unrecognised, of its servants in their private trade. He might execute a bond making himself amenable to the Company's Civil Courts, and after 1787 he had to do so before he was permitted to reside in the interior. In criminal matters he was subject only to the Supreme Court and Her Majesty's Justices of the Peace in Calcutta. He practically, therefore, remained outside the Company's system of administration, as an unmallearable unit of sturdy independence and growing importance in whatever district he settled, disliked and often unfairly treated, but very difficult to reckon with. In matters of criminal jurisdiction he was under the surveillance of the rural police instead of being amenable to the rural Courts. As late as 1817 a Regulation was passed requiring the police to submit yearly to the Magistrate of the district a list of all Europeans residing within it. Indeed, until the Government passed to the Crown, each police-inspector had to report the arrival of every non-official European who came within his circle.

The Charter of 1813 threw open the Indian trade to private enterprise, and at the same time created a jurisdiction over the Europeans who might embark in the business. It provided that every British subject living at a distance of more than ten miles from the Presidencies should be amenable to the Civil Courts of the East India Company in like manner as Natives of India. It also empowered the Governor General to appoint Justices of the Peace from among its Covenanted Ser-

vants, or other British residents, with petty criminal jurisdiction over British subjects, not exceeding a fine of Rs. 500, or in default two months' imprisonment. As the number of Europeans increased in India, the powers of the Justices of the Peace were extended by a Statute of George IV.* All powers, whether civil or criminal, were exercised only by Europeans, because at that time the Natives of India had been excluded from the higher judicial offices which they held in the early days of the Company, and had not yet been incorporated as a branch of its Uncovenanted Civil Service. But when the Company withdrew from its trade after 1813, it set itself to the task of improving its rural government. By a series of measures between 1821 and 1836, it increased the powers of its Native Judges, and admitted the Natives of India to a large share of the civil judicial administration. It followed that, if Natives were to do the staple work of civil justice, they must exercise jurisdiction over the whole body of inhabitants within their district. By a series of laws in 1836, 1839 and 1843, their jurisdiction was therefore extended over European British subjects. It was enacted in comprehensive terms that, thenceforth, no person should by reason of place of birth, or by reason of descent, be in any civil proceeding exempted from the jurisdiction of any of the Company's Civil Courts.

The European community bitterly resented these laws, and opposed every effort to bring them under the jurisdiction of the country tribunals, as distinguished from the Supreme Court in Calcutta. The most important of them they stigmatised as the Black Act. "The Black Act," writes an eye-witness, Mr. William Tayler, an eye-witness not at all likely to favour Bengal officialism, "was the cause of an agitation which may fairly be said to have convulsed Indian society for a time. Several barristers took the lead; public meetings were called; scurrilous articles filled the columns of the daily journals. One impassioned orator hinted that Mr. Macaulay [the Legal Member of Council] ought to be lynched at the very least." My Lord, it marks the difference between Englishmen in India at that time and at the present day, that although their feelings on questions of class privilege remain equally strong, the articles in the public journals are no longer "scurrilous"; their public meetings cannot fairly be described, in Mr. Tayler's words, as "fierce and uproarious"; and their resistance is not now confined to Calcutta, but, with the extension of British enterprise, is diffused over many districts. The jurisdiction of the Company's Civil Courts and of the Native Civil Judges, which Englishmen so loudly opposed fifty years ago, has done more than any other series of administrative

* 9 Geo. IV, c. 74, sections 92, 97, 113, 121, 124.

measures to protect British capital, and to render British enterprise possible in rural India.

During the same fifty years, the special privileges of European British subjects in matters of criminal jurisdiction have also been curtailed. Perhaps the most important attempt under the Company in this direction was that of Lord Dalhousie's Government. In 1849, it prepared a draft Act declaring that all British subjects, resident outside the towns of Calcutta, Madras and Bombay, should be thenceforth amenable to the Magistrates and Criminal Courts of the East India Company; save, only, that no such Magistrate or Court should have the power to sentence any of Her Majesty's natural-born subjects to death.* It made no proviso as to the Magistrate being a Justice of the Peace. On the contrary, it expressly stated that "the word Magistrate, as used in this Act, shall be understood to mean every officer, however styled, who has power to exercise any or all of the powers of a Magistrate."† I need hardly point out that the Bill now before the Council has a very much narrower scope. Lord Dalhousie approved of the proposed extension of the criminal jurisdiction over European British subjects, but thought that the measure should be postponed till the amending of the criminal law was effected by the Penal Code. His view prevailed. Shortly after the country passed to the Crown, the Penal Code became law, and the question of jurisdiction could be considered on its own merits. This was last done on the revision of the Code of Criminal Procedure in 1872. Before that year, the Natives of India had been admitted, by open competition in England, into the Covenanted Civil Service; and, in the natural course, would rise, as Magistrates and Judges, to the highest posts in the administration of criminal justice in their respective districts. The question which had to be decided in 1836, with regard to granting civil jurisdiction over European British subjects, came up for consideration in 1872 with regard to criminal jurisdiction. The Legislature, in 1872, determined to give a substantial jurisdiction over European British subjects to full-power Magistrates, being Justices of the Peace, and to Sessions Judges, provided that such Magistrates and Sessions Judges outside the Presidency-towns should themselves be European British subjects. By a narrow majority, the Legislature abstained from giving these powers to the Native members of the Covenanted Civil Service. How narrow the majority was, may be estimated from the circumstance that, if a single one of its members had voted the other way, the minority would by the President's casting vote have become the majority.

* Draft Act read for the first time in Council on the 26th October, 1849, section 1.

† *Ide m.*, section 6.

My Lord, I think that the Legislature decided wisely in 1872; but that we should decide wrongly if, in 1882, we supported its decision. The circumstances of the country at large, and of the special class of public servants to whom jurisdiction will be given, have altered during the ten years. The administrative necessity for the change, which was then remote, has now arrived, and will soon become urgent. Even before 1872, criminal jurisdiction over British subjects had been given to Native Magistrates in Calcutta, and both Hindú and Muhammadan gentlemen have exercised these powers in the Calcutta Courts. But it was not considered safe to entrust the same powers to Native Magistrates in the districts, because it was feared that public opinion, which would check any miscarriage of justice in Calcutta, might not act with equal force upon District Magistrates. I think that this was a good argument in 1872. But new enterprises have since then brought an influx of Englishmen into the interior, and created an amount of independent English opinion in the districts which could not have been anticipated in 1872. I, for one, read with pleasure the telegrams which have poured into *The Englishman* during the past month, from every part of Bengal where Englishmen reside. Those telegrams show that our non-official countrymen are strongly opposed to the measure which I advocate. But they also show that Englishmen in the interior have now the means of expressing the public opinion of their class with such promptitude and with such force as to constitute the strongest possible guarantee against the abuse of magisterial powers, whether vested in European or in Native hands. Not only is English public opinion in the districts stronger, but English public opinion in Calcutta acts much more directly upon the District Magistrates. Since 1872, the length of railways open in India has increased from a little over 5,000 to close on 10,000 miles. The number of private telegrams sent has increased from 600,000 to 1,337,526. The number of post-offices and letter-boxes has, during the same period, multiplied from under 5,000 to more than 11,000; and the number of letters, newspapers, &c., from 89 millions to 158 millions. Districts formerly isolated have now speedy and constant communication with the capital. Nor is it too much to say that English public opinion in the remote province of Assam can now be brought to bear as powerfully and as immediately upon the central Government, as the English public opinion of Calcutta could twenty years ago.

The circumstances of the special class of public servants, to whom it is proposed to give jurisdiction, have also changed. In 1872, the Native Covenanted Civilians appointed by open competition in England were untried men, who had yet to prove their fitness for the offices entrusted to them. They have, during the past ten years, abundantly proved it. They have established their

reputation as painstaking, impartial officers, and in a special manner they have shown their capacity for sound judicial work. Nevertheless, if a distinct administrative necessity had not arisen, I should decline to support a change which must be painful to an important section of the community. But such a necessity has now arisen. The Council has before it the reports from the various Local Governments in favour of this measure. I shall not, therefore, say more with regard to them, than that they present to my mind an overwhelming preponderance of opinion which it is difficult for the central Government to disregard. But I shall show, by one or two individual instances, the way in which the present anomalous state of things works in the rural districts. The Native Civilian has now reached a stage in their service when they must become, in the natural course, District Magistrates and Sessions Judges. We have guaranteed to them equal rights with their English brethren, yet they must be excluded from those offices in the more eligible districts where English private enterprise exists, and they must be turned out of those offices in any district into which English private enterprise comes. Let me illustrate this by two examples; one taken from Bengal, the other from Bombay. On the 17th January last, a Native Civilian was, in the ordinary course, appointed Joint Magistrate, with powers of a Magistrate of the first class, at the important station of Dháká. On the 23rd January, he received a letter from the Secretary to the Bengal Government, cancelling the appointment and transferring him to a less eligible district, on the ground that the opening out of the Dháká and Maimansingh railway was bringing a number of Europeans into the Dháká district. The gentleman thus disqualified had won the second place in his year, by open competition in England, from among several hundred candidates; he is an English barrister, and he had proved his fitness for the post from which he was turned out by twelve years of service. In the Bombay Presidency, a Native Civilian holds the important office of District and Sessions Judge of Kanára. His head-quarters are at Kárwár, the coast terminus of the railway which, some time ago, was proposed to be constructed from the Dhárwár cotton country. If this scheme should be revived and the railway sanctioned, the Sessions Judge of Kanára would, under the exigencies of the existing law, have to be turned out of his district. Let us see what this practically means. The gentleman in question is Mr. Tagore. After a distinguished education, both here and in England, he has given about twenty years of unblemished service to the Government, and has established a high reputation as a Judge. He is a near relative of our late colleague, the Mahárájá Sir Jotindra Mohan Tagore, who, during an unusually prolonged period, assisted this Council in making the laws of India. The well-earned encomiums in which your Excellency expressed your sense of the services thus rendered

are still fresh in our memories. Yet we are told that we must not entrust to a member of the same noble house, notwithstanding his training in England and his twenty years of proved integrity as a Judge, the power of sentencing a European British subject to a short term of imprisonment. This, too, although the European British criminal has the right of immediate appeal from any sentence of imprisonment, however brief, and from any fine, however small. If it were necessary I could multiply examples. Unfortunately, the time has come when such examples will year by year multiply themselves, unless the existing law is changed.

Since this Bill was introduced, I have taken occasion to consult several of the leading Native Civilians who were appointed by competition in England. They complain that under the present law they will be excluded, as Magistrates and Sessions Judges, from the advancing districts into which British enterprise comes; and that they will be condemned to backward or remote districts where they will have less opportunity of distinguishing themselves, or of proving their fitness for higher offices. They urge that in Bengal, for example, this means that they will be shut out, as Magistrates and Judges, from the healthy Province of Bihár, and condemned for the most part of their career to the miasmatic Delta. The pleasant regions of Tirhut and Patna will be denied to them: the swamps of Bákirganj and Noakháli will be permanently at their disposal. They contrast this state of things with the long series of declarations by Her Majesty's Government presented to Parliament, beginning with the Queen's Proclamation to the Chiefs and people of India in 1858, and ending with the Despatch of the Secretary of State, dated the 10th July, 1879. They rebut the plea that it is not essential that the Magistrate of the district should have power over Europeans if his Joint-Magistrate has these powers, by bringing forward a long list of districts in which there is no Joint-Magistrate. They expose the fallacy of the argument that in cases where a Sessions Judge has not these powers a European criminal can easily be transferred to another district. In the Bombay case which I have cited, a European criminal, together with the prosecutor and witnesses, would either have to be sent several hundred miles by sea to the Presidency-town, or the whole party would have to be marched inland, under guard, nearly 100 miles, in part across a tract malarious during the rains, to the head-quarters of one of the adjoining districts. The present law not only acts as a disqualification to the Native Judge, but it operates as a hardship to English criminals, prosecutors and their witnesses. The fact is, as shown by the Dháká case, that the Native Magistrate and Judge must either have jurisdiction over Europeans, or they must go elsewhere. They urge that Government will have

to regulate its appointments, not by the merits of an officer, nor by his general fitness for a district, but by his power to deal with a small exceptional class of cases occurring within it. Yet by the orders of repeated Secretaries of State, orders formally placed before Parliament, the Native officers thus disqualified will in time form a substantial proportion of the whole Covenanted Civil Service. They point out that this is not only an injustice to themselves, but also a source of weakness to the Administration.

The admission of the Natives to the Covenanted Civil Service was one of the results of the Queen's Proclamation when Her Majesty assumed the Government of India. In that Proclamation she commanded that her subjects, "of whatever race or creed, be freely and impartially admitted to offices in [her] service, the duties of which they may be qualified, by their education, ability and integrity, duly to discharge." The Covenanted Native Civilians have now reached a point in Her Majesty's service when the Government must decide whether it will or will not grant them criminal jurisdiction over European British residents, as the Company had in 1836 to decide whether it would grant civil jurisdiction over such residents to the Uncovenanted Native Servants. The Government has in 1882 simply reached the same conclusion as that at which the Company arrived in 1836. But the present Bill provides the most ample safeguards against the abuse of the powers which it confers—safeguards so ample, stringent and complete as to destroy any further analogy between the action of the Legislature in 1836 and in 1882. For the present, I shall only deal with the case of Covenanted Civilians who have entered the service by competition in England. They are the class to whom the Bill is chiefly directed; they are the only class in regard to whom the Local Governments appear to have yet been consulted. So far as a scrutiny of the Civil List enables me to form an opinion, there are not above two or three Native officers, with the exception of those in the regular Covenanted Service, on whom any Local Government would confer the powers granted by this Bill for many years to come. At any rate, the Council has no evidence before it with respect to the other classes mentioned in the Bill. And I, for one, am not prepared to support, by speech or vote, the curtailment of privileges on which my countrymen set a high value, without clear evidence that the sacrifice is demanded on behalf of good administration and the common weal. Such evidence may be forthcoming at the proper stage, when the Bill reaches the Select Committee. But, meanwhile, I speak only of the principal class of Native public servants whom the Bill will affect, namely, those who have won their positions by open competition in England.

I beg the opponents of this measure to consider the very limited powers which the Bill conveys, and the stringent safeguards which it provides against their abuse. The Native members of the competitive Covenanted Service are a select body of men, who have won their way into public employment by exceptional exertion, and by exceptional abilities. In youth they so far overcame the inertia of the climate, and the prejudices of their race, as to set forth to a country on the other side of the globe, on the chance of securing an honourable career by open competition. Most of them had already earned distinctions at Indian Colleges and Universities. In England they had to partially re-educate themselves on a Foreign model. They had to compete in an examination framed to suit an educational system different from that on which they had been trained, and they won their appointments from among a crowd of competitors. Many of the Native Civilians thus selected are more English in thought and feeling than Englishmen themselves. After their arrival in India they have to pass through further tests, and to prove their fitness by years of faithful service, before they can receive the powers which the Bill confers. Even then, it is only if the Local Government is satisfied of the fitness of the individual officer that the powers are granted to him. And what, precisely, are these powers? The highest are those granted to Magistrates of districts and Sessions Judges, officers of about 13 to 25 years' standing. A District Magistrate can sentence a Native of India to two years' imprisonment, with fine, or, in cases of cumulative sentences, and on default of payment of the fine, to four years. This Bill would only empower him to sentence a European British subject to a term not exceeding three months. A Sessions Judge may sentence a Native of India to death or transportation for life. This Bill empowers him to sentence European British criminals to only one year. A Native criminal can appeal only to certain Courts, and only against sentences of a certain degree of severity. The European criminal by this Bill is allowed the right of appeal to either the District Court or the High Court at his own option; and he may exercise that right against a sentence of a Magistrate or Sessions Judge, however small—against a fine of one rupee, or a single day's imprisonment. The European British subject is further protected by his race privilege of the writ of *habeas corpus*, and in any case important enough to come before the Sessions' Judge, by trial by jury. Nothing can be further from the truth than the statement that this Bill disregards the different degrees in which the force of public opinion acts as a check upon miscarriages of justice in Calcutta and in the rural districts. A Native Magistrate sitting in Calcutta can at present sentence European British subjects to two years' imprisonment, and to a fine, with a right of appeal only from sentences of a certain gravity. This Bill confers on the same officer, if he is promoted to be Magistrate of a district, the power

of sentencing a European British subject to only three months' imprisonment, with the privilege of appeal from every sentence, however small.

I would ask the opponents of the measure whether they seriously believe that these safeguards are not ample for the purposes of justice. If they can suggest further safeguards, I feel sure that this Council will impartially listen to their proposals. I know it is hard for any class of men to part with its special privileges. The hardship is sometimes a matter of fact, and sometimes a matter of feeling. The class affected always believes that the hardship is one of fact. Whether Europeans or Natives, they plead the same argument of the thin end of the wedge, and of the total abolition of their class privileges which the change, however small, foretells. This argument was never better set forth than by the Hindús on the passing of the *Lex Loci* Act. They then expressed their belief "that the security in person, property and religion, hitherto ensured to them, thus undermined in one instance, would be eventually denied to them altogether." The forty years which have passed since these words were uttered have abundantly falsified the predictions which they conveyed. Nor have the apprehensions of the European community, on the passing of the Black Act in 1836, been more fully justified. The civil jurisdiction then granted to Native Judges seemed to our countrymen to destroy the sole securities which they possessed for their capital invested in the rural districts, and to threaten the extinction of British enterprise in Bengal. Europeans would be deterred thenceforth from settling in India, and it was vainly attempted to combat this statement by quoting Mr. Mill's evidence before the Committee of the House of Commons. The fifty years which have since passed, and the immense development of British enterprise under the protection of the rural Courts of Bengal, now supply an unanswerable refutation of such fears. Even the abolition of the Grand Jury in the Presidency-towns in 1865 sufficed to awaken serious apprehensions. "On the abolition of Grand Juries," said the circular issued by the Landholders' Association, "there would be no protection to gentlemen from being accused of crimes of which they were entirely innocent, whenever the local Magistrate was supposed to be inclined to believe in such charges, and of being put upon their trial whenever a credulous or prejudiced Magistrate would be found." A correspondent in the *Englishman* predicted that, now that the Grand Jury was doomed, the right of calling a public meeting through the Sheriff "would be the next old institution voted effete." Another begged his countrymen to "beware of the doctrinaire dissectors. Cry out in time," he said, "and that lustily, or we may expect the fate of the eviscerated cat, whose personal objections to the operation are disregarded in the promotion of experimental science." The Public Meeting in Calcutta condemned by a formal

resolution "the proposed abolition of Grand Juries in the Presidency-towns; and on the contrary was of opinion that the institution should be extended to the Courts proposed to be established in the interior of India." One speaker regarded the abolition of the Grand Juries as "the thin end of the wedge" * * * "which threatens to bring down and destroy the whole fabric of our constitution". The *Englishman* newspaper, which has so ably brought to a focus the opposition to the Bill now before the Council, quoted with approval, in 1865, Sir Eardley Wilmot's protest against "any interference with this 'bulwark of the nation.'" My Lord, there have been individual miscarriages of justice since the abolition of the Grand Jury, as there were when it still flourished. But I feel sure that the English citizens of Calcutta, old enough to remember the state of things before 1865, will agree with me that the abolition of the Grand Jury has been a boon to the English community of the city, and a source of strength to the working of the whole jury system in the Presidency-towns.

I believe that the apprehensions now expressed with regard to the present measure will, ten years hence, be found to have been equally groundless. Meanwhile, we ought not to forget that those apprehensions spring from natural feelings of alarm in the minds of an important section of the community. If we can in any way allay those apprehensions, or conciliate those feelings, I think we are bound to do so. The honour of this Council, or the honour of the Government, is not involved in any hard-and-fast resistance on points of detail. Or, rather, the honour of the Government is involved in carrying out a measure which must necessarily be painful to an important class with the utmost consideration that it can show to their feelings. But with regard to the principle involved, I think the time has come when the Indian Legislature is bound to declare itself. At such a crisis, party spirit must run high. Several months will, however, elapse before the Bill can pass into law. During the interval the Council will have time to candidly listen to every argument, and to seriously consider every suggestion. If, in the heat of the discussion, fair arguments give place to ungenerous aspersions, our duty seems equally clear. We must meet obloquy with patience, and, assured of the justice of the measure, we must wait for time to dispel the apprehensions of our countrymen at present, as time has disproved their apprehensions in the past.

The Hon'ble RÁJÁ SIVA PRASÁD said:—"My Lord, this is the grandest concession to India. I would have called it the coping stone of the liberal policy of the Liberal Government of Her Most Gracious Majesty, whose worthy representative, the liberality incarnate, my Lord, you are; but no one can say to what a height the building is destined to reach during your Excellency's incumbency. So I content myself by simply saying that the measure will be

a magnificent addition to the list already long. The distinction of race in the Indian Criminal Procedure was one of the remaining mementos of the narrow policy of an honourable body of monopolist traders, though it might have suited or become a necessity at the time; but now it will be simply incongruous with advanced liberal ideas and the progress of the age. The concession is most unexpected and little asked for, and so the most valuable. I cannot conceal from your Excellency that the Indian branch of the Aryan race has been the most intolerant towards their conquered, and had no distinction between a conquered and a slave. Up to this time the Súdras, the remnants of the conquered aborigines, who form the mass of the population, are looked down upon by the military, and the then ruling class of Kshatryas, and the sacerdotal Bráhmans, as worse than slaves. The very name Dás, a corruption of Dasyu, means a slave or thief. Prohibition to wear the sacred thread has been for the poor Súdras a lasting mark of humility and subjection. Manu says, if any Súdra takes into his head to speak Sanskrit or to teach that language, 'scalding oil' is to be poured into his mouth; nay, 'on killing a cat, a weasel, a peacock, a frog, a dog, a lizard, and an owl or a crow, a Bráhmaṇ should expiate himself by the same penance which he has to undergo for killing a Súdra'—chapter XII, stanza 132. Further, 'having slandered a Bráhmaṇ, a Kshatriya becomes liable to a fine of 8,000 *kauries* (shells) amounting to less than rupee one and a half, but a Súdra merits death'—chapter VIII, stanza 267. Let us see how the Muhammadans treated their conquered. They did not regard the Hindús even as men; hence to massacre them, to enslave their wives and daughters, to plunder their property, to demolish their temples, to deface the images, to force beef down their throats by violence, are the subjects which fill the so-called histories of the time. Even so good-natured a writer as Amír Khusro was, alludes to the Hindús in such contemptuous terms as 'raven-faced' and 'raven-like in nature' (*Zigh-rú va Zagh Manish*). The administration of the civil and criminal justice was completely in the hands of the kázis, and no Hindú could possibly aspire to be a kází. No matter whether either or both parties were Muhammadans or Hindús, the judgment was invariably pronounced according to the Muhammadan law or Shara. The same Amír Khusro relates in his *Terikhi Alaí* that Alá-ud-dín Khilji once sent for a kází and asked him what was written in the Code of Muhammadan law regarding the Hindús. The kází answered that the 'Hindús were' Zimmis (condemned to pay the *Jizya* tax); if asked silver, they ought to pay gold with deep respect and humility; and if the collector of taxes were to fling dirt in their faces, they should gladly open their mouths wide. God's order is to keep them in subjection, and the Prophet enjoins on the Faithful to kill, plunder and imprison them, to make them Mussulmáns or to put them to the sword, to enslave them, and confiscate their property. Abu

Hanifa alone permits the levying of the Jizya, but the remaining successors of the prophet have uniformly laid down that the Hindús ought to be made Mus-sulmáns, otherwise lose their heads.' The Emperor smiled, and remarked that he did not know what the Code might prescribe, but that he had issued an edict that only so much grain, milk and other articles of consumption as would suffice for a year should be left to Hindús, and that they should in no case be allowed to lay by any money. Akbar was the only Emperor who raised the Hindús and kept down the race distinction as low as he could, but that was a matter of necessity. He had seen how his father was driven out from India. He could not reckon on receiving any succour from Central Asia. His only hope for his Empire was with the Hindús, and the Hindús well supported him. Now the days have come that a Hindú is appointed by your Excellency Chief Justice, or Kází-ul-Kuzáat, of the metropolis of the Indian Empire. We Hindús do not consider the British as our conquerors. We do not only acknowledge the divine right of our sovereigns, but find divinity in their person. I will never forget what the Pandits of Benares spoke to Sir William Macnaghten. I was then a boy reading in the Sanskrit College. Lord Auckland came with Sir William. His jamadár, being a Muhammadan, was stopped at the gate. Sir William asked the Pandits how it was that the English were allowed and the Muhammadans not. The Pandits quoted Bhagavat Gita that 'Rulers are divine.' Leaving aside the divinity for the present, is it not a fact that we sought the protection of the British? Jagat Seth Mahtábrai, one of the ancestors of the humble speaker, was one of those three who invited Clive to Murshidábád and helped him to establish the British supremacy in Bengal at the sacrifice of his own life. The idea of any restoration of a Kshatriyan Empire is as far from the bosom of a Hindú, as the idea of restoration of the Roman Empire in the family of Romulus, driving out all the 'barbarian' races across the Danube, is from the bosom of an Italian. Taimuri dynasty was gone; the choice lay between the bloody Muhammadans from the North-West, like Nádir Sháh, who massacred Delhi, or Ahmad Shah Abdali, who massacred Mathura, and the freebooter Pindari Mahrattas. India threw herself under the protection of the British like a sheep running from a tiger and a wolf to her shepherd. We look to our Sovereign Kaiser-i-Hind, not only as Divine ruler, but as our own mother. We take her as our own, and I leave it to the generous Christian feelings of the British nation whether we are still to be treated as a conquered and subjugated race. The *Indian Daily News* says very sensibly that 'we shall rise above class questions and race questions, and confess, even if it be with some natural reluctance, that the change in the law which is now proposed is practically inevitable. Besides, we have to consider whether determined and narrow adhesion to exclusive privileges is not the most dangerous policy the European commu-

nity could adopt. For the sake of England in India, and in order to further strengthen and cement the union between the two countries, is it not necessary that Englishmen should give the highest proof in their power of the thoroughness with which they adopt India, and take upon them the defence and advancement of her interests? The *Statesman* takes the same just and impartial view of the question. Though there is no doubt that a very strong feeling, whether right or wrong, but almost universal, exists against the Bill in the European quarters, as a gentleman was just the other day saying, wherever he went he was asked 'Have you seen that infernal Bill.' They take it as certain that all their countrymen who have to appear before a Native Magistrate will be sent to jail, and the reason they assign for it is the 'widening,' as they are pleased to think, of the breach between the Natives and Europeans. Some say that there is neither newspaper nor High Court with astute barristers in the Mufassal; but I do not know if there is any place in India now beyond the pale of the newspaper influence, or where barristers cannot go; the wire has brought the High Court within an easy reach of everybody. As for a Native's sending a European or his wife to jail, there is no fear of that. If there is any fear, the fear is for his unjust acquittal. Mr. Duthoit, the Judicial Commissioner of Oudh, who is no mean judge of Native character, truly says: 'I do not mean that they (Natives) would be likely, as a rule, to press hardly upon Europeans; I think, on the contrary; that they would, as a rule, unduly favour the Europeans.' Woe to the Native who has a European before him to judge! His position will be most unenviable, and fool he must be if ever he takes into his head not to ask for transfer of the case to some other tribunal or not to acquit the culprit totally. So, whatever the Europeans may have to say against the Bill, they cannot show any good cause for its condemnation, except the domineering race pride, or, as Mr. W. B. Jones says, the 'unreasonable class prejudice,' which cannot brook any idea of equality; but is such a pride to be encouraged? Does it not widen the gulf which we are trying to bridge over? Will it not keep the wound fresh which we want to heal up? The Government is bound to exonerate the integrity of Her Imperial Majesty's Proclamation of 1858. It is true that the Natives will not gain much by this concession. At the same time, it is also true that not the least harm will be done to the Europeans. It may do, I am afraid, some harm to the Natives. This new power may stand, to a certain extent, as a bar in the way of their promotion to a District Magistracy or a Sessions Judgeship; nay, some alarmists see a greater harm looming at a distance; they argue in this way, that, if the Government has broken the acknowledged privilege or personal law of their own countrymen, the Britons, like a straw, how can they be expected to maintain very long our own privileges and personal laws, which, though dear

to us, but often approach absurdity in the eyes of the advanced civilisation. Simply an incongruity will be removed. Our European brethren ought to have a little faith upon their European Governors, and to be sure that these Governors will never appoint any one Justice of the Peace unless they know him to be the fittest man before whom, if occasion arises, a European can stand to be judged. Hear what Sir Alfred Lyall says :—

No European officer is appointed to be a Justice of the Peace or Magistrate of a district or Sessions Judge, until he has been found to be, by experience and character, fitted to exercise the powers and perform the duties which are attached to these offices. During the period that ordinarily elapses before any officer can attain to the position of Magistrate of a district or Judge, or is appointed to be Justice of the Peace, ample opportunities are afforded of forming an opinion as to his qualifications for the offices in question ; and he is not appointed to them if he has shown himself to be unfit to perform the duties and exercise the powers belonging to them. The interests of the European British subjects and of the administration would be sufficiently provided for, if the general restriction, under which no one who is not himself an European British subject has jurisdiction over an European British subject, being removed, power be left with the Local Government to appoint Justices of the Peace those Native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The Local Government would then apply the test of personal fitness to each particular case for Native as well as for European members of the Covenanted Civil Service.'

“The worth of the argument or analogy brought forward by my hon'ble colleague, the learned Dr. Hunter, that, if so many privileges of the Natives have been destroyed, why not this privilege of the Britons also is to follow suit, I leave to your Excellency to judge. However, I do not know if the Britons also burnt their widows like the Hindús, or killed their infant daughters like them.

“Now, so far, whatever I have said, I have said as a representative of the Native community at large, and have echoed India's voice ; but, if your Excellency allow me to express my own individual opinion, may I ask whether this feeling, right or wrong, is to be totally derided and set at naught ? I would rather join with the Commissioner of Coorg in saying that ‘the provisions of the present law on criminal procedure, which limit jurisdiction to try, for criminal offences, European British subjects to persons who are themselves European British subjects, are wise, and should, for political reasons, be maintained.’ I would rather agree with the Hon'ble D. F. Carmichael in saying that ‘after all, there is such a thing as *privilege* ; this one is highly valued by those who possess it, and certainly does no harm to the Native population ; while its surrender would, in my opinion, cause great exasperation.’ I would rather coincide with the Hon'ble W. Hudleston in saying ‘that the proposed extension of jurisdiction would be impolitic, and is not expedient ; I am confident it would

raise an outcry that would aggravate race friction far more than the removal of the already existing disability attaching to a small number of officials would allay it.' I would rather side with the Right Hon'ble the Governor of Madras, on whom, if my memory does not fail me, almost the whole brunt of all the Parliamentary debate fell when he was Under Secretary for India under His Grace the Duke of Argyll, when he says such weighty words as 'it is perhaps a pity that a question was raised just now which affects so few people.' There is much truth in Sir James Stephen's remark that 'in countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law, the Hindu has his personal law. Women who, according to the custom of the country, ought not to appear in Court are excused from appearing in Court; Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? That whilst the English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim of absolute identity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with every distinction which race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinction.' I would rather allow the incongruity to remain untouched, at least for the present, as greater incongruities remain. For instance, a rich Bábú's European coachman can keep as many arms as he likes unchallenged; but the Bábú Sahib, or, if he is so fortunate as being dubbed with some title, his son and brother, have to go every year to the Magistrate's Court for the renewal of the license with his menial servants, and suffer all the indignities and annoyances inseparable from such a procedure. My countrymen (advanced and anglicised) will call me a traitor to my country. The Native newspapers will vilify me; but if the Hon'ble the Law Member is not afraid of the British lion, wagging his tail and roaring, why am I to care for the bellows of a few Indian sheep? However, for the present I only desire the Select Committee, when formed, to take both sides of the question into their serious consideration. It is possible that the Select Committee may add some more sugar to the pill. The Committee may think fit to strike off

section 2 altogether, or go further, and, striking off clauses (c) and (d) in section 1, change 'invested with the powers of a Magistrate of the first class' for 'District Magistrates or Cantonment Magistrates or Sessions Judges or equal to them in rank as Deputy Commissioners in Non-Regulation Provinces.' I reserve my vote in favour or against the Bill till it comes to that stage. This moment my head, under the dictates of prudence, is in its favour; but my heart—a true heart of a true Native, labouring under a sense of deep obligation and sincere respect to the British nation for all the good it has done to my dear country—is against it.

"Ignorant people—I mean ignorant of facts, though otherwise well educated—may charge me with flattery; but a life's experience cannot be forgotten. How much I value the goodwill of the European British subjects; how much I appreciate their services to the country, and how far I look to them for the protection of our life and property and the advancement of our welfare, the mention of one single incident, I think, will amply suffice. It was, if my memory does not fail me, the evening of the 4th June, 1857, when the alarm gun had been fired, all the non-combatant Europeans with their families had assembled in the mint at Benares. A few European gunners were blowing up on the parade some Native regiments of infantry and cavalry for refusing to lay down arms and mutinying. The time was critical. I was with the Governor General's Agent, Mr. Henry Carr Tucker, at the Mint. The runaway mutineers, many wounded and many with arms, were passing by the gate of the Mint towards the Burna Bridge. Not more than a dozen or two of the European soldiers were protecting the gate, pointing their guns towards the road. The hope of all of us was centred in them. Benares has a population of some two hundred thousand souls, but they all were utterly useless at the moment. The shops and houses were all closed, and the streets deserted. We were not so much afraid of the mutineers for our lives as of the city ruffians. The European soldiers were daily passing up the country by bullock-train, in batches, to join General Havelock's army. These few soldiers were detained from the preceding day's batch. That day's batch had not arrived. With what anxiety we were expecting it I have no words to describe; every moment was precious. We would have offered each soldier's weight in silver had they been procurable. Mr. Tucker thought that they might have been waylaid by the mutineers and wished me to ride down to Rájghát to look after them. How happy I felt when I saw there the bullock-carts full of European soldiers just arriving, I have again no words to describe. This handful of Europeans saved Benares. Such incidents can be multiplied by scores and hundreds. But I do not feel myself justified in further encroaching on your Excellency's valuable time."

The Hon'ble SIE STEUART BAYLEY said :—“ The motion before the Council is not one which, under ordinary circumstances, would require any expression of opinion from me ; but, owing to the course the discussion has taken, and to the direct personal appeal that has been made to me, I feel bound to express my own views on the subject. And, first, I think it is due to our colleague, Mr. Ilbert, that it should not be supposed that he is the prime mover and originator of the Bill. Those who have read the papers of the case must be aware that the Bill had its origin in a suggestion made in March last by the Government of Bengal, when Sir A. Eden was at the head of the Local Government. That suggestion was circulated in the ordinary way for the opinion of other Local Governments, and on finding that there was a general agreement among them as to the expediency of legislation, and that in this opinion the Secretary of State concurred, the duty of framing and introducing the Bill devolved, as a matter of official routine, on my hon'ble friend. I make these remarks, because much of the odium with which he has been assailed seems to be based on the supposition that the Bill is in its main principle the outcome of his own reforming zeal, whereas, whatever be the merits or demerits of that principle, the responsibility should in justice be far more widely distributed.

“ After the clear statement of the legal aspects of the case which we have heard from the member in charge of the Bill, I need not go over the same ground ; but I may say that the aspect in which I have all along regarded the Bill is, that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in District Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions in regard to Assistant Commissioners and Magistrates of the first class I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience ; and from this point of view the measure seems to me to be just and reasonable. Given the education which has enabled a Native to succeed in entering the Civil Service is not the fact of his having served with sufficient credit to be appointed to a District Magistracy or Sessions Judgeship,—a grade, be it remembered, that he cannot even temporarily reach till after an apprenticeship of some eleven or twelve years, and permanently not in less than eighteen years,—is not this as good a guarantee as can reasonably be desired of that man's fitness, honesty and practical ability ? and in that phrase I include, not merely natural ability, but the assimilation, by practice and study, of the full legal and juridical ideas

which guide our Courts. I think we have here all the guarantee that can reasonably be expected that the principles of our law will be properly applied, and this is all we have a right to demand. It seems to me that the exercise of these powers is the necessary corollary of the admission of Natives to the Civil Service. Practically, I hold that, when Government committed itself to the one step, it committed itself to the other; the question was only one of time, and the present Bill gives expression to that principle with as little alteration of existing arrangements, and with as careful a regard to the safety of the important interests concerned, as any Bill framed with this object could have attained. Before it can pass, however, the Bill will have to be criticised in ordinary course by the Local Governments (to whom only the preliminary principle of the Bill was referred in the first instance), and its working can be carefully examined and discussed, and the opinions of the Local Governments and their officers, as well as of others, will be fully weighed and considered before any action is taken. Now, there are two aspects from which the Bill is assailed. One is that Native gentlemen, no matter what their qualification, must be taught to remember that they are of a subject race, and, as such, unfit to try any members of the dominant race. On this argument I am unwilling to dwell. It has been developed into what our American cousins call 'spread-eagleism.' I have absolutely no sympathy with it, and the frequent recourse to such an argument is not creditable to our national character. But there is another aspect to the case of the opposition which I think deserves most attentive consideration; and this is the real danger in which the isolated European, living in the Mufassal, runs from having false cases trumped up against him. It is right that I should state publicly that this danger is a very real and very serious one; for, probably, no member of this Council has had the same experience as I have of the lives led by planters in the Mufassal. My own experience has given me a strong feeling on this matter, and anyone who knows the extreme bitterness with which disputes about land are fought out in the Mufassal, and the unscrupulous methods to which recourse is had in conducting these disputes before the Court,—methods to which a planter cannot have recourse,—will understand how precarious his position may become, and how essential to him it is that the law should be well and wisely administered. So far, then, as the argument against the Bill is based on a fear that these dangers are perceptibly increased, and that under the new Bill the law will be less well and less wisely administered than at present, I consider the objections deserve a most careful examination. As I have already said, my own opinion is that, in respect to Native Civilians who have reached the position of District Judge or District Magistrate, we have the best possible guarantee of their qualifications, and the other provisions of the Bill do not take effect *proprio vigore*, but merely give

Local Governments the power of selection in special cases. But I imagine that what has really excited the feelings of the European population in this matter is, not so much the actual extension of power contemplated in this Bill, but the apprehension that it is only a stepping-stone to a larger measure which would really do what many speakers and writers seem to think this Bill will do, namely, place all Europeans quoad jurisdiction exactly in the same position as Natives of the country. The actual scope of this Bill has been clearly explained by Mr. Ilbert, and, so far from its being a stepping-stone to a larger measure, I can certainly say for myself, and, I believe, for the Government of India at large, not only that there is no such intention, but that the proposal itself would be regarded as dangerous and uncalled-for. No, so far as we are concerned, what Mr. Ilbert said on the score of the finality of this Bill is, I know, strictly correct, and I hope that there may be no further misapprehension on this point.

“And now I have a few words to say in regard to the agitation which has sprung up in opposition to this measure. I confess that I failed to foresee either the extent or the depth of feeling which the measure has aroused among the European population; and it is only fair to add that I think the Viceroy had a clear right to expect from the Local Governments, or, in regard to Bengal, from myself, a more decided warning than he received of the spirit which the proposal would arouse. I cannot, looking at the evil effects which have ensued, and must ensue, from the agitation going on, but deeply regret that I failed to gauge accurately the feelings of the great body of my countrymen, and of even my many personal friends among the planting community. I confess I had hoped that twenty-five years had really done something to obliterate the feeling of race antagonism, of bitterness and hatred, which was familiar to us a quarter of a century ago. It seems that I was in error, and I deplore, as we all must deplore, the palpable evidence that I was mistaken. Nor am I prepared to say, in response to the challenge of my hon'ble friend Mr. Evans, that he has in any way exaggerated the depth and earnestness of the feeling which this Bill has evoked, or the probability of its continued ill effects. It is one thing, however, to oppose this measure on the ground that it threatens rights dear to Europeans, and that it jeopardises the liberty and property of the European community in the Mufassal. I believe the fear to be ill-founded, but at least the objections on this score deserve to be anxiously considered and to be treated with all respect. But when the ground is changed, and rhetorical appeals are made to race hatred; when bitterness and vituperation directed against the whole body of Native officials take the place of calm reasoning, then I say that those who employ these weapons incur a very serious responsibility. It is

by the use of these weapons that the old sore is re-opened and embittered, and that the healing influences of the past quarter of a century are nullified and destroyed in an hour. I have expressed my own regret that I did not foresee that this would take place, and I look forward with still deeper regret to the continuance of a state of things which by action and re-action must continue to keep the sore open. I wish it were in any way possible for the Government directly, and at once, to close the question one way or the other; but it is not easy to see how this can be done without incurring still more serious evils; and I can only hope that, so long as the question must remain open, it will be discussed candidly and fairly, without threats and without vituperation, with as little appeal as possible to the passions of race hatred and race contempt, and with the moderation which persons who really have reason on their side generally find to be the most successful weapon in their armoury. To such arguments the Government will give full and fair consideration."

Lieutenant-General the Hon'ble T. F. WILSON said:—"My Lord, with regard to the measure which is now before this Council, I occupy a position totally different from that of every other member of your Excellency's Government, inasmuch as I have alone, from the commencement of its consideration, been compelled by my convictions to take the very unusual course of opposing those with whom I have the honour to be associated. It will be within the recollection of your Excellency that I availed myself of the first opportunity I could of recording my dissent from the views of the other members of the Government. And on a later occasion, when the matter came under the discussion of the Government, I entered at some length into an explanation of the views which I entertained, and, with your Excellency's permission, my dissent from the recommendations made to the Secretary of State was duly recorded.

"It is not necessary for my immediate purpose that I should enter upon this occasion into any detailed explanation as to why I hold the opinion I do; it will suffice for the object I have in view, that I should honestly and frankly declare that the opinion which I held more than six months ago I maintain as strongly to-day. I am opposed to the measure that has been brought forward by the Government. But whilst sympathising with those who are anxious that this measure should not become law, and thus bring about the changes which the Bill will produce,—whilst sympathising with them, still I must, in the strongest manner I can, condemn the violent language which has been used towards the Government. I desire further to condemn, in the strongest terms I can command, the malicious and scandalous personal attacks which have been made upon my hon'ble colleagues, and more especially upon your Excellency the Viceroy, in your great and high position as the representative of

the Queen in India. Sympathising as I do with the opponents of the measure, and anxious as I am that the Bill should not become law, I must say that I hold in contempt many of the measures which have been resorted to in order to increase outside agitation. My Lord, there is no member of your Excellency's Government, there is not a person who is sitting round this table, who is more anxious and desirous than I am to receive outside criticism, for I think that, in these days of enlightenment and with the spread of education, the more the Government court publicity with regard to their intentions to alter the laws of the country, the better for the Government, and the better for those it governs; and when that criticism comes to us from a largely increasing population of Englishmen residing in the Presidency-towns, and others far away in remote districts of the country in pursuit of their several avocations, distinct, separate and independent of the Government,—I say, when such criticism and advice is presented to us through the medium of a temperate and discriminating Press,—it is indeed valuable, as making known to those who are entrusted with the government of the country, the wishes, the hopes, the fears, and all the general requirements of those who are committed to our charge; and it does something even more than this, for it, in some small degree, relieves those who are entrusted with high office of some of the heavy responsibilities which are inseparable from such position.

“The Government has been urged to-day, by several hon'ble members who have spoken, to withdraw this Bill. Now, I have considerable experience of the Government of India, for it has been my privilege to serve under eleven Viceroys and Governors General, and I have seen other cases, during that long period, when the Government have stood very much in the same position towards the British public of India as they stand to-day; but never have I seen such violence and unnecessary agitation as has been imported into the discussions on this measure; and I desire to say that, anxious as I am, in what I believe to be the interests of this vast country, that the proposed measure should not become law, still I am bound to add that, in my opinion, no Government ought to yield to the violence and hysterical excitement which now rages around us. In the presence of this it seems to me that there is but one course which Government can safely adopt, and that is to ascertain further the views and opinions of many more of the officials who are spread over the country. The time which this will occupy, will permit of passion cooling down, and we shall then be able to ascertain to a greater extent than we have already done the opinions of the various classes on the question now under consideration. These measures will enable those who like to change their opinions to do so, if further information should tend to that end.

“ My Lord, there is another feature in connection with this great controversy which has given me, individually, great pain ; because, if I am anything at all, I am a soldier in every feeling and idea ; and those feelings have been wounded by the miserable and pernicious advice which I have seen tendered by some irresponsible persons to the volunteers in India. It is known to your Lordship, and it is known to my hon’ble colleagues, that, as the head of the Military Department, I take a keen interest in the volunteers in India. But, apart from the official position I hold, it would be strange, indeed, if I were not a friend of the volunteers in this country. During by far the most eventful period of my life, I was closely associated with a body of volunteers, who took a prominent part in one of the most protracted and deadly struggles which has taken place during the past century, and they materially helped to write one of the most brilliant pages in our Indian military history. For these reasons I am, indeed, pained to read of the unpatriotic course which has been recommended to the volunteers. Can any volunteer in his senses suppose that his resignation, or that of any number of his comrades, will have any influence on this Council ? No. This Council will do as it has ever done. It will act fearlessly ; it will ascertain all the facts of the case ; it will seek further information, and it will decide as it thinks best for the interests of those who are committed to its care. But it has been said that the recommendation has been made with a view, not so much to embarrass or intimidate this Government, as to show to the House of Parliament in England the necessity of reversing hereafter any decision in favour of the measure which may be arrived at by the Indian Government. Now, if there is one thing which would rivet fast the whole thing, it would be procedure such as this. I cannot conceive anything more wild. But, my Lord, I hope that time will bring reflection, and that calmer, wiser and more patriotic counsels will prevail. I hope that the volunteers of India, mindful of those responsibilities which they have voluntarily taken upon themselves, will remain, as heretofore, faithful citizen soldiers of the Queen Empress of India.

“ In conclusion, I will only say that, as regards the measure which is now under consideration, I maintain, as I have always maintained, distinct opposition to it ; and, believing it to be impolitic, I hope it will not become law. To this extent I sympathise—I repeat, I sympathise—with those who hold similar views. Beyond this I cannot go, for I desire to separate myself from the unnecessary violence and agitation that has taken place outside this Council chamber.”

The Hon’ble MR. GIBBS said :—“ My Lord, it must be remembered that we are not now discussing or defending the principle of the Bill. That will form the subject of a future debate ; but as member in charge of the Home

Department, and, therefore, intimately connected with the general administration of justice in the Empire, it has been considered right for me to offer some explanation regarding the introduction of this measure, specially as it has, simple though it be, raised a perfect tempest among the European community.

“ In so doing, I fear I may repeat some of the arguments used by those who have preceded me, but this I cannot help, nor do I think in such an important matter it is to be regretted.

“ First, I think some explanation is required to show why the Government has remained silent up till now. The rules of this Council have been, as is well known to the members, recently amended with the object of giving greater publicity to measures. When leave for this Bill to be introduced was asked for, as the new rules were not in force, it could not be published, and, in consequence, the only way the Government could inform the public of its purport was by sending it by administrative order to the public newspapers. It has not yet been published in the *Gazette*, as my hon'ble and learned colleague's motion to-day shows; and, until this is done, no opinions of Local Governments and Administrations can be called for on it. Now, in accordance with the usual custom, such will be called for, and, when submitted, be laid before the Select Committee on the Bill. It is only, therefore, to-day that we have had the opportunity of saying anything about the matter. The opinions already published were invited, not on the Bill, but on a proposal submitted by the Government of Bengal, and which, as usual in such cases, was forwarded to the other Local Governments and Administrations for opinion, on receipt of which, as they were nearly unanimous in favour of the Bengal proposal, concurring as they did in the opinion so clearly given by Sir Ashley Eden in submitting his proposal to the Government of India (Bengal letter. 1411 T. of 30th March, 1882, paragraph 4), the Bill was drafted, and leave to introduce it applied for.

“ We have been accused of not consulting the present Lieutenant-Governor of Bengal. The fact is, the measure, as it came from Sir Ashley Eden, was couched in the usual terms, and was taken as the opinion of the Government of Bengal, and, as such, was, according to custom, sent to the other Local Governments and Administrations for an expression of their views.

“ The measure in itself is required for the furtherance of justice and the convenience of all parties. That sooner or later such a change would have to be made has long been foreseen, and I venture to think that the time has now come when, certainly as far as Sessions Judges and Magistrates of the district are concerned, the alteration is called for to meet the actual requirements of one part of the Empire, as well as the contemplated future requirements of

other parts. I will explain how this is so. At Kárwár, in the Bombay Presidency, there is now a Sessions Judge, Mr. Tagore, who was the first successful Native candidate for the Covenanted Civil Service, of which he has now for eighteen years been a member, and for some eight or more years he has exercised, with credit to himself, the duties of District Judge and Sessions Judge.

“Then, in the Bengal Presidency, there are four gentlemen of the Covenanted Civil Service rapidly approaching their promotion to be District Magistrates or Sessions Judges, one of whom, Mr. Dutt, was gazetted in Wednesday’s *Gazette* as promoted to the former grade.

“I have not obtained information as to the other divisions of the Empire, but I have, I consider, shown from the above that the time has come when a change should be made to render present and impending incumbents fitted for the full duties of their appointments; and the requirement is one of increasing importance, as year by year Native members of the Covenanted Civil Service will arrive at, or come nearer and nearer to, the appointments of Sessions Judge and District Magistrate. As regards the Natives themselves, it is a measure of simple justice, in so far that the policy which was laid down by the wisdom of Parliament a quarter of a century ago admitted Natives to the Covenanted Civil Service, and by so doing not only intended, but clearly made it manifest, that they should have therein the same powers as their European *confreeres*, which they will not have unless the law is amended. Surely, then, we cannot now, in the year 1883, be said to be pushing on a new measure ‘with indecent haste simply to please the Natives of the country.’ The entire general question is not now before us, but it has been one of long standing, from the time of Lord Macaulay to the present. In 1872 the latest step was taken. It is called ‘a compromise,’ not, so far as I can learn, a compromise between Natives and Europeans, but between the members of the then Government or, perhaps, of the Select Committee on the Bill; but even this showed that some change in the present direction was then felt to be required; and I remember, with reference to this, when a Judge of Her Majesty’s High Court at Bombay in 1870, I minuted in favour of such a change as is now proposed, basing my opinion mainly on the inconvenience of the law as it then stood. At that time there was no Native Civilian actually in a position to require such powers, whereas now the case is the reverse. Two officers actually require them, while others will do so very shortly; and surely any unbiased person would admit that the time has arisen for going beyond the ‘compromise’ of 1872.

“Let me explain more fully what I mean by the ‘inconvenience’ argument. Take Kárwár for example, where Mr. Tagore is Sessions Judge, in the

neighbourhood of which large railway-works are about being commenced. If a European commits a crime which requires more punishment than the District Magistrate can award, and which is three months' imprisonment and fine of Rs. 1,000, he must be committed to the Sessions Court, whose powers extend to one year's imprisonment and fine; but the Sessions Judge there could not try him, and an application would have to be made to the High Court to order his commitment elsewhere. He could thus be sent to Belgaum or Dhárwár, for example, each about 80 to 100 miles distant; this would be a troublesome journey at any time; but, for some months of the year, one generally dangerous to the health of all parties, Europeans especially. Surely this would be a matter of great inconvenience, not to say danger, expense and delay to all concerned.

"In the case of the District Magistracy, present arrangements also must cause great inconvenience. They are to some extent subversive of discipline by putting a junior officer by reason of his birth only, for one particular purpose, over the head of his superior in all other matters. No gentleman can arrive at the high position of Magistrate of the district under 10 to 12 years' service; and, considering that he would not even then be appointed to that post unless the Government thought him fitted for it (I have known European members of the Civil Service whom Government declined to place in such a position),—surely, I say, under these circumstances, the measure we propose is so far merely the natural and logical result of the policy which has been laid down for more than 25 years since Natives of India were first admitted into the Covenanted Civil Service of the State.

"From the extraordinary excitement which has been raised, a stranger would be led to suppose that the majority of the Europeans in India were constantly before the Criminal Courts in serious and intricate cases, whereas, so far as my own experience goes, there are very few cases in which Europeans come before them, and those of a simple nature—petty thefts or assaults.

"All cases in which one year's imprisonment does not suffice must now go to the High Court of the Province, and this Bill makes no alteration in this law. I fail, therefore, to find any reason why objection should be made, or why a 'European British subject' should not be tried by an officer who can now try any other European, be he French, German, Italian or otherwise, not to mention those Englishmen who are not what is technically called 'European British subjects,' or an American, who might be placed before him.

"I do not now stop to consider separately the Native members of the Civil Service appointed under 33 Victoria, for, while I have some doubts whether

they constitute a separate body, they are, when once admitted into the Service at the end of their term of probation, for all administrative purposes, members of the Covenanted Civil Service of India, equally with those who are appointed from home. I will, therefore, now proceed to consider the three classes of first class Magistrates on whom it is proposed that Government should confer the powers of a Justice of the Peace when necessary. These are—

“(a) Members of the Covenanted Civil Service ;

“(b) Assistant Commissioners in Non-Regulation Provinces ; or

“(c) Cantonment Magistrates.

“The proposed measure being intended to contain the entire law regarding the trial of Europeans in the Mufassal, as regards the powers to be given to the local officers, the Bill makes no difference between Europeans and Natives, just as it makes no distinction when it confers, by the previous section, Justice of the Peace powers ‘*ex-officio*’ on all Sessions Judges and District Magistrates. It, therefore, only differs from the present law by permitting Government to confer the powers of a Justice of the Peace on Native members of the classes I have named. As this power is only permissive, we are again thrown back on the questions of convenience and fitness to exercise the powers, and these must be left to the Local Governments to decide.

“Now, I will give an instance in point :—Take Calicut or any other large seaport on the coasts of India not being a Presidency-town. Unless Government have the power of appointing a Civilian of less standing than a Magistrate of the district to hear such cases, a captain who had a complaint to make against any of his crew might have to go some 60 miles for justice, leaving his ship lying in the roadstead in charge of a junior officer and a weakened crew, although there might be a Native Civilian on the spot as able and as capable of dealing with European crews and captains as is Mr. Dossabhoj Framjee in Bombay. Surely this is a case of inconvenience demanding a remedy.

“As regards Assistant Commissioners in Non-Regulation Provinces, the special provision is merely intended to be used to prevent inconvenience to the parties, and will probably be seldom resorted to ; while, as regards Cantonment Magistrates, they are, as a rule, European Military officers, and are merely included here to complete the law as to Justices of the Peace in the Mufassal.

“Having thus, I trust, shown that there are causes of an administrative character which call for the change in the law, I may, my Lord, express my inability, perhaps from being of a somewhat unsentimental disposition, and

preferring as a rule to be guided by common sense, to understand why all this commotion should have arisen about this measure—a measure which, even if the Bill became law to-morrow, and if the Local Governments were at once to confer on every Native gentleman of the classes mentioned in it the power of a Justice of the Peace—a course not at all probable,—would add but a very small number to the list of those who could try Europeans for petty offences in the Mufassal. From a return I called for, I find the entire number in the whole of India would be about twenty, while in Bengal *alone* there would be but nine, and all these members of the Civil Service.

“Much less can I understand why your Lordship should be looked upon as the leader of ‘an anomalous, unconstitutional and illegal confiscation of the chartered rights and privileges of Englishmen,’ or why my hon’ble and learned colleague, on whom the wrath of the European public seems to have fallen with redoubled violence, so much so that it was even suggested that he was not a worthy representative of the *alumni* of the two great English Universities, should be the victim of so much abuse, as if he alone, under your Lordship’s guidance, were the sole author of the proposal, and his colleagues, including myself, were no parties to the discussion which led to it.

“Neither can I understand why the European gentry of the City of Calcutta, who have for years been subject to the Court of a Native Magistrate who can pass on them heavier sentences than, should this Bill become law, could be passed by any Sessions Judge, much less a Magistrate, in the Mufassal, should now rise to prevent their neighbours on the opposite side of the Circular Road or other parts of the Mufassal from being placed, not on a par with them, but from being saved from some of the inconveniences and trouble and expense I have above alluded to.

“I am not sure that the great bulk of the European and Eurasian population of Bengal, who are most interested in this matter, know the meaning of the term ‘European British subject.’ It is a mere legal creation of the Indian Criminal Procedure Code; colour has nothing to do with it; a perfectly white person may not come within its definition, while a decidedly dark one may. It simply means that the person was either himself born in England, or that his father or grandfather, from whom he may be legitimately descended, was so born; but it goes no further. If the family has been settled for four generations in India, although father, grandfather and great-grandfather may have married European ladies, the representative of the fourth generation ceases to be a ‘European British subject’ within the meaning of the Procedure Code, and is amenable to all Criminal Courts presided over by Natives or Europeans,

as the case may be, exactly as any one of his Native fellow-subjects, or any European of another nationality.

“ And this, my Lord, brings me to the consideration of the articles in the Press, and the letters and speeches with which the daily newspapers have teemed during the last month or so. No one respects more than I do the right of any person or class of persons to bring forward their grievances and demand redress, and, therefore, I have read carefully this varied literature, to see what reasons it contained to lead me to the conclusion that the proposed measure was uncalled-for or could only be injurious ; but, my Lord, though I found in those letters and speeches and articles warm eloquence, much invective, more assertions, and some insinuations, I could find no reason to show that the view I took from the first as to the advisability of this step was wrong. I venture to think that, while all must admit the meeting of the 28th to have been an extraordinary expression of strong feeling, it was, like the articles and letters in the Press, confined to feeling only ; and when a cause appears supported mainly by invective instead of calm and dignified reasoning, its importance diminishes and its significance fades.

“ But we are bound, my Lord, to respect the feelings of all the races under our Government, though we are equally bound to analyse those feelings and to judge calmly and dispassionately of them, and to bear in mind that the other races may also have feelings to be equally consulted and respected ; and this we shall do most carefully when the reports and objections, which will doubtless be sent in during the next six months, come to be considered by the Governor General in Council.

“ My learned colleague has explained the legal effects of the proposed measure, and I have endeavoured to show that, while it is the logical outcome of the policy of the last quarter of a century, there are also causes of an administrative nature requiring its introduction ; and there I would leave it, merely adding that, although the Magna Charta has been freely alluded to, and the right which is supposed to belong to every British subject, of being tried by his peers, made the most of, I know not how the former can affect the matter, or where the latter right will be found granted to Europeans in India. In Calcutta it has long ceased, if it ever existed, and those very gentlemen who spoke so energetically about it have never possessed it ; so that I think the issue must be, as it ought to be, confined to the simple one of whether the measure is required for the due administration of justice or not ? And on this I have already shewn my reasons for holding that it is an alteration of the law which the circumstances of the time have rendered justifiable.”

His Excellency THE COMMANDER-IN-CHIEF said :—“ My Lord, I ask permission to say a few words on this occasion, because I have been challenged to give my free and unrestrained opinion on the policy of the Government, and because unworthy attempts have been made to intimidate me from doing my duty in regard to the matter before us.

“ At the outset I beg to say that, in dealing with the question of the proposed amendment of the Criminal Procedure Code, I confined myself entirely to the practical bearings of the case. The sorrows of Native officials, the symmetry of the law and philosophic theories have no special attraction for me, for I do not believe that the world can be ruled by logic alone. What I had to consider was this. Did the Government service require any change, and, if so, to what extent was change needed ?

“ I will say frankly that I should have been very glad if matters could have been left as they are. I have been long enough in India to have a very vivid recollection of the storm created by the so-called Black Act, and, having this before my mind, I proceeded to examine the question.

“ Well, having been satisfied by the representations of the Home Department that it was necessary to remove some of the disabilities of the Native Members of the Civil Service, who must sooner or later be appointed to the charge of districts or to be Sessions Judges, I made up my mind to support the proposals of the Government so far as they were applicable to these two offices, and to these only.

“ My reasons for going so far are these :—

“ Though the principle involved is, no doubt, a large one and of considerable importance, yet it must be patent to anyone who cares to look into the matter that its practical application must for a considerable time be small. I looked upon the change as a very tentative measure, which in its operation could be carefully watched, and which would, in a legitimate way, give us an opportunity of testing the merits and qualifications of this class of Civil Servants.

“ If, unfortunately, it should turn out that officers of this class could not be trusted with extended powers, the Government of the day would be obliged to reconsider the whole position, and perhaps retrace their steps. It is obvious that a Native Magistrate or Judge who exercised his functions in a tyrannical or unjust manner would not hold his office very long. Again, the proposed change seemed to me to be in the nature of what is called a permissive Bill.

The Supreme Government gives power to certain classes of its officers, but it cannot appoint these officers. It is only Local Governments that have the power of appointment, and we may rely on their not appointing to such offices any but men of the highest character and qualification; for the stronger sympathies of the Governors will naturally lie on the side of their own countrymen.

“In point of fact, I looked on the amendment of the law as a very safe experiment, and an experiment that might well be tried when its provisions would only apply to one or two individuals. I knew there would be opposition to any change, but I believed that, when my countrymen understood the case in all its bearings, they would see that it was a safe way of introducing a change which the bitterest of its opponents admit to be a question of time.

“That my expectations and forecast have been utterly wrong I freely admit, but I am not prepared to admit that the objections which have been put forward by those who oppose our proceedings are founded either on reason or common sense.

“I have hitherto attempted to restrict my observation to my own personal connexion with the measure under discussion, but there is one other point on which I have something to say. Very wicked and criminal attempts have, as you know, been made in some of the newspapers to excite animosity against the Government in the army. My Lord, I cannot trust myself to speak on proceedings of this nature. I am aware that the army may, and perhaps does, take a keen interest in a question that is engrossing the thoughts of the public; but I feel confident that the army knows its duty, and that it is thoroughly loyal to its Sovereign and to its salt.

“Soldiers have their feelings like other people—feelings that we all respect; but they also know that, if they have a grievance to redress, there is a legitimate way of putting it forward through their officers and those placed in authority over them. But what are we to say of persons who make use of such tactics in support of their arguments? They must, indeed, be in a bad way when they resort to such a course.

“It is possible that the reference to Cantonment Magistrates in the Bill may have misled people into the belief that the Government proposes to appoint Native Civilians to such offices. This would be an entire misapprehension.

“The following extract from a note which I received two days ago from the Secretary in the Legislative Department explains more clearly than I can why reference has been made to this class of officials in the Bill.

‘With regard to Cantonment Magistrates, they were put in because they would not ordinarily be Covenanted Civilians, Native Civilians or Assistant Commissioners, and it was thought

necessary that power should be given to appoint a Cantonment Magistrate, who would be almost certain to have to deal with European British subjects, a Justice of the Peace. Military officers who are Cantonment Magistrates can, under the present law (Act X of 1882, section 22), be appointed Justices of the Peace if they are, as I suppose they always are, European British subjects.'

"It will, then, be seen that the Government does not intend to make any real change in the system under which Cantonment Magistrates are usually military officers.

"If the reference to Cantonment Magistrates had not been made in the amendment, the effect would have been that any person, even a person who was not an European British subject, might have been made a Cantonment Magistrate, and it was to avoid this difficulty that the point was raised in this form."

His Honour THE LIEUTENANT-GOVERNOR said:—My Lord, I must apologise to the Council for being obliged to trouble them with a few remarks at this late hour, but the desire which I share with the other members of Council to hear the address of your Excellency compels me to be very brief. I feel, however, that I could scarcely remain silent, even if I wished to do so, after the several appeals which have been made in the course of the debate to the Government of Bengal, and after recent events which have testified in so prominent a manner the strong expression of public opinion in this City and the Province. At the same time, I confess, I feel I am in a position not altogether satisfactory regarding this proposed legislation; and if I had not received so late as yesterday evening from your Excellency an assurance that the motion now before the Council was of a purely formal character which pledged no one to the principle of the Bill, but, what is of more importance to me, that it is the intention of the Government of India to refer the Bill as drafted for the renewed consideration of Local Governments, I would not have hesitated to take this opportunity to state at length, and with such ability as I possess, the conviction which I entertain that this measure is unnecessary in the present condition and constitution of the Native Judicial Covenanted Service in Bengal, and that it is inopportune, having regard to the many claims which demand the most cordial relations between the Government and the European community in India. In saying that, I am not in an altogether satisfactory position, I allude to the fact to which reference has been made, that I have had no opportunity personally of consulting the officers of Government or recording my own views upon this change in the law; though at the same time I am aware that the Government of India had received from

Sir Ashley Eden a communication which favoured the view of withdrawing restrictions which now exist against Native Judges and Magistrates in the matter of the trial of European British subjects. Any defects or omissions in that respect will now be removed or remedied; and, as I shall have the opportunity of referring to the experienced officers of Government for their opinion, I think it the wiser and more appropriate course, and a course in which I am justified by the temper and excitement around us, if I reserve my own judgment till I have received those opinions. Whatever value may attach to my own views of the question—and those views I will say have not been formed or expressed only recently—they may be modified, or they may be removed, or they may be strengthened by the result of the inquiry. But whatever the result may be, they shall be communicated to your Excellency's Government with the utmost unreserve. Ample and exhaustive as was the speech of my hon'ble and learned friend Mr. Evans, with a great deal of which I sympathise, there are a great many facts which I could bring forward to support his contention that there is no administrative difficulty in connexion with the matter, and I should have been inclined to challenge more strongly than he did the competency of the Native to try European British subjects. But this is not the occasion on which I shall press those views. It is right, however, that, before I conclude my remarks, I should say a few words as regards the attitude of resentment which has characterised the public meetings and public utterances in connexion with this Bill. No man could deprecate more strongly and earnestly than myself the wild, extravagant and very dangerous sentiments to which the excitement round about us has given occasion. And I am sure no Englishman, Scotchman, or even Irishman, in his lucid moments, will think that the cause he advocates will be advanced or promoted by the threats levelled at the Government by certain writers and comments in the Press. If the Bill is not to be withdrawn—and this suggestion has come from a good many quarters—I sincerely trust the suspension of the measure for some months will induce a calmer judgment. No Government can deal with legislation, or with the withdrawal of legislation, in the presence of a popular phrenzy. Still I shall be wanting in my duty if I failed to press on the Government that I hope that, in their absence from personal contact with the public feeling, they will not allow themselves to think that the calm which I hope will supervene is an indication of apathy or indifference. If it be the opinion of the Government of India that this is a case of temporary excitement, which will soon die out, I am sure they are mistaken; for I feel that, in the whole of my experience in India, this is unmistakably the strongest and most united and unanimous expression of opinion of public discontent that I have ever known, and that the last state will be worse than the first.

I could wish for myself that the Bill could be withdrawn, and I do so, not only for myself, but as expressing the opinion of a great many who have spoken to me on the subject, even though they support the principle of the Bill. I believe that such difficulties happen to all Governments, and that the oldest and most English course is the wisest and safest. It is in the knowledge of all of us that such a course has been adopted in many cases, in our home Parliamentary experience, and it has not unseldom been the case also in India; and, if I may venture to allude to the fact, I think your Lordship's reputation in this country as a Viceroy, who has endeavoured earnestly and honestly to promote the political and educational development of the people, will not be affected if you see your way to withdraw the Bill."

His Excellency THE PRESIDENT said:—"I am very sorry that I should feel it my duty to detain the members of this Council yet a while after the lengthened and able discussion to which we have listened for so many hours; but I feel bound to make some statement, before this discussion closes, of the grounds upon which the Government have proceeded in introducing this Bill, and to explain the reasons which led them to think that it was a right and a reasonable measure. The observations which I wish to make now will be, as far as possible, of a strictly practical character. I do not intend or desire to enter into needless controversy, for I wish to reserve to myself the freedom carefully to weigh and consider the arguments which have been adduced in the course of this debate on both sides of the question at issue. It has been to me a source of regret that I have not had an opportunity before to-day of explaining the course which the Government has pursued; but that I have not had an earlier opportunity of doing so has not been my fault. It was the intention of the Government to have taken a discussion upon this Bill upon the 23rd of February. We never had the least intention of hurrying this measure through the Council, or of proceeding with it further than the stage which I described when it was brought in as the second reading stage during the present Calcutta season; but we did propose, and it was necessary that we should propose, as the rules stood when this Bill was brought in, that it should have been referred to a Select Committee before we left here, with a view to its being afterwards circulated and published as the rules required. But when my honourable friends Mr. Evans and Mr. Miller became acquainted with the intention of the Government to take a further stage of this Bill on the 23rd of February, they represented that they were somewhat taken by surprise by that proposal. Not that I understood them to make any complaint of want of good faith on the part of the Government; but they urged that they did not expect any such discussion to come on on that date. In consequence of those representations, I had an

interview with my hon'ble and learned friend Mr. Evans, on the 19th of February, and I then said to him that I was anxious that this discussion should take place, because I felt that it was only fair to the Government that they should have an early opportunity of explaining at greater length than had been explained by my hon'ble and learned friend Mr. Ilbert, when he brought in this Bill, the objects of this measure, and the reasons which had induced them to submit it to this Council. I said to my hon'ble and learned friend, Mr. Evans—' You may perhaps object to a discussion in the nature of a second reading, but it is possible for us, under the present rules, to take a formal discussion upon a reference of this Bill to Local Governments ; that would afford a sufficient opportunity for the statement that I propose to make, and would not involve a discussion upon the principle of the Bill.' My hon'ble and learned friend took time to consider whether he could agree to that proposal or whether he must adhere to the objection previously urged on his own behalf and on that of Mr. Miller to the discussion on the date proposed, and on the next day he informed me that he could not waive that objection. I then had to choose between putting my hon'ble and learned friend and Mr. Miller at some disadvantage, and putting myself and the Government at some disadvantage. I chose the latter alternative. It has been one of the many accusations made against the Government, that they delayed a farther explanation on this subject: those who have used that argument will now have an opportunity of judging of the justice of their charge. I may as well also say, as my hon'ble and learned friend is here, and will bear me out, that, when I saw him on the 19th of February, I explained to him that the Government had no intention of passing the Bill during the present session ; to that my hon'ble and learned friend assented. I was, therefore, somewhat surprised when I saw next day a statement in Reuter's telegram, that something had been said in the House of Commons, which appeared to imply that this measure was going to be pressed forward now ; and I immediately explained to the Secretary of State that that statement was not correct. It was founded on an entire misapprehension of the intentions of the Government. It would have been totally inconsistent with the declared policy of the present Government of India, if they had thought of unduly pressing forward this measure, and of not affording the fullest opportunity to the public and those interested in the matter to consider it. My hon'ble friend Mr. Miller touched upon that point, and he seemed, I thought, somewhat to complain that the public had not been consulted in this case in the manner in which we professed to consult them in respect to our legislative measures. Now, that charge—if it was meant as a charge—is founded on a mistake. The Government never professed that they would submit their Bills to the public before being brought in. No Government ever did or could do such a thing. All that we said was that,

when our measures were brought in and published, the public should have the fullest opportunity of considering them; and that we ourselves desired to consider any representations which might be made to us upon any proposals for legislation which we might so submit. To that course we have strictly adhered in this case, and have acted in perfect and absolute accordance with all our professions in respect to giving the public full time to consider our legislative proposals.

“ I thought it necessary to make these observations, in order to clear away some misapprehensions and misrepresentations which have surrounded this matter for some time.

“ And now I will proceed to state very briefly the history of this transaction. Something was said upon the occasion of the introduction of this Bill by Sir Jotindra Mohan Tagore about an undertaking which had been given him last year to the effect that this subject would be considered by the Government of India. What took place on that occasion was this. When the Criminal Procedure Code was before the Council last year, one of my hon'ble colleagues,—I cannot exactly remember which,—who was a member of the Select Committee on that Bill, came to me and said that Maharájâ Jotindra Mohan Tagore had told the Select Committee that he intended to raise the question of the powers of Native Magistrates to exercise jurisdiction over European British subjects. That was at a time when the Bill had nearly reached its last stage, and my hon'ble colleague said, with perfect justice, that it would be entirely impossible to take up a question of such magnitude upon that stage of the Bill; and he said to me—‘ I think, if you were to speak to the Maharájâ and tell him that, if he did not bring this matter forward now, the question would be considered by the Government, he probably would not press his notice of amendment.’ I replied ‘ I will consult my colleagues’; and I did consult the members of the Executive Government at that time, and it was with their full consent that I told Maharájâ Jotindra Mohan Tagore that the subject in which he was interested should receive the full consideration of the Government. Of course, by so saying, I gave no pledge whatever to the Maharájâ as to what would be the decision at which the Government would ultimately arrive. All that I did say was—and that promise I and my colleagues intended to keep—that we would consider this question after the new Criminal Procedure Code had passed. But, before we had taken any steps whatever to fulfil that pledge, we received from Sir Ashley Eden a letter which is contained in these papers, and that letter winds up as the summary of the opinion of Sir Ashley Eden with these words:—

‘ For these reasons Sir Ashley Eden is of opinion that the time has now arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their

powers as are imposed on them by Chapter XXXIII of the new Code of Criminal Procedure, or when at least Native Covenanted Civilians who have attained the position of District Magistrate or Sessions Judge should have entrusted to them full powers over all classes, whether European or Native, within their jurisdictions.'

"That opinion was expressed to us by the Lieutenant-Governor of Bengal; it was a clear and distinct opinion. There is not one word in Mr. Cockerell's letter from which I have quoted which indicated any probability that a proposal of that kind would be received, I will not say with resentment, but even with disapproval by any portion of the community. Now, it is not necessary that I should recall to the recollection of this Council who was the person who made that recommendation. You all know that Sir Ashley Eden had been for five years Lieutenant-Governor of Bengal; you all know that he was a man of large experience, and that he was intimately acquainted with the feelings of the European population; and certainly there was ample proof that he had their respect and confidence in the remarkable ovations which he received just before he left the country. Sir Ashley Eden did not accompany that letter by any other communications upon the subject, and, therefore, I had no doubt whatever that it contained his deliberate opinion and advice to the Government of India. My hon'ble and learned friend Mr. Evans says that Sir Ashley Eden only wanted to put his opinion on record; and he did not at all mean that anything should be done about it now. He only desired to say what he should like to see done at some future opportunity. But, in the first place, he says distinctly, in the summing-up of his letter,—'the time has now arrived for the change,' and, in the next place, it must be borne in mind that, if Sir Ashley Eden did not mean that the question should be taken up at an early date upon his proposal, he had a perfect opportunity of saying so; because, by a singular coincidence, marking the high respect entertained for that distinguished man by Her Majesty's Government, he went straight from the Government of Bengal to the Council of the Secretary of State at home; he was a member of that Council when our proposals were submitted to and sanctioned by the Secretary of State; and, therefore, if we had misinterpreted his views as my hon'ble and learned friend appears to think, or, if we had acted hastily on his opinion, he would undoubtedly have said so; and I cannot for a moment think that my noble friend Lord Hartington would not have communicated the fact to me: he did not do so. I should like to say one other word about Sir Ashley Eden. In the earlier stages of this controversy, before a large number of persons took to using strong language, they used language of a milder kind, and they talked about this Bill as an ideal and sentimental measure. Now, I must say that, if ever I came across a man in my life who was

not remarkable for the sentimental side to his character, that man was Sir Ashley Eden. I do not think that I ever knew a man less likely to be led away by vague sentiment or mere theory than Sir Ashley Eden. Then, what did Government do? If they had been so very keen to carry out this proposal; if they had been so very ready to proceed rashly in this matter, they would have had a very fair ground for acting at once, in the mere fact that a man so experienced as Sir Ashley Eden had recommended them to take that action. But they did nothing of the kind; they consulted the Local Governments on the subject, and the opinions of those Local Governments are before this Council. I have heard it said that those Local Governments felt themselves bound to give opinions which they thought would be agreeable to the Government of India. Well, really, it is needless on behalf of the Local Governments that we consulted—of men so eminent as those who fill the office of heads of those Governments—for me to reply to a charge of that description. The question was very carefully considered by those Governments, and their opinions are, with the single exception of the Local Government of Coorg, in favour of amending the present law. It is quite true that the Government of Madras were divided among themselves, and that the opinion given in favour of the Bill was only decided by the casting vote of the Governor of that Presidency. It is also true that another gentleman, Mr. Howell, has given an opinion which, if not absolutely clear, must on the whole be regarded as unfavourable to this proposal, but he reported as Commissioner of the Birárs to the Resident at Haidarábád, who advocated the principle of this Bill; and, therefore, I am strictly correct in saying that all Local Governments, with the exception of Coorg, were in favour of an alteration of the law. My hon'ble and learned friend Mr. Evans said that the only Local Government that is really concerned with this question at all is the Government of Bengal. But it was the Government of Bengal which started the question. I do not observe, however, that the European community in other parts of India appear inclined to admit that they have nothing to do with this subject; and I venture to think that all Local Governments have an interest in this matter, and are entitled to speak upon it. Can it be supposed that those distinguished men—many of them personal friends of my own—who are at the head of Local Governments; if they had anticipated—I will not say danger, but—serious inconvenience, would not have advised me privately that this was a measure that ought not to be pressed forward? There are, doubtless, in these papers differences of opinion between different Local Governments, as to the extent to which this measure should go; just as there have been differences among members of the Executive Council on the same subject. My hon'ble and gallant friend the Commander-in-Chief says that, though he supports the measure, he would confine it to District Magistrates and Sessions

Judges. Sir Charles Aitchison, on the other hand, went further than any other head of a Local Government ; and the measure as produced and brought forward by the Government of India is one which has struck a mean between these different proposals and which, on the one hand, does not go so far as Sir Charles Aitchison recommended, and, on the other, goes somewhat further than the recommendations of some other Local Governments. Indeed, as a matter of fact, the measure was drawn up mainly in accordance with the amendments of the Code suggested in Sir Alfred Lyall's letter. Now, what was the next step taken with regard to this question ? The next step taken was that the Government of India sent a despatch to the Secretary of State, Lord Hartington, last September, containing their proposals and forwarding the papers now before the Council. Lord Hartington must have received that letter late in September. It was upon the 7th of December that, in an answer to that letter, he stated that he had very carefully considered our proposals in Council, and that he gave them his sanction. My hon'ble and learned friend Mr. Evans alluded to the fact that this circular to Local Governments was not sent to the Government of Bengal. The course taken on the occasion was in accordance with the practice generally pursued ; and it is a perfectly reasonable and intelligible practice, followed by all the departments of the Government of India, that, when one Local Government originates a proposal on which the Government desires to consult other Local Governments, the original proposal is sent round to those Governments, but not sent back to the Government from which it, in the first instance, emanated. The Bill was prepared and drafted in strict accordance with the proposals sanctioned by the Secretary of State. Leave was given to introduce it on the 2nd of February. It was brought in on the 9th of February ; and the papers, containing the opinions of Local Governments, were circulated to members of Council and given to the public at the earliest possible opportunity. I believe I am right in saying that they were circulated to members of Council on the 12th February.

“That is the history of this transaction up to the introduction of the Bill. And I turn now to consider what was the state of things in respect to the position of Natives of India in the Civil Service of the Crown, with which we had to deal. I am dealing now solely with the case of the Covenanted Civil Servants. I leave aside the question of the non-regulation Provinces, which is not material to the present argument. I say nothing of Cantonment Magistrates, because my hon'ble and gallant friend the Commander-in-Chief has explained that Cantonment Magistrates are almost invariably military officers, and that no Native gentlemen are likely to be appointed to positions of that kind. The question, therefore, we have to consider here relates to the Native members of the

Covenanted Civil Service, because it must be borne in mind that, although, in departmental practice, it has been the custom to describe the members of the Covenanted Civil Service admitted under Lord Lytton's rules as members serving under the statutory rules, they are under those rules themselves—rules approved by the Secretary of State, Lord Cranbrook, and laid before Parliament—admitted to employment in Her Majesty's Covenanted Civil Service. These are the words of the rule as sanctioned by the Secretary of State and by Parliament; and, therefore, the persons with whom we have to deal are the members of the Covenanted Civil Service. Our proposal, I would just point out, is a very much narrower one than that which was made in the year 1857, and to which Mr. Evans alluded. In that year there were no Native members of the Covenanted Civil Service. The proposal of 1857 would have subjected European British subjects to the jurisdiction of all the Mufassal Courts of every grade. The present Bill does not go nearly so far. Well, what is the state of things with which we have to deal now? I have said that in 1857 there were no Native members of the Civil Service at all. They have come in since;—first, by competition, having gone home and competed on equal terms with Englishmen, Irishmen and Scotchmen, and won their way in that competition into the Civil Service; and recently under the new system inaugurated in the time of Lord Lytton. The time has now arrived when some of these gentlemen have risen to high judicial positions. Mr. Tagore is one, and I have been informed that Mr. Dutt has also been raised to a similar office. Therefore, they are now beginning to reach these positions, and the number of those who fill such appointments must gradually and steadily increase. Mr. Miller asks in what have the times changed since 1872? They have changed in this respect, that some of these Native gentlemen have acquired these important positions, and others will go on rising to them in increasing numbers in coming years. But the great change which has taken place in regard to this question from an administrative point of view has been that which was made by Lord Lytton's Government in 1879. That change was made by the express order of the Government at home: indeed, after the reiterated orders of successive Secretaries of State. I am not about to express any opinion as to the mode in which these gentlemen are now admitted into the Covenanted Civil Service under the rules of 1879. It may be that these rules can be improved. Nothing is more probable than that experience may show that they are capable of amendment. But what we have to consider is, what is the position in which these rules place the gentlemen admitted under them? and what will be the effect of them as time goes on? These gentlemen will rise in the Covenanted Service year by year, and they will be entitled to hold higher and higher offices as they advance, until ultimately they will attain to the highest judicial offices below the High Court.

Now, it has been contended that the Local Governments, when they spoke of Covenanted Civilians, only meant those who had got in by competition. I have no reason to suppose that that is the case with any of the opinions which have been expressed, because the words 'Covenanted Civil Service' cover all the members of that Service. The Hon'ble Mr. Evans quoted Mr. Elliott, the Chief Commissioner of Assam, and he said that Mr. Elliott only proposed that these powers should be conferred upon persons who had got into the Covenanted Service by competition. Mr. Elliott no doubt drew a distinction between the two classes; but he said that he would extend the powers to the second class when they became District Magistrates or Sessions Judges. Now, it seems clear to me that, as these gentlemen in the Civil Service rise to the higher appointments, especially to the appointments of District Magistrates and Sessions Judges, increasing administrative inconvenience must ensue unless these additional powers are conferred on them. If they are to hold these offices, it appears to me that inconvenience of a serious kind must arise as time goes on; indeed, I shall have to show that it has arisen already. The Hon'ble Mr. Evans has said that what we ought to do is to give the best justice we can to everyone in the country without giving rise to administrative inconvenience. I entirely concur in that opinion, and I say administrative inconvenience has already begun to be felt, and it will increase. That being the state of things with which we had to deal, some of these gentlemen being already in high administrative positions, and a still larger number coming on from below, we felt it our duty to see in what way we could best remove this administrative inconvenience, and, I must also say, the injustice to suitors which would be caused by dragging them long distances over the country.

"I turn to consider what is the scope of the Bill. I have shown you that the extent of our Bill is very much less than that of the Bill of 1857. It is very much less than that of the Bill brought in by Lord Dalhousie's Government in 1849. We have confined it to the strict necessities of the case, and the result of it would be that, if it were passed to-day, it would at once confer jurisdiction over European British subjects upon only two persons in India; and the number who would rise to that position during the next few years might not exceed four or five. That statement supplies, as it seems to me, the strongest argument against the proposal of the Government. It is said, why do this now when it will only affect Mr. Tagore and Mr. Dutt? Why do this now, when, if there is administrative inconvenience, it is only in one or two places? and I admit that I am bound to meet that objection, and to explain why the Government think that this is a convenient opportunity for making the change.

"But, before I do so, I must point out that, of course, that argument cuts

both ways. If the scope of the Bill is so very small, then it seems not altogether reasonable that it should have been encountered by such violent opposition. In stating the reasons why it appears to me to be desirable to make this change now, rather than to postpone it until the appointment of a much larger number of these gentlemen to high judicial positions, I desire to deal with this question strictly from a practical point of view. I am not going upon this occasion to enter into any examination whatever of any claims which these Native gentlemen may have to exercise this jurisdiction; but, at the same time, I cannot but ask members of this Council to consider whether—I do not speak now of justice or generosity—it is politic, if there be not an overwhelming necessity, for us to impose on these gentlemen restrictions which sensitive men would naturally feel? These men, it must be admitted, are the pick and cream of our Native Civil Service; those who are now in this position, or are about to enter into it, have won their way through a keen competition at home, and secured their position through their own ability. Under Lord Lytton's system, by which, for the future, at least one-sixth of the whole Covenanted Service will in course of time consist of Natives, we shall have to rely more and more, year by year, on the devotion and loyalty of these gentlemen. I think the question of policy is not undeserving of the consideration of this Council; but I pass from it to the practical question. My hon'ble friend Mr. Gibbs has shown you to-night that the idea that administrative inconvenience may arise is not an imagination or a theory; he has pointed out to you what are the circumstances in regard to Mr. Tagore, the Sessions Judge of Kárwár; and he has explained that, if certain railway works which, he says, are likely to commence there are opened, they will bring European British subjects in considerable numbers into that district. If these persons are not tried by the Sessions Judge, they will either have to be sent by sea to Bombay, or have to march 80 or a 100 miles through a district which at many times of the year is very injurious to health. This constitutes a real administrative inconvenience, and it implies, not only an inconvenience to the administration of justice, but also a considerable hardship to the suitors and witnesses concerned. And it is surely clear that, though there is not at the present moment an irresistible necessity for introducing this measure, as Lord Lytton's system develops an irresistible necessity will arise. When you have one-sixth of the Civil Service composed of Natives, it will be impossible to maintain the present restriction. Therefore, what we had to consider was—is it better to wait until this necessity becomes overwhelming and irresistible, or is it better to introduce the system now? I confess it appears to me that it is far wiser, and far more in the true and substantial interests of those over whom this jurisdiction is exercised, that it should be introduced now, when the persons who would obtain the powers are very limited

in number; when the circumstances under which they enter the Civil Service insure their ability and character; and when all their proceedings can be carefully watched. Being few in number, it will be easier now than afterwards for the attention of the Local Governments and the public to be directed to their proceedings; and, being the men they are, it seems to me that they would be likely to set a good example and give a good tone to those who come after them. I hold it, therefore, to be wiser to introduce the measure now gradually, cautiously and tentatively, than to wait till the change is forced upon us by necessity, and the powers which are now to be given only to a few men have to be given suddenly to a very much larger number of Native Civil Servants. This is the ground upon which I thought that the time had come when this change could best be made. The truth is, that the opposition to this Bill is in reality, not so much an opposition to this particular measure, as an opposition to the declared policy of Parliament about the admission of Natives to the Covenanted Civil Service. That policy has been a deliberate policy; it commenced many years ago, and has been enforced steadily from time to time. It is not a policy of my invention or of the invention of the present Government at home or here; it is the policy of Parliament. What does Lord Cranbrook say upon that subject, writing to Lord Lytton's Government on the 7th of November, 1878? He says—

‘The broad policy was laid down by Parliament so long ago as 1833, that no Native shall, by reason of his religion, place of birth or colour, be disabled from holding any office; and Her Majesty's gracious proclamation in 1858 announced her will that, as far as may be, ‘our subjects of whatever race or creed be impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge.’

—“ And he goes on to say—

‘Since that period several of my predecessors in office, and especially Lord Halifax, Sir Stafford Northcote, the Duke of Argyll and Lord Salisbury, have pressed upon the attention of the Government of India that the policy of Parliament, enforced as it was by the Royal proclamation; was not to remain a dead-letter, and two Acts of Parliament were passed to give further effect to it. But, as your Excellency justly observes, all endeavours hitherto to deal with this question on a satisfactory basis have proved unsuccessful. It is gratifying to observe that your Lordship's elaborate treatment of the subject will enable a practical course to be taken, that will prove, it may be hoped, both beneficial to the State and satisfactory to the natural aspirations of the educated Natives of India.’

“That is said, not by me, but by Lord Cranbrook; and I cannot doubt that, if that policy is now applied under the rules laid down by Lord Lytton's Government in 1879, and is carried out as he proposed, an alteration of the

law in the direction in which this Bill goes is inevitable at no distant time. The Government of India have not the power, if they had the inclination, which certainly I have not, to withdraw from that policy; and Lord Cranbrook very distinctly tells us that, in his judgment, Parliament will not withdraw from it. Lord Lytton's original proposal was that, when he established a separate Native Service, permission to Natives to compete for the Civil Service in England should be withdrawn. What Lord Cranbrook says on that subject is this—

‘But your proposal of a close Native Service, with a limited class of high appointments attached to it, and your suggestions that the Covenanted Civil Service should no longer be open to Natives, involve an application to Parliament which would have no prospect of success, and which I certainly would not undertake. Your Lordship has yourself observed that no scheme could have a chance of sanction which included legislation for the purpose of repealing the clause in the Act of 1833 above quoted; and the obstacles which would be presented against any attempt to exclude Natives from public competition for the Civil Service would be little less formidable.’

“Therefore, it appears to me to be evident that the intention of Parliament has been to admit Natives more and more largely into the Covenanted Service; that steps were taken in 1879, after a considerable delay and frequent injunctions from the Secretary of State, to carry out that intention more fully; and that the result has been, as I have stated, that we have now to deal with a state of things in which, before many years have elapsed, it will be, as I have said, simply impossible, on account of administrative inconvenience, to withhold powers of this description from the higher ranks of the Covenanted Native Service. The Hon'ble Mr. Evans has said that he could not admit the force of the argument that because Presidency Magistrates had power to try Europeans, therefore, similar powers should be given to Native Magistrates in the Mufassal. I admit a considerable portion of the argument of my hon'ble friend, but he must allow me to say that the fact that Natives of India have been trying Europeans for a considerable number of years in Calcutta and Bombay is a conclusive argument against the theory that Englishmen have a constitutional right to be tried by Englishmen only. No one is more convinced than I am of the advantage of having a case argued before a Magistrate by trained lawyers; and I would not for a moment think of underrating its importance. Nevertheless, I was rather struck with what I saw in a Bombay newspaper this morning. It certainly did seem rather curious, after all that has been said on this subject, to find that certain European gentlemen, composing what is called the Salvation Army, are being tried at this moment in Bombay by Mr. Dossabhoy Framjee. Their religious feelings are very intimately involved in the case which is being tried by that Native Magistrate. I did not intend to have said anything about the past history of this question, because, as I have mentioned before, my main

object has been to explain the reasons which have induced the Government to bring in this Bill. But Mr. Evans has spoken with personal knowledge of what was called the compromise of 1872. On that point I would say this. There may have been a compromise between the members of the European community and the members of the Select Committee. Of that I know nothing, although I have not the least doubt that the Hon'ble Mr. Evans has stated exactly what occurred; but it is perfectly obvious that that compromise cannot have been a compromise with the Government; because, if it had been, then Lord Napier of Merchistoun, Lord Napier of Magdala, Sir Richard Temple, Sir George Campbell and Mr. Barrow Ellis could never for a moment have given their support to an amendment inconsistent with it. My hon'ble friend Mr. Ilbert, in the speech with which he commenced this discussion, pointed out that all the safeguards now possessed by Europeans, and all the special privileges now enjoyed by them, were left standing by this Bill, except the single one of being exempted from the jurisdiction of Magistrates who are not European British subjects. This Bill does not touch the rest of these safeguards; and the Government has not the least intention of submitting any proposals now or hereafter, certainly not as long as I am here, with the view of interfering with those privileges. But there is another matter which I look upon as in some respects a more important safeguard, and that is the power of supervision exercised by the High Court over all the Courts below. What would be the result if a Native Magistrate trying an European acted towards him in an unjust manner? If the case came before the High Court, or if they even heard of it, they would be able to call for the proceedings, and the consequence would be to deprive that gentleman of the position which he might have so abused. That is the history of this measure, and of the grounds upon which it was introduced, and of the extent to which it goes. I know very well that a great deal has been said, as is always said when changes are introduced, about this being the thin end of the wedge. I can only say that, so far as this question is concerned, it is not the thin end of the wedge, and that this measure represents the final views of the present Government in respect to changes regarding this portion of the Criminal Procedure Code. Passing from the history of the course we have taken and the motives which have actuated us, I may now state that we are perfectly ready to listen to reasonable remonstrances, to statements of fact and to legitimate arguments. But neither this nor any other Government that will ever exist in India will, I hope, listen to violence, to exaggeration, to misrepresentation and, least of all, to menace. It is perfectly natural that those whose interests are affected by this Bill, that those who would lose under it a privilege to which they evidently attach a great value, should bring their views on the subject before the Government, and should press them earnestly upon their attention. I should be the last man to

complain of that being done, and I should be the last man not to give to such representations the fullest and most careful consideration; and those who are animated by the dread, which has been expressed in many quarters, of the results of this measure, may rely upon it that a fair representation of their opinions, supported by good arguments, will be listened to with the greatest attention. It is, of course, true that in this, as in every other, question with which the Government of India has to deal, it is obliged to take a wider view than that confined exclusively to the interest of any single class of the community; but it is also true that any special class of the community, which is specially affected by any particular measure, has a right to bring its views before the Government, and to expect that those views will be fully and carefully examined. I will not allude on this occasion to the character of a great deal of the opposition which has sprung up to this Bill, or to the means by which that opposition has been to a great extent conducted; I will say nothing of the charges which have been made against myself, or of the systematic misrepresentation of my feelings and objects in regard to this and other measures. I pass that by; but I can truly say that it is a source of deep regret to me and all my colleagues to observe the difference which has in this matter sprung up between the Government and, I admit, a very large portion of the European community, especially on this side of India. I do not know whether anything that I can say will tend to mitigate the bitterness of the controversy or to induce calmness; but if the vehemence of feeling is due in any degree to a misapprehension as to the scope of the Bill or the course which the Government intended to pursue in regard to it, or to a fear that we have ulterior designs which we never have entertained, then it is possible that this discussion may have done good. It is only right that it should be remembered that the Government never had the smallest idea of hurrying this Bill through the Council. They proposed to deal with it deliberately, and to afford the amplest opportunity for the representation of opinion in regard to it. It will be observed that it was before any such representations had reached the Government, and, therefore, before it had been in their power to consider them, that the proceedings which have been adverted to were adopted. This Bill will now, in accordance with the usual practice, be sent to the various Local Governments, and they will have an opportunity of recording their views upon it. These views will be sent up in due course, after careful examination by the Local Governments into all the circumstances of the case, for the consideration of the Government of India; and we shall then give to the observations of the Local Governments and of the public which may have reached us in the meantime, the fullest weight and the most deliberate consideration. I frankly say that with those who desire, if any such there be, to retain the distinction which this Bill proposes to remove, merely

because it is a race distinction, I have no sympathy whatever. To arguments which are inconsistent with the declared policy of the Crown and of Parliament it would be contrary to my duty to listen; but to fair reasons, urged in a manner to which the Government can give heed, the ears of myself and my colleagues will always be open on this and every other question. I observe that the opponents of this Bill speak of appealing to the House of Commons. I am the last man in the world to object to such a course being taken. To the decision of the House of Commons both parties to this controversy must bow. I do not think I have anything more to add now by way of explanation of the views of the Government. I have kept myself clear of controversy, because I wish to hold myself perfectly open to consider the arguments adduced on both sides in this debate. If I had thrown myself into this controversy, it might fairly be objected that I had not reserved to myself real freedom to consider those arguments. I have shown that this measure was recommended to the Government by Sir Ashley Eden, the Lieutenant-Governor of Bengal; that its principle has been approved by all the other Local Governments in India, with the exception of that of Coorg; and that it has been very carefully considered by the late Secretary of State for India, Lord Hartington, in Council and sanctioned by him. I have recalled to the recollection of the Council the circumstances in which we stand at this moment, and those in which we shall stand in no distant future, with respect to the position of the Native members of the Covenanted Civil Service. I have pointed out how very limited the immediate effect of the Bill will be, and have stated the reasons which induce me to think that it is wiser to make the proposed change now, when it can be brought into operation gradually and cautiously, than to wait until administrative necessities and justice to suitors compel the Government to introduce it suddenly and extensively. Lastly, I have expressed the perfect readiness of the Government to consider and to weigh any remonstrances which may be made against this Bill, provided they are supported by arguments which are consistent with the policy of Parliament. The Government do not propose to take any further steps in this matter now, and ample time will thus be afforded for the deliberate examination by Local Governments, by the Government of India and by the Government at home of any representations which may be made to them in connection with this measure."

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING asked for leave to postpone the motion for leave to introduce a Bill to amend the law relating to certificates granted under

SUCCESSION CERTIFICATE.

Act XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

Leave was granted.

Major the Hon'ble E. BARING also asked for leave to postpone the introduction of the Bill, and the motion that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* and in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

Leave was granted.

The Council adjourned to Monday, the 12th March, 1883.

R. J. CROSTHWAITE,

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

CALCUTTA;

The 9th March, 1883.

*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 12th March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I.,
G.M.I.E.

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

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

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

Major the Hon'ble E. Baring, B.A., 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 Rájá Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble Kristodás Pál, Bai Bahádur, C.I.E.

The Hon'ble Maharájá Luchmessur Singh, Bahádur, of Darbhanga.

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that 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 be referred to a Select Committee consisting of His Honour the Lieutenant-Governor, Major the Hon'ble E. Baring, the Hon'ble Messrs. Ilbert,

Reynolds and Evans, the Hon'ble Kristodás Pál, the Hon'ble the Maharájá of Darbhangá, the Hon'ble Mr. Quinton and the Mover.

He said that the Council were aware of the circumstances under which his hon'ble colleague, Mr. Ilbert, had introduced the Bill on the 2nd of March, and he (SIR STEUART BAYLEY) could only congratulate the Council and himself that his enforced absence from here had transferred to Mr. Ilbert's hands the duty which he had so admirably performed. After the clear and elaborate statement which Mr. Ilbert had made on the 2nd March, as to the necessity for legislating, and on the principles of the Bill, SIR STEUART BAYLEY did not at present propose to say anything more on the subject, but he would reserve to himself the right to answer the objections which may be made in the course of the debate, which objections, he had no doubt, would be numerous. But he had just one word to say pertinent to the motion before the Council. He was at liberty to say that it was the intention of His Excellency the Viceroy to appoint to this Council a representative of the planting interests in Bihár, Mr. Gibbon, and on his being gazetted, and if he agreed, and if the Council agreed, he would be appointed to the Select Committee, and that hereafter, when vacancies occurred in the Council, as would be the case next year, it would probably be expedient to strengthen the Committee by the appointment of additional members who might fill those vacancies. Although the Bill will now be referred to a Select Committee, the Committee would not meet till next November, but during the Simla session criticisms would be received from the Bengal Government, and from the associations and individuals concerned; and those criticisms, when received, would from time to time be circulated to the members of the Committee for their consideration, and he hoped that, when the Council re-assembled in Calcutta, they should, by this means, clear a good deal of ground, and enable the Council to set to work at once.

His Highness the MAHÁRÁJÁ OF DARBHANGÁ then said :—" My Lord, it is not without considerable diffidence that I submit my views on the Bill which affects all classes of people.

"It is now more than six years that it was proposed by Sir Richard Temple to change the present law of landlord and tenant, and as the Government has already made up its mind to change the law, it would be useless for me to say that this Bill ought not to be introduced. But I might safely say that, as far as Bihár is concerned, no change in the present law is needed: neither the raiyats nor the zamíndárs have asked for a change, and that in itself is sufficient proof that no change is needed. The zamíndárs certainly do

not wish to get any further facilities for the collection of their rents, and the tenants also do not complain of any oppression by the zamíndárs.

“ A great deal has been said about the oppression of zamíndárs in Bihár, and I doubt not that in Bihár there are a few bad zamíndárs as well as a few bad raiyats. But it is most unjust to think that all the Bihár zamíndárs, as a class, are oppressive. That there was a great deal of oppression in former days I do not deny, but Mr. Reynolds, after his last tour, was able to say that things have quite changed of late.

“ Illegal distraint used in former days to be common, but that is now almost a thing of the past. The zamíndárs now have sufficient knowledge of law to know that by illegal distraint they render themselves liable to criminal prosecutions, and the raiyats also know how to protect themselves, and they are not now at all likely to let a zamíndár distraint their crops illegally. Besides, though the former system of distraint was certainly illegal, it was not necessarily oppressive. The Government itself, as the guardian of two of the largest proprietors in Bihár, was obliged to have recourse to this illegal system of distraint up to 1876. In the Darbhanga Ráj, when under the Court of Wards, it used to be considered the proper thing to distraint the raiyats' crops without serving them with formal notices. It was in 1876, however, that steps were taken to introduce a system of legal distraint, and I am happy to say that the system of illegal distraint has now entirely disappeared throughout Bihár, and this is simply owing to the good example set by Sir Richard Temple and my hon'ble friend Sir Steuart Bayley. It would therefore be unjust now to call the zamíndárs of Bihár oppressive, and I hope I may be excused for having gone out of the way to say a few words in justification of the zamíndárs of Bihár, who have already been more than sufficiently abused in the report of the Rent Commission for carrying on a system of distraint which, though illegal, was not oppressive, and which the Government itself was carrying out until lately.

“ I will now say a few words on the subject of occupancy tenures in Bihár. The zamíndárs, as a body, are not averse to the cultivators acquiring this right. It gives the raiyats a permanent interest in their lands, and they are, therefore, more likely to increase the value of their lands. But the Bill does not create this right in favour of the actual cultivators. On the other hand, it distinctly says that the sub-lessees, who after all are the actual cultivators of the soil, are not to acquire rights of occupancy. The actual cultivator is not to

acquire the right unless he happens to pay in his rent direct to the zamíndár, and he is to be perfectly at the merey of his middleman. This seems to me to be perfectly anomalous, and it would be a better proposal that a raiyat who is not an actual cultivator should not be allowed to acquire right of occupancy. Unless some such provision is made, we are bound to create a set of occupancy tenants, who are not the actual cultivators, but middlemen, and these middlemen would be in a far better position to oppress the cultivator than the much abused zamíndárs. The zamíndárs have to deal with those raiyats whose names are registered in the village papers, but these middlemen will have to deal with people who have in most cases no documentary evidence to prove that they are the actual cultivators. Then there is another provision of the Bill which concerns the zamíndár more directly—I mean the provision which dobars the raiyats from contracting against their rights of occupancy. Such contracts are but seldom made. A zamíndár might especially wish to have a piece of land all to himself, though it might not necessarily be his *zarat* or *khámár* land. It might be a jungle or a preserve, and supposing he was to lease out a part or the whole of this plot, on condition that at some future time it is to be given back to him, is he to be prevented from the use of his land for ever? Then, again, zamíndárs very often plant trees on their lands, and lease out the ground to raiyats to grow crops for a certain number of years, and, in most cases, at very low rates, on the condition of regaining possession of the lands when the trees grow up, and the raiyats gladly take such lands on short leases. Are these raiyats supposed to acquire rights of occupancy? Then, again, why provide for a right of occupancy against any contract to the contrary? Such a provision does away with the freedom of parties to contract. Parties understand their own interest better, and it is idle for the legislature to affect to protect their interests. To secure some personal benefit, a raiyat may very well give up his rights under the law, but if the provisions of the Bill are passed into law they would not be able to secure such advantages for themselves.

“I am glad to see that the Bill proposes to do away with the law which entitled the tenants to acquire rights of occupancy only when they could prove that they were in the possession of an identical piece of land. There would be little harm done to the zamíndárs if, where raiyats occupy different lands in different years, the right of occupancy is allowed to spring up in respect of a particular quantity of land held for a certain number of years. But the Bill goes on further, and provides that if a raiyat occupies a very small quantity of land, and in respect of that quantity acquires a right of occupancy, such right would attach to all land which he may hold within the estate for however short a period. This is certainly unfair.

“ About the proposed facilities for the collection of rents, I must confess that the position of the zamíndárs would be much worse if the proposed changes are carried out. The Rent Commission had proposed to abolish the system of distraint altogether. The new Bill has effected a compromise in this respect between the suggestion of the Rent Commission and the existing law ; but I am confident that the proposed mode of distraint through the Civil Court, and the deposit of the proceeds for a month, would frustrate the very object of distraint, which is only had recourse to as a mode of speedy realization of rents. The present mode of distraint is the best and most speedy way of collecting rents. The proposed law, however, in a way abolishes distraint altogether. It burdens the zamíndár with the cost of an application to the Civil Court on stamp-paper, as well as with the expenses of paying lawyers ; whereas now he has practically no expenses to incur. Illegal distraints are no doubt objectionable, but, as I have already said, it is only a very short time ago that the Government even used to resort to this illegal system in managing the Court of Wards' estates. This shows clearly that though illegal the distraint never operated as a hardship. It would, therefore, be most undesirable to change the present law, especially as the raiyats and zamíndárs have begun to know the law, and there has been absolutely no complaint by the raiyats that this instrument is used by the zamíndárs illegally, or as a means of oppression. It has been said that the law of distraint is an off-shoot of the English law. It may be so. But then how is it that you find in Nipál, which has had less to do with Foreigners than any other State in India, that distraint has been carried on for certainly more than a hundred years ?

“ Now I come to the most important point of the Bill—I mean the question about the enhancement of rents. The Bill proposes fixing tables of rates for each pargana. This may have been quite possible before the time of the Permanent Settlement, but I doubt if it is possible to do anything of the sort now. It is hardly possible to find two fields in the same village of exactly the same quality of land, and parties will never cease to question the correctness of classification of lands. I know of a pargana where the rate for some of the villages is two rupees, whereas the rate for similar lands in another village is only two annas. Instead, therefore, of deputing officers to draw up tables of rates, would it not be better that the law should fix a certain proportion of the average produce as the zamíndár's rent.

“ Now as to the question of transfer of occupancy holdings. The zamíndárs ought to be thankful for getting the right of pre-emption. But it is not always that the zamíndár is in a position to buy occupancy holdings, and in

such cases would it not be advisable to give a *khádkáshí* raiyat the right of pre-emption in preference to an outsider, and immediately after the zamíndár? This might in some cases prevent an out-sider coming in who has got no common interest with the villagers, and who does not necessarily care for the good-will of the village community.

“Here I might also mention the fact that though the zamíndárs have been allowed the right of pre-emption, still they are not allowed to buy on the same conditions as raiyats. A raiyat who buys an occupancy holding, and who does not wish to cultivate himself, can lease it to one who cannot acquire rights of occupancy; but if the zamíndár leases out any such holding the cultivator at once acquires rights of occupancy.

“About the survey of *khámár* lands I have to make only a few observations. Such surveys would cost a great deal of money, which the raiyáts or the zamíndárs might eventually have to pay, and even then I do not see what good the raiyats or the zamíndárs are ever likely to get. No doubt it would be a first-rate thing to have proper records-of-rights, but it would be impossible to have proper records-of-rights by having a mere survey of a village.

“These are some of the observations which a cursory reading of the Bill suggests, but this is not the time to enter into all its details.

“In conclusion I beg leave to make the following observations :—The Bill was originally intended to give relief to the zamíndárs as well as to the raiyáts. Sir Richard Temple and Lord Lytton thought that the zamíndárs should get further facilities for the collection and realization of rents, but the proposed Bill does not give the zamíndárs any facilities for the realization of rents. Now as to concessions to the raiyats I have very little to say. It is the zamíndárs' interest to make any fair concessions to their raiyats. All that a zamíndár needs is a law which secures him his rents and provides him with modes for speedy realization of the same, but I am obliged to say that if the procedure as laid down in the Bill is to become law, the zamíndár's position is sure to be much worse than what it is now, and I can safely state, before concluding, that Bihár zamíndárs are quite satisfied with the existing law, and do not wish for the change contemplated.”

The Hon'ble KRISTODÁS PÁL said :—“I wish to begin with a personal explanation, for which I crave your Lordship's indulgence. It may be supposed

that, as I have the honour to sit in this Council under your Lordship's orders, with the suffrage of the landholders, it is my duty to look to the interests of the landholders alone. But such is not the case. I cannot divest myself of my natural sympathy with the millions who till the soil and constitute the backbone of the nation. Indeed, I would not be true to myself, to my cherished convictions, and to my humble labours for the promotion of my country's welfare, if I were to shut my eyes to the interests of one party for the sake of the other. All that I want is justice and fair play to both. No good landlord, I submit, my Lord, is blind to the interests and happiness of his tenantry. In fact, rightly understood, the interests of the two are interwoven with those of each other. A prosperous and contented tenantry is a blessing to the landlord and to the country at large. In considering the vitally important question before us, happily we have not to deal with a *tabulá rasa*, and are not left to our own unaided judgment. Both the landlord and tenant in Bengal have their charter of rights, and if we rightly interpret that charter we cannot go far wrong. This charter is none other than the Permanent Settlement Regulations. I consider it my duty to call the attention of your Lordship and the hon'ble Council to the main points of that charter, and to invite your unbiassed decision upon those points.

"Before I proceed to discuss the Bill, I desire to offer my hearty acknowledgment of the ability, industry and thorough mastery with which the learned Law Member has grappled with this intricate and complicated subject. The Bill is, doubtless, the work of many hands, but he has accomplished his task in a few weeks which might baffle the efforts of many an expert in as many years. But I hope he will pardon me if I say I cannot accept all his conclusions and endorse all the views and opinions he has expressed on the subject. My Lord, the papers on the Bill have been before us for nine days, and I am free to confess that, consistently with my other avocations, I have not been able to give it that close attention which I ought to have given. I am, therefore, likely to make statements and remarks from an imperfect study of the Bill, for which I hope I will be excused. In submitting the Bill to the Council, the hon'ble and learned Law Member reviewed the whole question from the days of the Permanent Settlement, and in following his example I am afraid I shall also have to traverse a wide area. I may be tedious in my statements and observations, but I hope the Council will bear with me kindly.

"I think we ought to consider, in the first place, who are the zamindárs who come within the scope of this Bill; what was their position originally; what functions did they perform in the administrative and social economy of the country, and how far were they useful to society and to the State? To ascer-

tain the position of the zamíndárs, it is not necessary for me to go back to the ancient history of India—I mean to the days of Hindú supremacy. It is enough for us to know that when the Muhammadans took over this country they fully recognised the position, the status and rights of the proprietors of the soil. It is true that the revenue demand was variable, but the rights and status of the zamíndárs were not at all interfered with. Before, however, I proceed to point out the position of the zamíndárs at the date of the Permanent Settlement, I will quote here the opinion of an eye-witness of the settlement as to the state of the country when the Permanent Settlement was effected, and the eminent service which that settlement rendered to the national Exchequer. I will read to the hon'ble Council the opinion of Mr. James Pattle, one of the best fiscal officers of the East India Company, who before his retirement held the hon'ble office of member of the Board of Revenue. Mr. Pattle writes :—

'The country brought under the Decennial Settlement was for the most part wholly uncultivated. Indeed, such was the state of the country from the prevalence of jungle infested by wild beasts, that, to go with any tolerable degree of safety from Calcutta to any of the adjacent districts, a traveller was obliged to have at each stage four drums and as many torches; besides, at this conjuncture, public credit was at the lowest ebb, and the Government was threatened with hostilities from various powerful Native States. Lord Cornwallis's great and comprehensive mind saw that the only resource within his reach in this critical emergency was to establish public credit and redeem the extensive jungles of the country. These important objects, he perceived, could only be effected by giving to the country a perpetual land assessment made on the gross rental with reference to existing productiveness, and, therefore, promising to all those who would engage the encouragement of an immense profit from extending cultivation. Admitting the sacrifice was very great, I think it cannot be regretted when it is considered what difficulties it conquered, and what prosperity it has introduced. For my part, I am convinced that our continuance in the country depended on the adoption of that measure, and that our stability could not otherwise have been maintained. This was my opinion at that time, and it has remained unaltered.'

"This is the opinion of an eye-witness of the Permanent Settlement as to the state of the country when that settlement was effected, and also when it was in operation for some time. And it was his deliberate opinion that the Permanent Settlement enabled the Government of the day to keep the British power in the country. It may be said—and it is sometimes said—that the Permanent Settlement was financially a mistake, but in those days it saved the public treasury. The Company's treasury was on the verge of insolvency; their territories were threatened by powerful enemies; on one side an adventurous European rival was plotting, and on the other mighty Native Chiefs were arrayed against the Company; it was then a question of the continuance of English supremacy in the East; on the other hand the land-revenue, on account of

varying assessment, could not be regularly collected. It was at this juncture the Permanent Settlement was made.

“Ninety years have elapsed since this settlement was concluded. Within that period we have seen what changes, what commercial and material changes, have taken place, and how the jungle which then covered the land has been removed and cultivation has been introduced; what financial prosperity has since succeeded the insolvency to which Mr. Pattle referred, and how active has been the national industry. I will not say that these results have been achieved wholly through the agency of the Permanent Settlement, but I do not hesitate to say that it has contributed greatly to the consummation of the changes which we now contemplate with so much satisfaction. It is well known that one of the charges brought against the Bengal land system is that it has involved the Government in an unnecessary sacrifice of prospective revenue. But, my Lord, if an examination of the development of the finances of these Provinces were made, it would be seen that in no other Province has the public revenue progressed so satisfactorily as in Bengal, and that whatever sacrifice was made by the Permanent Settlement of the public demand in Bengal has been more than made up by the enormous indirect increase of the revenue from many sources. This was particularly pointed out in the Duke of Argyll’s despatch on the Road Cess.

“I now come to the position of the zamíndárs before or at the time of the Permanent Settlement. The name of Mr. Francis is well known in history as one of the colleagues of Warren Hastings in the administration of India. When he was in this country, the question of the land settlement occupied the attention of the Government, and enquiries were set on foot as to the position of the persons who were then known by the name of zamíndárs. Mr. Francis in a Minute, dated 22nd January, 1876, or rather in a note to that Minute, wrote:—

‘The inheritable quality of the lands is alone sufficient to prove that they are the property of the zamíndárs, taluqdárs and others, to whom they have descended by a long course of inheritance. The right of the Sovereign is founded on conquest, by which he succeeds only to the state of the conquered Prince; unless, in the first instance, he resolves to appropriate or transfer all private property, by an act of power, in virtue of his conquest. So barbarous an idea is equally inconsistent with the manners and policy of the British nation. When the Moguls conquered Bengal, there is no mention, in any historical account, that they dispossessed the zamíndárs of this land, though it is frequently observed that where they voluntarily came in and submitted to the new Government, they were received with marks of honour, and that means were used to gain and secure their attachment.’

“These were the men whom the British Government, on the first acquisition of this country, found in possession of the land. Mr. Francis admits that the Muhammadan Government always recognized their position and rights, and in fact did all they could to gain and secure their attachment. I do not know whether many members of this Council have read that curious book called, I believe, the ‘Four great zamíndárs of Bengal’, by Mr. Rouse. It is now out of print, but it is a very interesting and useful book. It contains good deal of information about the Permanent Settlement, about the status of landlords in those days, and gives a very interesting history of the four great families of zamíndárs in Bengal, namely, Burdwan, Dinájpur, Nattore, and Kishnagur. It also gives some account of some minor zamíndárs. I allude to this book only to show that in the days of the Permanent Settlement there were men in possession of large properties or estates, and that they were considered absolute proprietors of the soil. Now, in what light were these zamíndárs regarded by the authors of the Permanent Settlement? Were they regarded as proprietors of the soil or not? Here is the opinion of Sir John Shore, afterwards Lord Teignmouth :—

‘I consider the zamíndárs as the proprietors of the soil, to the property of which they succeed by the right of inheritance, according to the laws of their own religion; and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it when there are any legal heirs. The privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the *Diwán*.’

“I will give an extract from the Minute of Lord Cornwallis, dated the 18th September, 1789. He says :—

‘Mr. Shore has most ably, and, in my opinion, most successfully, in his Minute delivered in June last, argued in favour of the rights of zamíndárs to the property of the soil. But, if the value of permanency is to be withdrawn from the settlement now in agitation, of what avail will the power of his arguments be to the zamíndárs for whose rights he has contended?’

“Again, His Lordship writes :—

‘Although, however, I am not only of opinion that the zamíndárs have the best right, but from being persuaded that nothing could be so ruinous to the public interest, as that the land should be retained the property of Government, I am also convinced that, failing the claim of right of the zamíndárs, it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded.’

“So that Lord Cornwallis was deliberately of opinion that the zamíndárs were the proprietors of the soil, and that, even if their rights were questioned, still,

as a matter of policy, proprietary rights should be conferred upon them. The zamíndárs before the Permanent Settlement were not only proprietors of the soil, but they actually exercised powers which legitimately belonged to the State or Sovereign ; they levied duties on internal commerce, a power which, as far as I am aware, no private landlord is allowed to exercise in any civilised country. But in those days, as I have observed, the zamíndárs actually exercised that sovereign power. Lord Cornwallis justly held, on grounds of public policy, that such power should be withdrawn from the zamíndárs, and in his Minute dated 3rd February, 1789, he wrote :—

‘I admit the proprietary rights of the zamíndárs, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that, however, it may be sanctioned by long usage, I am convinced there are few who will not think us justified in resuming it.’

“And so this power was resumed—I do not say unjustly; I admit that it was very properly resumed. But I mention it to show that the zamíndárs not only exercised the powers of landlord, but even, to some extent, the sovereign power. Lord Cornwallis, as the hon’ble Council is aware, fixed the revenue demand at ten-elevenths of the gross rental, and, by way of compensation to the zamíndárs, surrendered the waste-lands to them. The Government has always recognised the right of the zamíndárs to the waste-lands, and the assurance given to them in the days of the Permanent Settlement was repeated in the subsequent Regulations. Thus, I find the following in the preamble to Regulation II of 1819 :—

‘It appears to be necessary, in order to obviate all misapprehension on the part of the public officers and individuals, * * * formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a Permanent Settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud or on any pretext whatever.’

“Section 31 of the same Regulation states that—

‘Nothing in the present Regulations shall be considered to affect the right of the proprietors of estates for which a Permanent Settlement has been concluded, to the full benefit of all waste-lands included within the ascertained boundaries of such estates, respectively, at the period of the Decennial Settlement, and which have since been or may hereafter be, reduced to cultivation.’

“I will not allude here to the assumption sometimes made that the waste-lands should be treated in the same way as lands settled at the time of the settlement. It should be remembered that these waste-lands were howling wildernesses at the time, and that it was left entirely to the discretion of the zamín-

dárs to settle them in any way they might think proper. To that question I will not advert at present. I have said that the waste-lands were given to the zamíndárs by way of compensation for the exorbitant assessment of the Permanent Settlement. The Council was doubtless well aware that the assessment was so heavy that most of the first zamíndárs, with whom the settlement was made, were literally swept away under its effects. The great house of Nattere, which, I believe, used to pay 52 lakhs of rupees of revenue, was broken up completely under the crushing effects of the heavy assessment of the Permanent Settlement. The house of Dinájpur suffered similarly, and so did the house of Bírbum and many other families. The Burdwan house was also tottering, and was only saved by the introduction of the *patni* system. I cannot do better than read to the hon'ble Council the remarks which no less an authority than Sir George Campbell has made on this subject in the Bengal Administration Report for 1872-73. He says:—

'The Government demand was then one which left a margin of profit, but small compared with that given to zamíndárs in modern days. There was wide-spread default in the payment of the Government dues, and extensive consequent sales of estates or parts of estates for recovery of arrears under the unbending system introduced in 1793. In 1796-97, lands bearing a total revenue of sikká Rs. 14,18,756 were sold for arrears of revenue, and, in 1797-98, the revenue of land so sold amounted to sikká Rs. 22,74,076. By the end of the century the greater portions of the estates of the Nadiyá, Rajsháhí, Bishanpur, and Dinájpur Rájás had been alienated. The Burdwan estate was seriously crippled, and the Bírbum zamíndárf was completely ruined. A host of smaller zamíndárs shared the same fate. In fact it is scarcely too much to say that within the ten years that immediately followed the Permanent Settlement a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement.'

“Now, what do these startling statements show? The Permanent Settlement, as I have shown from a quotation from Mr. Pattle, was intended to benefit the landlords as well as the State. The State derived immediate benefit by the replenishment of the treasury. The landholders, however, at the time suffered extremely. In fact, as this statement shows, most of the original zamíndárs were swept off the face of the earth by the tremendous sacrifices they were called upon to make at the time the Permanent Settlement was established. Most of the present zamíndárs have come in by investing their capital, and they have done so in perfect reliance upon the good faith of the Government.

“I have shown that the waste-lands were made over to the zamíndárs by way of compensation. Now, how were the waste-lands brought into cultiva-

tion? My object is to show what functions the zamíndárs have performed in the social economy of the country. The zamíndárs in the first place invited tenants, because in those days it was the land which sought the tenant and not the tenant who sought the land. They established villages at their own expense, and they appointed the village smith, the village barber, the village priest and other members of the village establishment, by giving them rent-free lands. They made takkáví advances to the raiyat for the cultivation of the land; they charged no rent whatever in the first instance, and subsequently levied a progressive rent as cultivation advanced, and in this way they reclaimed the jungle which covered the greater part of Bengal in the days of the Permanent Settlement. You may now go to any part of the country, and you will be struck by the smiling fields and the teeming populations which meet your eye in every direction. But, in 1793, you could hardly go a few miles from Calcutta without drums and torches to keep away wild beasts. Those who brought about these changes certainly deserved the thanks of the public.

“ Now, what have the zamíndárs done in other respects? Have they been content only with the introduction of cultivation and the reclamation of waste-lands? No. As population has increased, as cultivation has extended, as civilisation has advanced, the zamíndárs have risen to the requirements of the time, and have also assisted in the execution of public works, in accordance with the spirit of progressive time. Go through the villages and you will generally find in most of them large tanks. I am sorry to say that tanks now-a-days are not dug with the same zeal as heretofore. But you will find many old tanks dug by the zamíndárs, and there was a double motive in the execution of this work. In the first place, water was necessary for cultivation in times of drought, and, secondly, it was necessary for drinking purposes. The zamíndár wanted to foster the settlement of raiyats, and, therefore, he opened these tanks; he had also partly a religious motive in providing drinking water for the people. As this hon’ble Council knows well, among the Hindús religion supplies a strong impulse for many of their acts, and the digging of tanks was one of these. Then, as the country advanced in prosperity, there was necessity for roads, and the zamíndárs were not remiss in making them. They, in co-operation with their tenants, laid out large sums of money in making roads through different parts of the country. I will give you the example of one district only—the district of Hughli. The list which I hold in my hand does not comprise all the roads made in the district within the last few years, but it gives a good account of what has been done. These roads were made at the time of the Ferry Fund Committees which existed before the Road Cess Com-

mittee was constituted. The following is a list of the roads and bridges referred to:—

Names of the Roads and Bridges.	Lengths.	By whom constructed.
Bhastara to Tribany	16 miles	Zamíndár of Bhastara.
Jonye to the Surussutty	8 do.	Ditto of Jonye.
Jonye to Connaghur	7 do.	Ditto ditto.
Biddabatty to Gobindpore	7 do.	Singoor zamíndárs.
Biddabatty to Huripal	25 do.	Zamíndárs and F. F. Committee.
Chinsurra to Dhoneakhally	25 do.	Ditto ditto.
Huglí to Dwarbasiny	12 do.	Ditto ditto.
Pandua to Calna	18 do.	Ditto ditto.
Howrah to Jugutbullbopore	12 do.	Ditto ditto.
Metalling of the road from Serampore to Salkea.	13 do.	Ditto ditto.
The Bally Tension Bridge	Ditto ditto.
Two bridges on the Dhoneakhally road	Ditto ditto.
Three bridges at Nosorye, Tribany and Satgan.	...	Zamíndár of Noapára.

“Now, what has been done in Huglí has been more or less done in other districts in Bengal. If the Council will refer to the Famine Report of Sir R. Temple, they will see that the zamíndárs gave, free of cost, all the lands required for roads and tanks which were constructed during the scarcity of 1873-74. In fact, the question arose whether the Government could take over lands free of all consideration, and the learned Advocate General was of opinion that it could not. But the zamíndárs in a body refused to receive a pice for the lands they gave for those purposes.

“Now, have the zamíndárs done anything for education, in the way of establishing or promoting the establishment of schools? I have been just reading the last report of the Director of Public Instruction, Bengal, and I find that

the total amount of private contributions was nine lákhs last year, including both endowments and private subscriptions. The statement is this:—

	Government Institutions.	Aided Institutions.	Unaided Institutions under regular inspection.	TOTAL.
	Rs.	Rs.	Rs.	Rs.
Endowments	65,015	64,832	82,957	1,62,304
Subscriptions	14,870	6,19,205	1,11,838	7,45,913
GRAND TOTAL	9,08,217

“Any one who knows the sources from which these contributions usually come will admit that the bulk of it came from the pockets of the zamíndárs. In the same way, in 1881-82, the total expenditure on dispensaries was Rs. 3,74,000, and the subscriptions from the Native community amounted to Rs. 1,20,000, and it may be also said that the bulk of this money came from the zamíndárs. I ought to have said, while noticing the support which the zamíndárs have been giving generally to education, that some of the most munificent benefactions in the cause of education have come from the zamíndárs. Take, for instance, the magnificent Tagore Law Professorship Endowment at a cost of three lákhs of rupees, which was founded by the late Hon’ble Prasanna Kumar Tagore, the illustrious uncle of my friend Maharájâ Sir Jotíndra Mohan Tagore. My friend the Diggiapattí Rájâ has given, I believe, Rs. 1,20,000 for the Rajsháhi College; munificent donations have also been given for the Ravenshaw College at Cuttack, and for the Berhampore and Kishnagur Colleges by other zamíndárs; and I say it with much pleasure that one of our hon’ble colleagues, the Hon’ble Durga Charan Láhâ, has given Rs. 50,000 towards the cause of education. I could mention many more names, but it is not necessary. I cannot, however, refrain from alluding to the many magnificent benefactions given by my friend the Maharájâ of Darbhanga, and I think it is not too much to say that the zamíndárs generally have not been deaf to the call on their purses in the cause of education. Then there was one branch of education which the zamíndárs from the first encouraged with the greatest liberality—I mean Sanscrit learning. I believe hon’ble members were aware that rent-free lands to the extent of more than a crore of rupees were assigned by the zamíndárs, of their own free-will, for the support of men professing Sanscrit learning. The great house of Nadiyâ gave away in this way, I believe, the bulk of its property.

These were voluntary contributions. But the zamíndárs were also subject to compulsory contributions for public purposes. I may mention, first, the dáł cess. It is not necessary for me to go into the question of the dáł cess, whether the zamíndár was liable to render postal service or not. It is enough, for my present purpose, to say that they were required to pay the cess. Then the zamíndárs were also liable to pay the road and public works cesses, and with them, their raiyats are also liable, and the amount thus contributed by the zamíndárs annually comes to 35 lákhs of rupees. Then the zamíndárs construct embankments voluntarily, for the protection of their raiyats, and they are also liable to an embankment cess for those embankments which are maintained at their expense by the State. They are also called upon to perform certain official services. Whenever troops march through their estates they are required to provide supplies for them; whenever public officers pass their way, they also do their best to send provisions to them; whenever heinous criminal offences were committed within the limits of their estates they were required to report the same to the Police. In the days of the salt monopoly of the East India Company, the zamíndárs were made liable for the illicit manufacture of salt on their estates. Whenever statistical or economical enquiries are made the zamíndárs are required, through the Police and the Magistrates, to make reports, and whenever any great public work has to be done their services are put into requisition. Take, for instance, the census operations. I appeal to His Honour the Lieutenant-Governor to say whether the Government could have carried out the census work at double the cost which was incurred if the zamíndárs had not freely offered their own services, and those of their servants, in furtherance of this great work. And they perform these public services ungrudgingly; they fully acknowledge that property has its rights as well as its duties. Then, again the public seem to think that they have a claim on the purses of the zamíndárs for all public purposes, for whenever there is any call for money, who is it that is first appealed to? It is the zamíndárs. Take, for instance, the calls made here for contributions for the relief of the sufferers from the Crimean war, the Scotch famine, the Irish famine, the Lancashire distress, and many other funds. If you examine the list of contributions, you will find that zamíndárs have always headed it; even for race stands, agricultural shows and other objects their purses have been taxed. The district officers do not hesitate to appeal to the zamíndárs whenever they have a public object in view. And in times of difficulty the zamíndárs have loyally, willingly and cheerfully placed their services at the disposal of Government. Take, for instance, the Sepoy Mutiny. Happily, the flame of the Mutiny did not extend to Bengal Proper, but it did spring up in parts of Bihár, and the Government have heartily acknowledged the loyal services which the Bihár zamíndárs rendered.

in that crisis. In Bengal, too, they did some service in their own way by supplying elephants and other things for which the Government applied to them. Even in fiscal emergencies the Government has not hesitated to appeal to the zamíndárs, relying on their loyalty, and with the greatest alacrity they have responded to the call. I am personally acquainted with the circumstances of one case. In 1878, there was a financial pressure, and Sir John Strachey, who was then the Finance Minister, wanted temporary accommodation to make the two ends meet. He did not desire to raise a public loan, he simply wanted a temporary accommodation, and he spoke to Sir Ashley Eden and asked him if he could secure some lákhs of rupees in that way. I was taken into confidence, and I know that several of my zamíndár friends willingly came forward with the required help. So whenever there has been any occasion for help, and whenever any appeal has been made to the zamíndárs, they have not hesitated to render every assistance in their power to the State. I may also cite the Minute of Sir R. Temple as a testimony to the services which the zamíndárs rendered to their tenantry during the great famine of 1873-74. I wish I had before me a copy of that Minute to read to the Council a few extracts from, but I am sorry to say I have not got it. I dare say that Minute has been read by most hon'ble members, and they doubtless recollect that the zamíndárs, as recorded in that Minute, remitted lákhs of rupees of their rent, suspended the payment of rent, gave takkáví advances, and afforded charitable relief to their tenantry in that crisis without any grudge, and Sir R. Temple justly complimented the zamíndárs by saying that they had nobly redeemed their character as landlords. Apart from these facts, I may tell you that, whatever disputes may here and there exist or arise between zamíndárs and raiyats, the raiyat generally looks up to the zamíndár as a protector against oppression and injustice. If a policeman troubles him he goes to the zamíndár; if a private individual assails him he goes to the zamíndár; if there is a quarrel between the raiyat and his brother, his sister or his uncle, he goes to the zamíndár for an amicable settlement of the quarrel. In fact, whenever the raiyat is in difficulty he looks up to the zamíndár for assistance, for advice, and for arbitrament. But while the zamíndár performs these functions I hope the Council will kindly bear in mind that the zamíndár does not get all the profits from the land in the shape of rent. The road cess returns show that there is a long chain of sub-infeudation in the country, and that the profits from land are largely intercepted by middlemen. When the Permanent Settlement was first made these middlemen were not in existence, except the dependent taluqdár, the istimrárdár and the mukarrarídár. But as I have shown, the pressure of the assessment was so severe that even the big house of Burdwan was tottering, and for his sake the patní system was introduced, and from that time sub-

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infeudation commenced. A large number of tenure-holders sprung up under this system, and they gradually intercepted the profits from the land. I do not say that this is to be regretted, for the more wide-spread are the profits from land the better for the country, but this fact should be borne in mind, because it was generally thought that all the profits from land were monopolized by the zamíndárs. On this point Sir R. Temple, in the Administration Report of Bengal, for 1875-76, wrote :—

‘The material advancement of the sub-proprietors, the raiyats and the peasantry in Eastern Bengal has been mentioned with satisfaction on former occasions. A remarkable illustration has been afforded by the detailed inquiries which are being made for the valuation of the lands in the deltaic district of Bákirganj. It appears from the road cess returns that the rent-roll payable to the intermediate tenure-holders is often twelve, twenty or fifty times the rent paid to the superior landlord. It seems probable that not less than a crore of rupees (assumed as equal to one million sterling) are annually paid in rent in this district, and that the value of the agricultural produce of the district can hardly be less than five millions sterling annually, and may be much more. The returns, moreover, while they show the prosperous condition of the tenure-holders and other middlemen, show also how the profits of the land are slipping out of the hands of the zamíndárs, who have permanently alienated their interests in the soil, and, in many cases, have fallen into the position of needy annuitants.’

“So that the zamíndár did not monopolize the profit from the land which constituted rent.

“Now, I have gone to this length to show who the zamíndárs were, what functions they performed in the social and administrative economy of the country, and what services they have rendered to society and to the State, only with a view to impress upon the members of this hon’ble Council the propriety of showing some consideration to men who were so useful to the country. I do not believe that those who perform such important functions will not receive due consideration at the hands of this Council in dealing with the law of landlord and tenant. If they have performed such useful and beneficent functions, have they no claim to your generous consideration ; and are they not entitled to have their rights duly recognised by the State and the legislature ? The hon’ble and learned Law Member, in introducing the Bill, said that the zamíndárs were in no sense absolute proprietors of the soil ; that, according to the definition of owner in certain English Statutes, he apprehended that the zamíndárs were no better than managers or trustees or limited owners of the land. I will, with your Lordship’s permission, read one short extract from the hon’ble member’s speech. He said :—

‘In the first place, the term, as applied to land, has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of

land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place, the term was freely applied to the zamíndárs of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and, therefore, could not possibly be taken as indicating or, to use a technical term, connoting rights created at that date. And, thirdly, the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement literature of British India. It means, in those parts of India which are not permanently settled, the person who, whatever may be his rights on the soil, has the right of having a settlement made with him, the person, namely, whom, for purposes of land-revenue, and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor of the land. Such a recognition, of course, is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number of other persons. All such rights are simply left outstanding. The use of the term proprietor in this sense is closely analogous to the use of similar terms in English statute-law. Here, for instance, is a definition of owner taken from a recent English Act, the Public Health Act of 1875 :—“ Owner means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent.”

“ I appeal to this hon’ble Council to consider whether, when Lord Cornwallis and Sir John Shore effected the Permanent Settlement, they understood the words ‘ proprietor of the soil ’ in that sense. I have already read to the Council extracts from the Minutes of Sir John Shore and Lord Cornwallis, giving their opinion on the status of the zamíndár at the date of the Permanent Settlement, and I will now confine myself to the one point raised, namely, the legal position of the zamíndár. I daresay the hon’ble and learned Law Member will acknowledge the high authority I am going to cite. I allude to the opinion of Lord Lyndhurst,—Vol. I, Moore’s Indian Appeals, p. 348—

‘ It is to be gleaned from these Regulations that the proprietors of lands in India had an absolute ownership and dominion of the soil, that the soil was not vested generally in the Sovereign, that proprietors did not hold it at the will of the Sovereign, but held the property as their own. * * * I think it is impossible to read those articles without coming to the conclusion that the zamíndárs and taluqdárs were owners of the soil, subject only to a tribute, and that it was the object of the Regulation to make that tribute fixed and permanent.’

“ My Lord, I am no lawyer, and am, therefore, bound to accept the interpretation of the law as it may be given by the learned Law Member; but, in the face of this opinion from no less an authority than Lord Lyndhurst, I hope I may be excused if I refuse to accept even the high authority of my learned friend. If Lord Lyndhurst holds that the zamíndárs are the actual and

absolute proprietors of the soil, I appeal to the Council to consider whether many of the provisions contained in the Bill are consistent with that reading of the law. For, if I understand the Bill aright, it proceeds wholly on the assumption that the zamíndárs are not owners of the soil, and, therefore, they must submit to a redistribution of property, as it were, under the operation of the proposed law. From 1793 to this day, the zamíndárs have been recognized by the Government over and over, by solemn Regulations and Acts, and also in solemn State papers, as proprietors of the soil. Even Act X of 1859 did not do away with the material incidents of proprietary right, though it recognised the occupancy-right of the tenant under the twelve years' rule; it did not take away the right of enhancement of rent, of eviction of the raiyat, and many other rights inherent in an absolute proprietor of the land. But, after the lapse of ninety years, the zamíndárs are now told, by no less an authority than the learned Law Member of your Excellency's Council, that they are not proprietors of the soil, that they were hitherto labouring under a huge delusion, and that they must prepare their minds to surrender their rights as soon as they can, that there is another class waiting to participate in the land with them; that in fact there is to be a redistribution of the landed property. I hope this hon'ble Council will seriously consider the effect of these propositions, for if I read the Bill aright it amounts to this.

“ Now I come to the necessity for legislation. I at once concede that there is necessity for legislation. There has been for many years necessity for legislation. I regret much that it has taken the Government so long a time to give that relief which both the zamíndár and the raiyat have stood much in need of for so many years. From 1871 Government has been promising to simplify the law for the recovery of rent. It is well known to this Council that it was no part of the obligations of the zamíndárs to collect the road cess and public works cess for the Government. But Sir George Campbell, when he imposed the road cess, succeeded in getting the assent of the zamíndárs to collect the cess on behalf of the Government, on the understanding that the law for the recovery of rent would be simplified without delay. The zamíndárs had felt the delay in the recovery of rents as a great grievance, and they said that if the Government would give them the *quid pro quo*, they would undertake the duty of collecting the cesses. It is to be borne in mind that the zamíndárs received no remuneration whatever for the collection of the cesses either by way of percentage or in any other form; and I do not know whether any commercial community would undertake such a duty without charging commission of some kind. But the zamíndárs did not take any remuneration. They were only

buoyed up by the hope that the law for the recovery of rents would be simplified. When Sir George Campbell left the arena no change was made. He made promises, but no change was effected. He made inquiries and intended to do something, but nothing was done. Then came Sir Richard Temple. He, too, saw the propriety of changing the law of procedure for the recovery of rent. He also prepared a draft Bill, but nothing was done. Then came Sir Ashley Eden. During the first two years of his rule he was very active in this matter. He actually caused a Bill to be introduced into the Local Council, but that Bill was dropped on the plea that the whole rent-law should be dealt with. From that time rose the cry for a general revision of the rent-law. Heretofore, the complaints were about the recovery of rent and the settlement of rent, but now came the cry for a general revision of the rent-law, a comprehensive revision of the substantive rights of landlords and tenants. Against such a general revision the zamindárs protested. There was not the faintest echo from the raiyats in any part of the country to the cry raised by the Government that there should be a general revision of the substantive law. And yet the Bengal Government thought it necessary to appoint a Commission to prepare a draft Bill for the general revision of the rent-law. The Commission was fairly constituted, and I must do them the justice to say that they performed their work with great intelligence, ability and zeal. But, my Lord, I cannot help saying that the Bengal Rent Commission did not work in the way in which Commissions of a similar kind worked in England, and, as far as I am able to judge from the papers submitted by them, they have not given sufficient data for the conclusions arrived at by them. They made no statistical enquiries; they made no local enquiries; they sat in their own chambers; they called for official reports, and from the depth of their own consciousness they evolved their theories and propositions. Ransack their reports, ransack the voluminous literature which they have produced, and find out if you can any information as to what extent evictions were resorted to in this country. That was one of the first propositions they were charged with enquiring into. It was said that evictions were on a large scale resorted to in Bengal; but where were proofs in support of such a statement? They ought to have given some figures showing the current of evictions district by district; but where were they? On the contrary, is it not a fact that evictions were rarely resorted to by the landlord, and that the Courts were most reluctant to order eviction? Then there was the question of the transferability of occupancy tenures. On this point have the Rent Commission given any details? Of course, they say that this right is recognized in some parts of the country; but where are the facts and figures? Were not the records of the Courts open to the Commission? and could not they give facts and figures, extending over some years, to show that to this extent the custom has prevailed?

“Now, with regard to the enhancement of rents. Is it a fact that the enhancement of rents is going on under the provisions of Act X of 1859? It is generally believed that these provisions have brought enhancement of rent to a deadlock. I, for one, would have been glad to receive some statistics on this point—how far enhancement has been stopped by the present provisions of the rent-law; how far the rates have been altered, that was to say the rates at which the rent was paid before and is now paid; in what proportion rents have been increasing, and so forth. Enquiries of this kind have been lately made in some districts for the collection of tables of rates; but the papers produced by the Rent Commission offered little information on the subject. I think that if a Commission of this kind had been appointed in England they would have given fully the facts and figures on which their conclusions were based.

“But the Rent Commission of Bengal, I am sorry to say, did not furnish us with such facts and figures as would fully bear out their own conclusions and opinions. That Commission, I believe, was appointed with the view of securing to the Bengal raiyat what were popularly called in England the three F's. Now, it is worthy of consideration whether the three F's, consistently with the economic conditions of this country, have not already the fullest operation here. Fixity of tenure. The twelve years' rule, under Act X of 1859, has practically given fixity of tenure to the bulk of the agricultural population of this country. Some estimate it at ninety per cent. I cannot of course be positive about the figure; but, from all I have seen and heard, I hold that the right of occupancy in Bengal is enjoyed by the vast majority of these tenants. In Bihár, too, though the raiyat does not fully appreciate the right, the right is practically enjoyed by the raiyat as appears from the report of Mr. Finucane, and it is for the Council to consider how the occupancy-right in Bihár is to be secured by law. The fact remains that it is already in operation. Fair rent. Now I invite hon'ble members to enquire and say whether the rents now levied in Bengal are not fair; whether the raiyats in any district now pay rents which may be called rack-rents, I mean in any district in Bengal Proper. So that you have now fixity of tenure, and fair rent. As for the third F, free sale, I admit that it is not common; that the custom obtains only in some districts, and that there even it is not fully recognized. It is a question whether the right of free sale should be fully recognized in the interest of the raiyat, and whether it would be quite consistent with the rights of landlords. I will return to this question hereafter.

“I now come to the Bill itself. I have already said that the Bill has been prepared with great ability and care, but I do not quite understand the primary object of the Bill. Is it to prevent dispute and litigation and to pro-

mote peace and harmony amongst zamindárs and raiyats by reasonable, fair and equitable provisions, or is it to redistribute rights in land, to promote and foster litigation, and set class against class ? I should be very sorry to believe that the authors of the Bill had the latter object in view. I repudiate any such notion ; but at the same time, when I read the Bill and contemplate its tendencies, I cannot help feeling that, however opposed such a tendency may be to the views and wishes of the hon'ble authors of the Bill, it will be practically difficult to control that tendency of the Bill, so long as the provisions contained in it are allowed to have full play. I was in hopes that it would be in my power to propose a compromise which might be acceptable to both zamindárs and raiyats, and thus to contribute in some way to the promotion of that peace and harmony on which I lay great stress. But the present Bill, I am sorry to observe, is so one-sided that I cannot entertain any hope of proposing any such compromise. Indeed, there could be no compromise without concession on both sides, but the Bill leaves little room for compromise. I do, however, entertain the hope that when the Bill will be considered in Select Committee, with the light of public criticism and public representations, the Committee will take into consideration outside views, and deal with an even hand with both classes which are interested in and affected by it. After giving, as I have said, rather an imperfect perusal to the Bill, I find that its tendency is to drive both the raiyat and the zamindár into Court at every stage and to foster litigation all round. In the first place, it is proposed to make a distinction between *khámár* and raiyatí land. Now, as far as Bengal Proper is concerned, I can say that there has been made no attempt whatever to absorb raiyatí land into *khámár* land. The enquiries which I have made on the subject have satisfied me that the absorption of the raiyatí land does not apply to Bengal Proper, nor has there, I believe, been any complaint on the part of the raiyats that they cannot obtain land from the zamindár because he has absorbed the raiyatí land into *khámár* land. When such is the case, is it desirable to throw the country into the ferment of expensive and harassing litigation, by ordering a survey and measurement and registration of these lands ? I believe the most important principle of legislation is, that it should be made to meet the actual needs of the country. Now the question is this, whether there is any actual necessity for the measurement, survey and registration of these lands in Bengal. Well, if the power is meant to be permissive, then it is not intended to apply it to Bengal Proper, because such necessity does not exist here.

“Then comes the question of occupancy-right. Now it is not my intention to go into the history of that question. That history has been repeated times without number, and the question has been discussed threadbare. It is

enough for my purpose to recognize the position that Act X of 1859 gives the right of occupancy to the raiyat who holds the same land for twelve years consecutively. I accept that position. I have already said that the occupancy-right has already extended to the majority of raiyats in Bengal, and the question is, is it necessary to extend this right further, and to give a construction to the law which would practically give the raiyat the right to claim all lands as occupancy holdings, provided he occupies any one spot for twelve years? The present law is, that the right of occupancy shall accrue upon the same land. The provision of the proposed Bill is, that the right of occupancy shall accrue upon all lands which a raiyat might hold in the same village, or estate, if he has twelve years' possession of any particular plot; so that the effect would be that the raiyat who might hold two cottahs of land in village A for twelve years will thus acquire the right of occupancy in two hundred bighás of land in villages B, C and D, though he might have had possession of the same lands for only three or four months or years. I say the extension of the right of occupancy in this form is not consistent with the principles of the rent-law of 1859, nor consistent with the proprietary rights of zamíndárs. It has been said that this provision has been rendered necessary by the recourse some zamíndárs have to shifting raiyats from plot to plot, from land to land, in order to destroy the accrual of the right of occupancy. But, as far as Bengal Proper is concerned, I am not aware of a single instance in which the zamíndár has sought to defeat the right of occupancy in this way. Those who have written on the subject, including no less an authority than Sir George Campbell, have readily admitted that this practice is not known in Bengal Proper, and yet it is to be extended to Bengal Proper under the present Bill. Now, I have said that this Bill will drive the raiyats and zamíndárs to Court at almost every step. How do I establish my position? If a raiyat is allowed to acquire an occupancy-right by the accumulation of time, if he holds different plots of land at various periods, there will be so many disputes about the calculation of periods that nothing will be practically decided without recourse to Courts.

“Then comes the question of rent. In every case the settlement of rent will be practically subject to litigation. Whether it is settled by the Court or by a special revenue-officer, it will be a legal proceeding in some form or another. Nothing can be done, as the system has been devised, by private arrangement between the zamíndár and raiyat. If the zamíndár and raiyat come to a private understanding and enter into a contract, they must go to the revenue-officer as the keeper of their conscience. If they don't come to a private understanding, they must go to Court. So they cannot act as free agents or free men; they must have recourse to litigation.

“Next comes the question of the realization of rent. Of course, if there are arrears, there must be litigation, and so on through all stages, even in matters of minor dispute. We will have, if I may be permitted to observe, a Pandora’s box in the name of peace and harmony.

“I have said that the practical effect of this Bill will be the redistribution of property. If any one will carefully read through the Bill he will see that it takes away some of the most important incidents of proprietary right. In the first place it abolishes the right of contract as regards occupancy-right. Now, what is the ground upon which this extreme proposition is based? The hon’ble and learned Law Member has produced what he thought was a horrible *kabúliyat*, and asked the Council to consider whether the legislature could conscientiously protect such a thing. I have not seen the original of that *kabúliyat*, but will consider it in the form of the translation in which it is given in the statement of the hon’ble member. I have compared it with the *kabúliyats* and *pattás* given by Government in *khás* estates, and also with the form of *kabúliyat* which the Government had at one time held up as a sample for landlords, and which the Government used to sell to the general public. I do not know whether that form is now for sale, but I find, from a notification by Government in 1875, that a form of *kabúliyat* was printed and sold for public use by the Government, and in comparing this form with the condemned form which the hon’ble member has laid before the Council, I find that there is no very material difference, except upon one point. Now, I will briefly dwell upon this subject. The first point in the *kabúliyat* to which the hon’ble member took objection was the monthly instalments. He said that ‘monthly instalments were oppressive. They drive the raiyat to the money-lender before the harvest, and they enable zamíndárs to worry the raiyats by bringing suits every month, and saddling the raiyat with costs.’”

His Honour THE LIEUTENANT-GOVERNOR enquired whether this form was issued from the Bengal Office.

The hon’ble speaker stated that they were sold in the Bengal Office.

The MAHÁRÁJÁ OF DARBHANGÁ said that they were circulated in Court of Wards’ estates.

The speaker continued :—“Now, if the hon’ble member had enquired, he would have known that Government revenue was formerly paid in monthly *kists*, and throughout the country rent was paid in monthly instalments, and that, subsequently, it was divided into quarterly instalments, and that in many

parts of the country it is still paid in monthly instalments. So that this is no new condition, but even the payment of quarterly instalments might drive the raiyat to the money-lender, as he could not always pay before the harvest.

“ I should mention that these monthly *kists* have been recognized in this country for a long time, and that even Suvankar, the Cocker of Bengal, has given, in one of his arithmetical tables, the calculation of monthly *kists*, so common was the practice. In the Government *kabūliyat*, I find that the first condition was ‘ in default of instalments, monthly interest at the.....per centum you shall pay.’ Now this is important, because it is a sample pattá which is prescribed by the Government, and the first condition is, that if there was default so much interest must be paid. It is not necessary to go into this point at any length, but I will observe that Regulation XI of 1793, admitting this usage, imposed these *kists*, and severe penalties for default were prescribed in section two. I have said that the same condition is prescribed in the Government form of pattá. But what does the Government do in its own estates? What is the practice of Government in its own *khás maháls*? I will read some passages from the forms of leases prescribed by the Board of Revenue:—

* * ‘ pay the Government revenue *kist* by *kist*, according to instalments noted at the foot of this engagement. If I fail to pay the full amount of one instalment, or a part thereof, due within the year, Government shall have power, on its own authority, without the interference of Courts, to cancel any lease even before the close of the year’—*Vol. II, page 131, Form 16.*

“ So here we see that the Government tells the tenant, ‘ if you fail to pay monthly revenue *kists*, the Government will have power, on its own authority, and without the interference of Courts, to cancel your lease even before the close of the year.’ Then, again, Vol. II, page 138, ‘ pay the revenue *kist* by *kist* according to the *kistbandí* noted at the foot of this agreement.’ So that the horrid private pattá which contains the condition about monthly instalments is not singular or *unique*.

“ The next point is, ‘ if I fail to pay rent on a due date, I will pay interest at the rate of two pice in the rupee until the date of realization.’ The remark of the hon’ble member was that thirty-one per cent. was charged in the *kabūliyat* he had read out. It was well known that this was what was usually considered or called a penal sum, and that the Courts never decreed that rate of interest, the law allowing only twelve per cent. per annum, and such a clause, the hon’ble member knows, finds place in bonds in England; here the zamindár charges interest if the raiyat wilfully defaults. What does the Government do in its own *khás maháls* if the raiyat defaults? Here is a provision in Form

25, page 141: 'If I default * * * I may be ejected at the will of the Collector.' The zamindár is content with interest, which the Court will never decree at more than twelve per cent. per annum; but under the form quoted, the Government, in case of default, has taken power to eject a tenant without the intervention of the Courts.

"I would ask the Council to compare the terms of the *kabúliyat* taken from Government raiyats on Government estates upon the same points. I would refer to the Board's Rules again: the tenant engages—'I shall not ask for any abatement of revenue in consequence of inundations, drought or any other calamities, and no such requests if preferred will be listened to.'—*Board's Rules, Vol. II, page 131, clause 6, Form 21.* Again, 'I shall not raise any objection to the full and punctual payment of the said revenue on the score of inundations, &c., or other accidents affecting the value of the said land or the outturn thereof, and I shall raise no claim to abatement on any such account.'—*Form K, clause 5.* It will be seen that no deduction is to be allowed to a Government tenant even in case of diluvion. And these were *kabúliyats* which the Government obtained from tenants on their own estates.

"The next objection is that the raiyat is not allowed to enjoy the value of trees, or to cut down trees. Now, similar rules will be found in Government Forms. Thus—'I shall not sell or cut any trees on the estate whether bearing fruits or not.'—*Form 16.* I presume that the raiyat who executed the private *kabúliyat* must have been a new comer; and, if he was a non-resident raiyat, I do not see any reason why the proprietor should be debarred of the right of making a contract with him that he should not be entitled to the right of occupancy. If this is considered objectionable, landlords will be able to accomplish their object in a different way, that is to say, by taking terminable leases for, say, ten years, and renewing the same at the end of ten years; and so defeat the accrual of the right of occupancy. In this *kabúliyat*, I see the zamindár has gone straight to his work; but I hope it will not be supposed that, because there may be some instances of new raiyats who may enter into an engagement claiming no right of occupancy, for the simple reason that they have no just claim to such right, therefore, the right of occupancy is not allowed to accrue in this country. On the contrary, as I have shown, since Act X of 1859 came into operation, the right of occupancy has extended to some ninety per cent. of the raiyats throughout the country. But how does the Government meet such cases in the *kabúliyat* which it takes from its own tenants? The tenant declares 'in the event of my dying during the continuance of the term of this engagement,

the Government shall have power to settle the mahál with any one.'—*Form 16*. In this private *kabúliyat*, the right of the heir is recognized, but in the Government instrument that right is not recognized. Then the hon'ble and learned Law Member comments on that clause of the *kabúliyat* in which the raiyat engages to pay the road and other cesses. Of course, I do not know what the words in the original *kabúliyat* imply, but no Court of Justice will decree the full amount of the road cess against the raiyat. As regards the dák cess, it is payable by the zamíndár. But if the hon'ble and learned Law Member will refer to section 12 of Act VIII of 1862, he will find that private contract in this matter is allowed, so that the zamíndár is perfectly within the law if he makes a contract between himself and his raiyats providing that they would pay their share of the dák tax. With regard to trees, I find that only one-fourth of the value of the wood is to be given to the raiyat under the private *kabúliyat*. What is the provision in the Government *kabúliyat* on this point? Form 16 says, 'I shall not cut or sell any tree on the estate whether bearing fruit or not.' So under this stipulation the Government tenant will not get even one-fourth of the value of the wood, which the zamíndár allows under the *kabúliyat* before the Council. Then there is Form 22 in which an option is given to the raiyat to enjoy the right of cutting trees or not, and in Form 23 it is stated: 'I am entitled to take and enjoy the fruit only of the existing trees or of such trees as may be planted by me.' Comments on these conditions are superfluous. I shall not pursue the subject further. I have shown that the conditions contained in the *kabúliyat* quoted by the hon'ble and learned Law Member are much the same as those in the Government sample Form advertized in 1875, and that the conditions of the *kabúliyats* taken by Government from its own raiyats contain similar, if not harder, conditions. If such is the case—if Government itself, in its own wisdom, has thought fit to prescribe such *kabúliyats*—I ask whether they are of such an outrageous nature as not to justify the protection of the law. I submit that, if it be considered right and just that the raiyat and zamíndár may enter into a contract with regard to the disposal of land on permanent or temporary lease, that the raiyat may enter into a contract in all other matters affecting his own interests, and that a coolie in Bengal may enter into a contract for the sale of his labour in the wilds of Assam, I do not see any good and valid reason why the zamíndár and raiyat should be debarred of the right to enter into a contract of this kind, because the matter relates to the right of occupancy in the soil. Surely, this matter ought to be dealt with in the same way as other matters of contract affecting the rights of landlord and tenant.

"I now come to the question that the proprietor has a natural right to elect his own tenant. This right is admitted by the hon'ble and learned Law Member. He says that, in order to secure that right, we propose to give the zamíndár the right of pre-emption; that is to say, if the occupancy-tenant should wish to sell his tenure or to mortgage it, the zamíndár shall have the right to pre-emption in regard to it, and that, if the zamíndár and the raiyat should fail to come to any settlement as to price, they shall go to the Court for such settlement. Here, again, both the zamíndár and raiyat are driven into Court for the settlement of their differences. Now, apart from that, let us consider what will be the economic effect of a provision like this. If, as I have ventured to show upon the authority of Lord Lyndhurst, the zamíndár is the actual and absolute proprietor of the soil, is it right that, when one class of his tenants should leave his land, he should be made to pay a fine for securing his proprietary right in the same? Why should he be made to purchase what ought to belong to him as a matter of right? Even admitting, for argument's sake, that the zamíndár's power of ownership is limited, that he must not absorb into his own *khámár* what is raiyatí—admitting that to be the case—I ask, why should the zamíndár be compelled to purchase his own land again in order to exercise the right of ownership over it? I think that the provision contained in the Bill of the Hon'ble Mr. Reynolds was more equitable. While conceding the right of transferability to the raiyat, he would not take away from the zamíndár the right of proprietorship; I believe his Bill provided that no occupancy tenure should be transferred without the consent of the zamíndár. I say such a provision would not clash against the leading principles of the Bill, while it would secure the right of the zamíndár to elect his own tenant. I leave it to the Council to imagine what the position of a zamíndár would be if this provision were put into force by the raiyats in any large number of cases. Take, for instance, the case of a person purchasing an estate for two lákhs of rupees on a calculation of so much annual return. Well, he calculates the interest and makes a simple money investment upon a certain percentage of profit. He holds this estate for five years. After that, when this Bill becomes law, a number of occupancy-tenants come in and tell the zamíndár, 'We have sold our holdings to such and such persons for so much; if you will pay us the price we will sell the lands to you, otherwise you must forego your right.' Of course the zamíndár, in order to keep away inimical tenants, would, if he had the means, buy up the tenures. But what is his position? He has, firstly, paid the full price for the estate, and now he must pay again for these lands if he wishes to exercise the right of pre-emption. What return does he get? *Nil*. As the Bill provides, he must let out the land at the same rate and, perhaps, even less. Now, I wish to ask the Council whether such a provision is fair, just or equitable.

“With regard to enhancement of rent, I confess I do not clearly understand the very complicated provisions which have been made on this subject. As far as I understand the Bill, it appears that, as a rule, the maximum of rent shall not exceed twenty per cent. of the gross produce. Tables of rates are to be prepared, and, if applicable, they shall be the guide. If not, the proportion theory shall, to a certain extent, be resorted to, and then the maximum of twenty per cent. should be adhered to, that was to say, as regards occupancy-tenants. Now, as regards the tables of rates, I hope the enquiries made by the Bengal Government will satisfy the Council that it will not be worth while to go to the trouble and expense of preparing these tables of rates. I am indebted to the courtesy of His Honour the Lieutenant-Governor for copies of the reports of Mr. Finucane and Bábú Párbati Charan Rai. In the report of Mr. Finucane, this is the conclusion he arrives at with reference to the tracts he enquired into:—‘The rate varies from four to one hundred and odd.’ So that the ascertainment of a uniform rate of rent which will apply to all holdings is impracticable, and yet the Bill contains provisions for an enquiry into rates, and I believe the cost of the enquiry is to be borne by both zamíndárs and raiyats. I do not see the necessity for such an enquiry, nor the justice of charging the zamíndárs and raiyats with the cost. With regard to the enquiry of Bábú Párbati Charan Rai, I find that he reports that the rate of rent has not varied from the days of the Permanent Settlement in certain tracts which he has enquired into. Now, here is one proof also of the moderation with which the zamíndárs in some districts have treated the question of rent. Then, as to the twenty per cent. maximum, it is quite true that I, in another capacity, had recommended twenty-five per cent., but I confess I am not prepared to accept the recommendation of His Honour the Lieutenant-Governor for twenty per cent. The proportion of rent in Bengal has varied very much. At the time of the Permanent Settlement, as I find from a Minute by Sir John Shore, it varied from one-half to three-fourths of the value of the gross produce. At the present day, the proportion has been considerably reduced by rise in the value of produce. In the Eastern districts, I am inclined to think this proportion of rent may not be unacceptable, but in the Western districts it will be strongly objected to. There, I believe, the proportion is not less than one-third. In Bihár, it is much higher, and varies, I believe, from seven to nine annas in the rupee. Therefore, the twenty per cent. maximum, if sanctioned by law, will be a source of gross injustice to many zamíndárs in these parts. When I recommended twenty-five per cent. I did not for a moment suspect that the Government would go lower down, and I observe that the Rent Commission accepted my recommendation. But it is

necessary for me to add that most of the zamíndárs did not agree with me, and did not consider twenty-five per cent. fair or just. The rules which provide for the settlement of rent of the ordinary raiyat, or the tenant-at-will, will be practically a bar to enhancement. The rules have been so framed that either the ordinary raiyat or the tenant-at-will will become, by force of circumstances, an occupancy-raiyat, or will leave the land with both his pockets or hands full. Now, from the time of the Permanent Settlement, a broad distinction had always been made between *khudkásht* and *paikásht* raiyats, that was to say, between resident raiyats, and tenants-at-will. But this Bill makes away with that distinction by importing certain ideas which are entirely foreign to the land-system of this country, and which I cannot help saying have been apparently borrowed from the Irish land-law. In the first place, the ordinary raiyat or tenant-at-will, according to the customs of this country, is not entitled to compensation for improvements. This question of improvements is a very large one. In this country, if a raiyat wishes to make any substantial improvements for the purpose of cultivation or manufacture, he generally takes a long lease, and secures his right, and then makes the improvements he needs. That has been the general practice. Ordinarily few improvements are needed for the cultivation of the soil. Nature has been so bountiful that if you merely scratch the soil in many parts of the country mother earth will yield her fruit. But this Bill introduces the novel idea of compensation for improvements. Now, what are the improvements that a tenant-at-will generally makes? I should feel obliged if any hon'ble member present would kindly enlighten me on this subject. As far as I am aware, irrigation is very little needed in Bengal Proper. Embankments are here and there needed, but for the most part they are made by the zamíndár. Would you consider those little ridges which separate the fields one from the other as improvements? and would you like to give to the raiyat a new handle for litigation, by inciting him to find out improvements which had never before entered his unsophisticated mind? I again say that, by bringing in this chapter of improvements, you will simply drive the raiyat and the zamíndár to the chapter of litigation. That is one of the weapons placed in the hands of the tenant-at-will to use against the zamíndár, because, if the zamíndár must pay for improvements before he can enhance the rent of a tenant-at-will, he must perforce desist.

“But this is not all. If the tenant-at-will should refuse to pay the enhanced rent, the zamíndár must pay him ten times the amount of the proposed annual enhancement by way of compensation for disturbance, or forego the right. The tenant-at-will will, by this unnatural process of law, become an occupancy-tenant.

“ Now, what right has the tenant-at-will, who is a creature of to-day or yesterday, to demand from the zamíndár a compensation for disturbance as it is called? He will have the right to relinquish the land if he chooses, but the zamíndár will not have the right to eject him. This provision I say is open to three objections. In the first place, the rich zamíndár, who alone can pay the value of improvements and compensation, will be subjected to so much fine if he wishes to keep the land in his own possession and prevent the tenant-at-will from acquiring occupancy-right. The poor zamíndár, who cannot pay, will be obliged to put up with this forced occupancy-right, and in every case the zamíndár and the raiyat will be driven to litigation. Now, it is well known to the hon'ble Council that, as matters go, there are abundant causes of dispute between the different classes of the agricultural community, and is it right and proper that this new idea should be forced into the unsophisticated minds of our raiyats? The practical effect of the provisions I have commented upon will be the destruction of proprietary right, and the deterioration of private property.

“ I have already alluded to the distinction which has been made between *khamár* and *raiya* land, and I only wish to draw your attention to the provisions of the Permanent Settlement Regulations, giving the zamíndár the right of disposing of his lands, with the exception of dependent, *istimrári* and *mukarrári*, in the best way he might think fit. Section 52, Regulation VIII of 1793, says :—

‘ The zamíndár, or other actual proprietor of land, is to let the remaining lands of his zamíndári or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following.’

“ This clause to my mind proves two things. In the first place, the zamíndár had an absolute right to dispose of all lands, except independent taluqs, in the best way he could, and, in the next place, it recognised the right of the zamíndár to enter into contract. In fact, from 1793 to 1859, I find repeated enactments in which the zamíndárs are exhorted to enter into contracts with the raiyats, and if the interchange of *pattás* and *kabúlyats* had been regularly enforced by Government, there would by this time have been such a record-of-rights as would have prevented the necessity of over-riding contracts.

“Now, I have said that rack-renting, as it is generally understood, is not known in Bengal Proper. If the country had been so rack-rented as has been represented, there could not have been so much prosperity as the Government has from time to time testified there is. I find that Sir Ashley Eden, on assuming the reins of the Bengal Government in 1877, made a tour through the Eastern districts, and in a memorable speech he then said :—

‘Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world; well-fed, well-clothed, free to enjoy the full benefit of their labours, and able to hold their own and obtain prompt redress of any wrong.’

“Similar testimony with regard to other parts of Bengal is, I believe, to be found in the Administration Reports of the Bengal Presidency. I need hardly remind the Council that, when Sir Ashley Eden left the country last year, he, in defence of his excise policy, made this broad statement, that the development of the excise revenue was the best test of the growing prosperity of the agricultural population; and I ask whether this prosperity could go on if the raiyats had been handicapped, or if they had been depressed by rack-renting, as is sometimes alleged? I am afraid I have trespassed upon the time of the Council very long, but I hope I may be permitted to notice a few other points.

[At this stage the Council adjourned for lunch, and on their re-assembling the hon'ble member continued his remarks as follows :—]

“My Lord, when I closed I had alluded to the question of rents in Bengal. I said that it could not be rightly urged that, as far as Bengal Proper was concerned, it was rack-rented. Now, it may be interesting to enquire what is the condition of the peasantry in the other Provinces of India, and such an enquiry may throw considerable light on the present subject. I hold in my hand a pamphlet on the effects of periodical revision of the land-tax in India. It is from the pen of a well-known Indian publicist and sincere well-wisher of this country, Mr. John DaCosta, who was senior member of the late firm of Messrs. Ashburner and Co., and with whom I have had the privilege of being long associated in the work of Indian reform. Mr. DaCosta, in referring to the Madras Presidency, says :—

‘Beginning with Madras, the last Administration Reports from that Presidency show that the arrears of revenue, annually recovered by the sale of land, steadily increased from Rs. 31,830 in 1865, to Rs. 665,091 in 1879. This rapid rise, showing the growing difficulty of collecting the land-revenue, indicates the impoverishment of the cultivating classes.’

“Then, with reference to Bombay, he says :—

‘If we next turn to Bombay we find that, in consequence of unsatisfactory reports regarding the collection of the land-revenue in that Presidency, the Secretary of State has quite recently sent out orders authorising a reduction of twenty per cent. in assessments in the Sholapur district. That the assessments there have long been excessively oppressive may be seen from a Minute of the Government of Bombay indited about seven years ago, in which it is recorded that ‘the Government had read with much concern the opinion expressed by the Collector of Sholapur as to the undue pressure of the revised rates, in consequence of which a large quantity of land had been put up for sale in default of revenue, much of which found no purchasers.’

“A reference to the Bombay Revenue Commissioners’ reports will show, moreover, that 10,880 acres of cultivated land in Surat, and 25,035 acres in the fertile Province of Guzarát, were abandoned in 1872 and 1873, when the revised assessments were enforced; and that, while the unfavourable year 1871-72 was followed by two exceptionally propitious seasons, the depression of the people, as manifested by the relinquishment of their fields, had continued. From the same causes the revenue collected in the Northern Division in 1874 decreased, although the rates had been enhanced; and official reports of the same period from Puna state that ‘the amount of land-revenue unrecovered was very considerable, and that, in order to realise the amount actually recovered, it was found necessary to sell up many occupancies.’ Further, a memorial was addressed to the Viceroy in 1875 by some 3,000 landholders in the Bombay Presidency, complaining that the demand made upon them for land-revenue was out of proportion with the productive value of the land; and that, owing to their inability to satisfy it, many had been deprived of their estates, cattle and other moveable property, while their tenants and cultivators were on the verge of starvation. These reports materially help to account for the appalling severity of the famine which shortly afterwards devastated the Bombay Presidency, showing, as they do, that the very life-blood of the people had been sucked in the process of raising the land-revenue.

“Next, I turn to the North-Western Provinces. You know how harassing a process a settlement work is, and how much the people suffer as long as its operations go on. Mr. DaCosta quotes the following from an official memorandum of Sir Auckland Colvin, who writes :—

‘Settlement-operations have now, in one district or another, extended over nineteen years. By the time the settlement of Banda falls in and is disposed of, twenty-six years will have elapsed from the date on which the two first districts were placed in the hands of a Settlement-officer. Others were begun twelve years ago and are not yet sanctioned; one of these is not even yet completed. These facts are significant to those who know what the settlement

of a district means; the value of property depreciated, until the exact amount of the new assessment is declared; credit affected; heart-burning and irritation between landlord and tenant; suspicions of the intention of the Government; hosts of official underlings scattered broadcast over the vexed villages. . . . Nothing can equal the injury inflicted by a slow uncertain settlement, dragging its length along, obstructed by conflicting orders, harassed by successive administrations, and finally threatened with annihilation at the moment when it seemed to have nearly finished its course. Little wonder that we hear of the land needing rest.

‘Who have hitherto been connected by so kindly a bond in one of the greatest political dangers of the day. * * * The Commissioner of Allahabad, adverting about the same time to the depressed condition of the Futtehpora district, stated that ‘the imposition of a ten per cent. cess in addition to the ordinary land-tax fell heaviest on the villages which were least able to bear it, that many villages broke down, and many more were threatened with ruin.’ * * * From the District Collector’s report it appeared, moreover, that many landlords who had failed to pay up the revenue were imprisoned; their personal property was sold, and their estates were attached for arrears of revenue. * * *

‘The Collector of Cawnpore, referring to the revised settlements, stated :—‘The margin left for the cultivator’s subsistence is less than the value of the labour he has expended on the land. This district has the benefit of water-communication by both the Ganges and the Jamna; it is intersected by the East Indian Railway, and partly traversed by the Ganges canal; yet the land is only worth five years’ purchase, and the state of the average cultivator is one of hopeless insolvency and misery.’ The Lieutenant-Governor, in his Administration Report published in 1873, said that, while travelling, he was forcibly struck with the wretched condition of the Lalatpur district ‘in which many estates were so depopulated, and so much land had fallen out of cultivation, that the assessment has become very severe.’

“The extracts which I have read from this pamphlet unmistakeably show what is the condition of the tenantry in the other Provinces of India. One fact is well known to this hon’ble Council. Relief Acts have been enacted by this Council for the benefit of agriculturalists of the Dekkhan and of Jhānsi; but happily things have never come to anything like that state in Bengal, so as to require exceptional legislation. On the contrary, as I have shown from the words of Sir Ashley Eden, and as is evident from the annual Administration Reports of Bengal, the prosperity of the agricultural population of this Province has gone on uninterrupted, from year to year, since the revolution of prices commenced in 1853, or since the Crimean war. Now, if the condition of the tenantry of Bengal is so prosperous, it cannot be reasonable to suppose that the land-law has pressed upon the springs of industry. I think, my Lord, it would be interesting if we could know what proportion does the revenue levied upon the peasantry of Madras, Bombay and the North-Western Provinces bear to the value of the gross produce of the soil. Is it one-half, or one-third, one-fourth, or what? I have no accurate information on the subject, but an

enquiry into the matter may clear up doubts which exist upon the subject. I, however, know this much, that while the enhancement of rent has come to almost a deadlock on private estates in Bengal, under the working of the proportion theory of the High Court, the enhancement on Government estates in *khás maháls* has been going on of late years at a tremendous rate. I find that within the last few years—I cannot give the exact period—there has been an increase of rent in Chutiá Nágpur estates from one hundred to three hundred per cent; in Tipperah I hear that the increase is much higher, and matters are much worse in Chittagong. In Jalamati, in the district of Mednápúr, the increase has, I believe, been from sixty to eighty per cent. On the other hand, the Government expenditure on improvements in the *khás maháls*,—I believe it was stated in an official paper sometime ago—has been very limited. And while I speak of the Government estates, I think it right to point out that, while the Government goes on increasing the rent on its own estates, and while the Government imposes such hard *kabúliyats* upon its own tenants, the Government enjoys peculiar facilities for the settlement and recovery of its own rents. It is well known that the Government employs almost the same agency as the private zamíndár employs for the management of its estates. The tahsildárs of Government estates generally come from the same class that supplies the *náibs*, *gumáshtas* and other ministerial officers of the zamíndár's private establishment. But while the Government manages its own estates through these men, it is not content with the ordinary powers which a private landlord enjoys; takes advantage of exceptional powers for the realization of its own rents. Now, it ought to be borne in mind that the Government exercises a prestige, by virtue of its position, which the private landlord can never command. First, there is always a sort of intimacy between the Police and the revenue establishment of the Government, which is unseen by the outside public, but which is fully felt by those coming within the operations of the revenue establishment. Notwithstanding all these advantages, which the private landlord cannot claim, the Government has a summary procedure for the settlement of rent, and a summary procedure for the recovery of rent. Now, I ask, if the Government considers it necessary to have recourse to all these exceptional methods for the management of its own estates, is it not manifestly its duty to give similar facilities to the private zamíndár, who is bound to pay in the revenue under the stern sunset law? That is to say, if the zamíndár fails to pay in revenue before sunset on a particular day, he is liable to be sold out at once. Therefore, is it not fair that the zamíndár should have the same facilities for the settlement and realization of rent? It may be said that the Government cannot place the same confidence in the servants of the zamíndár as it can in its own servants. Now, the Bill prescribes certain forms

in which the zamíndári accounts are to be kept and receipts are to be given, and if, with all these safeguards, the zamíndár's servants should still commit fraud and wrong, cannot they be checked by the imposition of penal damages on the zamíndárs in any case in which they may abuse their powers? If, by taking such precautions, the procedure for the settlement and recovery of rent could be assimilated, whether the demand be for Government or for the private landlord, is a point deserving of the fullest consideration of this Council. With regard to the realization of rent the hon'ble and learned Law Member has said that it is not practicable to secure the ends of justice by a summary method. Now, the Government has, from the days of the Permanent Settlement, always recognised its duty to be to help the zamíndár in the realization of rent. So long ago as 1795 the Government thus declared :

'Government not admitting of any delay in the payment of the public revenue receivable from proprietors and farmers of land, justice requires that they should have the means of bringing their rents and reveaues with equal punctuality, and that the persons by whom they may be payable, whether under farmers, dependent taluqdárs, raiyats or others, should be enabled, in like manner, to realize the rents and revenues from which their engagements with the proprietors or farmers are to be made good.'

"Increased punctuality on the part of landholders in the discharge of their duties was now expected, and justice required that they should have the means of obtaining the rents due to them even more now than in 1795.

"From 1793 to 1859, there was a double procedure, a summary procedure and a regular procedure through the Civil Courts, and it was left to the option of the landlord and tenant to have recourse to either. This subject was thoroughly discussed when Act X of 1859 was passed into law, and Sir Barnes Peacock then raised the question that the Civil Courts ought to be invested with jurisdiction, and he proposed to take away the jurisdiction of the Revenue Courts. The majority of the members of the Council were opposed to the change, and Mr. Currie openly declared that, if the jurisdiction was transferred to the Civil Courts, he would rather abandon the Bill than submit to it. Sir Henry Ricketts, Mr. Harington and other members were also opposed to it. Well, the law was passed leaving the jurisdiction to the Revenue Courts intact; but, in 1869, Sir William Grey carried out the transfer of jurisdiction to the Civil Courts. I by no means take objection to this transfer of jurisdiction. I think that, with their legal training, the Judges of the Civil Courts are admirably fitted to decide questions of right and title which are involved in the trial of rent-suits. But, if it be not deemed desirable that the jurisdiction should again be transferred to the Revenue Courts, surely the Government ought to consider whether the procedure cannot in some way be simplified. The proposals made by the hon'ble and learned Law Member will not remove the com-

plaint of delay to any material extent. Now, knowing the origin of the proposal for a change in the land-law, namely, the complaint of the landlords of delay in the trial of rent-suits, and remembering also the promise which Sir George Campbell gave when charging the zamíndárs with the collection of the road cess for the simplification of the procedure for the realization of rent, and the repeated efforts made by successive Lieutenant-Governors in that direction, I think it is very disappointing that the zamíndárs should be told at this time of day that they cannot expect a summary procedure for the realization of rent, and that it is not practicable to do so consistently with the ends of justice. I have just now told you that in the *khás maháls* Government has a summary procedure of its own, and, surely, what is good for the *khás maháls* should be equally good for the estates of private landlords. If justice is not sacrificed by the summary procedure applicable to the *khás maháls*, why should it be held that justice will be sacrificed by extending the same procedure to private estates? If there be any loop-hole through which the ends of justice may be defeated, by all means stop those loop-holes; but do not summarily reject the prayer of the landlords for a summary trial of rent-suits.

“I think, my Lord, I have touched upon the salient points of this Bill. There are many other points on which I cannot dwell at present for want of time. Perhaps they may be best considered in Select Committee; but there is one other point I should like to notice. Whatever difference of opinion may exist as to the different provisions of this Bill, I am glad to say that I am at one with the hon'ble and learned Law Member upon this, that we take our common start from the Permanent Settlement Regulations. I believe his object is to bring back the landlords and tenants in Bengal to the *statu quo* which existed at the time of the Permanent Settlement, and I should be very glad to see it restored. In fact, I look upon the Permanent Settlement Regulations as the Magna Charta of the rights of zamíndárs and raiyats, and I would earnestly wish that that charter should be respected by both parties.

“The two main questions which underlie the scheme of legislation before us, are, what is the position of the resident raiyats and of the tenants-at-will, and what are the rights of the zamíndárs?

“Upon these two important points I will, with your Lordship's permission, read two extracts: one from Harington's 'Analysis', and the other from a Minute of Mr. Seton-Karr, late a Judge of the High Court. I find these passages in Harington's 'Analysis', pages 422-23, Volume 3:—

“Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure, be

considered as hereditary tenants; and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and, having only a temporary, accidental, interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class; and, when oppressed, easily abandon the land, to which they have no attachment."

"It will thus be seen that there was a broad distinction drawn between the *khudkásht* and *paikásht* raiyats, and that, in the days of the Permanent Settlement, the former paid more than the latter. Again, he says:—

'It would be endless to attempt the subordinate variations in the tenures or conditions of the raiyats. It is evident that, in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible.'

"In other words there was no fixed law or custom for the determination of rent, which was left entirely to the discretion of landlord and tenant. With regard to the rights of the landlords, Mr. Justice Seton-Karr, to whom I have alluded, does not take an exaggerated view. This is his rendering of the Permanent Settlement Regulations on this subject:—

'The zamíndár, at first sight, appears certainly possessed of very high privileges and powers. He is at liberty to impose rents on every bighá of land included in the area on which the revenue for which he is responsible is assessed. He can, *proprio motu*, and without having recourse to an action at law, dispossess all persons who set up rent-free grants of a date subsequent to December, 1790. The lands of all raiyats who die without heirs, or who abscond, revert to him. He has the undoubted privilege of levying and assessing rents at a higher rate on the better qualities of land, and on some of the more valuable kinds of produce. His title to demand rents from tenants who are mere occupiers without any title, is, it has been judicially held, barred by no length of time, not even by sixty years' abstinence from demand, inasmuch as the mere liability for rent is held to be a constantly recurring cause of action. As regards his distinct proprietary right in some of the very products of the land, there is, in all the ordinary *patás* which the zamíndár issues to raiyats, an invariable restriction against the cutting of trees by the raiyat, which might even seem to imply that the right to the timber and the fruit trees belongs, not to the raiyat, but to the zamíndár. Tanks are not usually dug, nor are new roads cut, without his permission; and the former are sometimes excavated at his expense. This is one of the few instances in which I have known zamíndárs lay out any money on the land. The motive, however, is generally a pious one. The theory that the rent-bearing area of the estate is not to be reduced without his permission is, in this and other instances, namely, in the excavation of tanks and the formation of roads, openly recognised. The zamíndárs' right to rent includes not only agricultural produce, leviable in kind or in money, but rents from fisheries in running streams and in marshes; from the actual produce of the forest; and from the very droppings of the trees.'

“This is the interpretation of the Permanent Settlement law by a learned Judge of the High Court, who was by no means a friend of the zamíndár, and I ask whether the rights and privileges which the Permanent Settlement Regulations conferred on the zamíndárs are respected in the Bill before us. I ask whether, while professing to restore the *statu quo ante*, which existed at the time of the Permanent Settlement, my hon’ble and learned friend has not practically gone in the opposite direction. This is not the first attempt which officers of Government have made to legislate in a direction not quite consistent with the guarantees of the Permanent Settlement. But the Government has always scrupulously respected the solemn compact entered into by it with the landholders of the country. In 1819, I find the Government, through no less a personage than Mr. Holt Mackenzie, himself a high authority on the Revenue law of Bengal, Secretary to Government, declared as follows, in a letter, dated the 22nd of April, 1819.

‘But it is the firm determination of Government to maintain inviolate the rights and privileges bestowed on the zamíndárs by that settlement, notwithstanding any errors or abuses that may now be discovered to have been practised, and although the profits of any one from his estate should be many lákhs and his jama only a few rupees, yet Government will on no pretence break its agreements.’

“In the words of Mr. Holt Mackenzie I appeal to your Lordship, and I am confident that when the whole question is considered by your Lordship and this hon’ble Council, the rights and privileges conferred and guaranteed by the Permanent Settlement, both on the zamíndárs and raiyats, will be preserved intact and inviolate. I observe that, at the present stage, the Bill is to be referred to a Select Committee, and I confess I do not quite understand my position with respect to the Bill. I have said there is necessity for legislation on the subject, at the same time, I have denied the necessity for a general revision of the rent law. On the other hand, I see that the Bill, in its skeleton form, has received the assent of the Government of Bengal, the Government of India and Her Majesty’s Secretary of State. I see that the Bill, as laid before the Council, contains provisions which are repugnant to the principles of the Permanent Settlement, and which I, therefore, consider it my duty to oppose. But the question is whether, the Bill having already received, as regards its main principles, the assent of Her Majesty’s Government, it will be open to the Select Committee to consider those provisions which constitute the leading principles of the Bill, and whether the Government will be prepared to make any changes in the substantive part of the Bill, when, by the rules of the Executive Council, which require the previous assent of the Secretary of State to any project of legislation, the members of this Council are prac-

tically precluded from considering any fundamental principles of a Bill so sanctioned. I, for my part, do not see any advantage, so far as these main points are concerned, of referring the Bill to the Select Committee.

“Of course, as regards details, the Select Committee will be the proper body to settle them. Be that as it may, I take it that when a Bill of this momentous nature is submitted to public criticism, the Government will not decline to consider any representations or suggestions which may be reasonable or just, though such suggestions may be opposed to their previous conclusions. I feel grateful to your Lordship that arrangements have been made for giving a wide publicity to this Bill, and for inviting public opinion upon it; but I think the public ought to receive an assurance that their criticisms and representations will not be thrown away, because the leading principles of the Bill have already been discussed and determined upon by the Government of India and the Secretary of State. If the Select Committee be tied as it were hand and foot in regard to the fundamental principles of the Bill, then public discussion will be of little advantage, for whatever the public may say or write, and however reasonable their suggestions may be, the Select Committee will not be at liberty to make material alterations in the Bill.

“And now, my Lord, in bringing to a close my wearisome address, for which I apologize to the Council, I venture to express a hope that, as this is a measure of the greatest importance to both landlords and tenants in this Province, the like of which had never before, I may say, engaged the attention of the legislature since 1793, that this hon’ble Council will not seal with its sanction this Bill, without giving to it a patient, attentive and full consideration, and that it will not consider the object of the Bill as merely an attempt to adjust the relations between landlord and tenant, but also as a matter involving deep economic problems, as a matter involving the sacred question of the plighted faith of Government, and as a matter involving the prosperity and happiness of sixty millions of the population of Bengal.”

The Hon’ble MR. EVANS said :—“ I do not propose to detain the Council at any great length on this question, and I am glad to find that the Hon’ble Mr. Kristodás Pál is at one with me on at least one subject, and that is the necessity for legislation. I do not think that anyone who has seriously and attentively considered this subject, and has seen how matters were going on, can help feeling that there is a necessity for legislation. When it is found, as I myself have found, that the Law Courts have come to a dead-lock, and that they can do nothing with the cases for enhancement and settlement of rents that come before them; that such enhancements are introduced by illicit means, where

the zamíndárs are strong and the raiyats weak, and that just demands are resisted where the zamíndárs are weak and the raiyats strong, then it is evident that a very serious state of things has arisen—a serious state of things for the Government of the country, and a serious state of things for the landlords themselves. The mass of the raiyats in this country are ignorant people, as a rule, incapable of combination, except on a very small scale, although they have begun to show, in some parts of the country, that they are learning the advantages of combination, and can combine in an effectual manner against the landlords. If you find, on the one hand, the landlords beginning to use other than legal pressure to enforce their claims, and the tenants beginning to combine to resist, by means other than legal, those claims, you have a state of things which might, if left alone, develop into a serious danger. We all know there is nothing more troublesome or difficult to manage, when once it has begun, than an agrarian agitation, and, therefore, I think that, in the interests both of the landlords and the raiyats, legislation of some kind is clearly necessary.

“ The landlord has great difficulties in enhancing and settling his rents, and difficulties of various sorts in the collection of them. Therefore, as everyone seems agreed on the necessity for legislation, the question really resolves itself into one of the length to which legislation should go. The hon’ble member who last spoke has said that this matter was formerly discussed, and it was felt there was necessity for some legislation for the benefit of the zamíndár, and that successive Governments found themselves unable to give the relief wanted for various reasons. He also said there were two points on which legislation was required, namely, for the recovery of rent, and the settlement of rent. But there, my Lord, is the hitch. How are you to settle the rents unless you get at the rights of the parties? And that is why each Lieutenant-Governor found himself unable to settle the rents. They could not settle the rents until they found some proper method of settling them, and they could not give the zamíndár summary power to recover rents till it was settled what the rents were. The zamíndárs, no doubt, would be glad if they could have a summary procedure, which enacted that the tenant was to be sold up for whatever the zamíndár considered to be his rent. But it was impossible for a Government which had the charge of all these millions of raiyats to grant that boon—a boon which might in the end turn out to be an exceedingly fatal one to the zamíndár himself. Therefore it is that Commissions have been issued, and all this mass of evidence before us now has been collected. I quite agree that the work of these Commissions is wanting in statistics. I cannot, however, go with my hon’ble friend as regards the want of statistics about the question of transferability, because

we find pages 365 to 373 all taken up with divers transferable tenures, and the districts in which they are transferable and the number of transfers which are registered. There are a certain number of valuable statistics in regard to transfers; on other points there are no statistics. This is a great disadvantage. But this is not to be imputed to any fault of the Commission, because, as a matter of fact, there was no means of procuring these statistics. The statistics as to the occupancy of the lands are to be found nowhere except among the zamíndárs themselves, and if there is any body which can give these statistics, it is the Zamíndárs' Association. Well, now, this being so, the question has been forced before the Government, after careful consideration, how are rents to be settled? And here I may observe that my hon'ble friend Mr. Kristodás Pál appears to assume, with regard to the great bone of contention, the position of occupancy raiyats, that Act X of 1859 has practically accorded that right to a large proportion—he thinks ninety per cent.—of the tenants of Bengal. If that is so, there can, as already stated, be very little reason for extending it further. But what is the fact?

“If ninety per cent. of the tenants in Bengal have got the occupancy right, the fact remains that they cannot prove it, and it would be ruin to most of them to try to prove it. Now, of course, if you get a class of men and give them certain rights, but place them in such a position that, having those rights, and knowing that they have them, yet they are unable to enforce them, there arises a very lamentable position. If a man has a right and cannot press it, what will he do? If there are many of them, they will create disturbances. Therefore it is that, looked at from this point, the Bill appears to be a Bill, not for overturning the Permanent Settlement, but for securing to the ninety per cent. of the raiyats in Bengal some means of getting the benefit of this right of occupancy declared by Act X, and being able to assert it. I saw in a letter not very long ago, in one of the newspapers, a statement by a zamíndár that most of the raiyats on his estates had morally a right of occupancy. That is a curious expression. It means they had got it, but had not got it; and that, practically, is no doubt the state of affairs described by my hon'ble friend to-day. There is the moral possession of a right of occupancy, unaccompanied by an actual or fructuous possession of it. Now, if this is the state of the case, it is not really so great a blow to the zamíndárs as we have been led to suppose, to pass a law by which the difficulties of proof should be minimized, by which the onus of proof should lie less heavily on these tenants, and by which they may be able to get a more effectual enjoyment of this already existing moral right. I understood my hon'ble friend the Mahárájá of Darbhanga to say that, as a matter of fact, he thinks it would not be a bad

thing that raiyats should have some sort of fixity, and I think that is the feeling of a great many zamíndárs. If they could get a fair settlement of their rents, and get rid of all the litigation in which they are at present involved, they would not look upon such extension of the right of occupancy as is given by the Bill with any great alarm. Now, this being the case, we are invited by my hon'ble friend to consider this matter as, if it were some interference with the Permanent Settlement, and the first thing he asks us to consider is the position of the zamíndár and raiyat, and he lays claim on behalf of the zamíndárs to what he terms the actual property of the land, and his case, as I understand it, is that, antecedently to the Permanent Settlement, the zamíndárs were absolute owners of the land; that they were subject to payment of revenue to the Government, but that they were absolute owners, and that this right was not then created but confirmed, and exists to this day, and that Act X of 1859 was a serious interference with that right. I cannot agree with that view of the matter. As regards the position of the zamíndárs before the Permanent Settlement, I would refer to a Minute of Lord Cornwallis.

'Under the former practice of annual settlements, zamíndárs who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Dívání, been dispossessed in numberless instances and their lands held khás, or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zamíndárs in Bengal, I conceive, that a more nugatory or delusive species of property could hardly exist.'

"Well, it was so; it was a delusive possession of property. However, I think it is quite clear that, whoever they were, they were not absolute owners, even taking it from the point of view as between themselves and the Government. But I do not really care to discuss that matter, because, whatever was their position as between themselves and the Government before the Permanent Settlement, it is clear that, as between themselves and the Government, the Government did give over this right of making any further demands upon them and constituted them, so far as Government was concerned, absolute owners. That was the position in law. I have no doubt at all that a very large number of them were hereditary zamíndárs, and many of them were members of the old princely houses, who had originally (as ruling chiefs) rights in the land; I agree that it was a hereditary interest, and an interest which would pass to their children. But this did not at all conclude the question whether the raiyats had any interest. The fact is, that land is capable of having a number of interests in it. As between the Government and the zamíndár, if the Government surrenders its rights in the land to the zamíndár, the zamíndár becomes the actual proprietor of that land so far as the Gov-

ernment is concerned. But when we come to the question whether the raiyats had anything to say in reference to this land, that is another thing altogether. What do we find was the old customary land-law of India? I am quoting from memory now, but even Menu lays down that ownership in land arises from the reclamation of land, and I think you will find that even that right of ownership was not a full and absolute dominion, but that a right, subject to the rights of Government and some other persons, did arise on the reclamation of land, according to the old custom of Hindustan, and so we find it to be the feeling of the country to this day.

“Zamíndárs held certain large estates, and under them were the raiyats, and the raiyats from time to time reclaimed jungle and then held lands under the customary law of India. What was that customary law? The first thing was that, having been recognised as raiyats, they had a right to sit there at pargana rates. That right did not interfere with the right of property of the zamíndárs. The right of the zamíndár was absolute as between himself and the Government. But those rights did not cover all the rights in the land, as other people also had rights in that land. My hon’ble friend has relied on a passage from a judgment of Lord Lyndhurst. Now this passage which has been read comes from the well-known case of *Freeman v. Fairlie*. It was a suit brought in the year 1828. The decision in it was that land in Calcutta descended as a free-hold inheritance to the heir, and did not pass to the personal representative. That was the point Lord Lyndhurst had to consider, and his remarks were all made in reference to it. It appears that one Susannah Oldham died, leaving three houses in Calcutta. These three houses she bought from different people. But, as was the custom in those days, she got a pattá from the Collector of Calcutta. She died and left an executor, and differences having arisen between this person and those interested, the question arose whether the houses passed to the heirs or the personal representatives, whether this was real estate or whether it was personal estate. They went before the Master and the Master made his report, and it was decided that the English law applied, and that it went as a free-hold inheritance. This is a very interesting question, but has really nothing to do with the question now under discussion.

“It was contended in that case that no interest which could be held in land in India could be said to amount to an estate in fee simple according to English law, although English law had been introduced to some extent into Calcutta, and it was said that all holdings under the East India Company were too precarious to constitute so high an interest as an estate in fee simple, for various reasons which may be read at length in the report.

“It was *a propos* of these contentions that Lord Lyndhurst remarked that a perusal of the Bengal Regulations had led him to the conclusion that the interest of the zamíndárs in land under those Regulations was an absolute proprietorship and not such a precarious or temporary interest as had been suggested. His object was to show that, if such an interest was vested in an Englishman in a place where English law applied, it would be an estate of inheritance in land descendible to the heir, and not something in the nature of a chattel interest divisible among the next-of-kin. If Lord Lyndhurst had before him a question as to the relative position of zamíndár and raiyat in a zamíndárl, his decision would have been entitled to the highest respect, and the hon’ble and learned mover might well be uneasy if he had gone against so high an authority. But in truth the passage cited is only another instance of the danger of citing isolated passages from judgments without considering the point discussed in those judgments.

“In the *résumé* given by Mr. Justice Seton-Karr of the position of the landlord, just read by my hon’ble friend, he points out that the zamíndár has a right to the rent which is barred by no length of time. Here is a curious thing. If you have an absolute ownership, and if another person holds possession for twelve years, it becomes his own, because he has adverse possession. But the rule laid down by Mr. Seton-Karr was that, if it be in the possession of a raiyat, and the raiyat cultivated it, not alleging himself to be a zamíndár, he does not hold adversely. Now, although he sits there for sixty years, his title is not adverse, and the landlord does not lose his right even though he may omit to collect the rent. What is the reason? That originally the status of the raiyat and the zamíndár did not depend on contract at all. There was one person who engaged with the Government for the land and obtained an assignment, temporary or permanent, of the right of Government to obtain revenue from every *bíghá* of cultivated land not specially exempted by a grant from the ruling power; then squatters came and squatted; they never dreamt of saying they were zamíndárs, but simply raiyats; if the landlord came and asked for rent they would pay what their neighbours paid; if they reclaimed the land, they would ask to pay less, and generally would be allowed to pay less; but if they took possession of cultivated land, they would have to pay the *pargana* rate or go away. But it was not possible to say that these persons were anything else but raiyats. Tenancy in England was by contract, and if a person comes and sits on your land and cultivates it, and has not made an express or implied contract, his possession is adverse to the landlord, and after twelve years he becomes owner of the land free of any obligation to pay anything to anyone. But this is not the case here. I know that Sir Barnes Peacock and other great authorities, who have

taken a strictly English view of the question, have said that the relations between the zamíndár and the raiyat are similar to those of landlord and tenant in England. But many of the Judges—Messrs. Steer, Jackson, Seton-Karr and others—held that the relation of zamíndár and raiyat could be established independent of any contract. If that is so, it throws great light on the subject, and I think there are many other things which point to the conclusion that permanent cultivation of land in India by a person other than a zamíndár was sufficient evidence of a raiyati holding according to custom.

“There has been much confusion arising out of the use of the term ‘actual owner’ or ‘actual proprietor of the soil.’ In many zamíndáris there is a zamíndár, a patnídár, a durpatnídár, and under them a *jangalburí* or an occupancy raiyat. Each one of these is an actual owner or proprietor of such interest as he has in the soil.

“But say the opponents of the Bill—how about the waste-lands? There were no raiyats on the waste-lands. The zamíndárs by the Permanent Settlement became, as to the waste-lands, owners of their own former rights (if any) *plus* the Government rights, and as no one else had any rights they must have become absolute owners in the fullest sense, and able to do what they liked with their own.

“The answer is that the position of the waste-lands was not changed by the Permanent Settlement, save so far as the rights of Government were transferred to the zamíndárs. If, therefore, before the Permanent Settlement raiyats who reclaimed or settled on waste-land acquired any rights, raiyats who did the same thing after the Permanent Settlement would acquire the same rights and occupy the same status as they would have acquired or occupied had they settled before the Permanent Settlement.

“No doubt the incidents of a customary holding may be varied by actual contract (unless prohibited by law). But all original contracts which I have seen between zamíndárs and raiyats about to reclaim waste-lands have been contracts whereby the raiyats have obtained a right to sit at lower rates, either permanently or for a time, than the ordinary rates prevailing on the neighbouring cultivated lands. I have never seen or heard of any case in which a raiyat undertook to reclaim waste-lands on worse terms than the customary terms on which permanent tenants of adjacent cultivated lands were then holding.

“But I have seen and I have heard of many cases in which, from the power of the zamíndár and the weakness and ignorance of the raiyat, the successors of those who had reclaimed land on specially favourable terms since the Permanent

Settlement have been unable to enforce or maintain those terms and have been reduced to the level of ordinary raiyats.

“It may be taken that all land reclaimed since the Permanent Settlement has been reclaimed either on the old customary terms without a written engagement, or on a written engagement more favourable to the raiyat than the customary terms.

“I will only make one or two further remarks. The most effective part of the hon'ble member's on-slaught on this question was his attempt at what I may call the *argumentum ad Governmentum*, in which he said that the Government had treated the raiyats on their khás maháls or Crown lands just as the zamíndárs had treated them, or rather worse, and that they had declined to recognise in the raiyats any higher rights than the zamíndárs had recognised, and that they had mercilessly enhanced their rents and evicted them if they did not consent.

“It is no argument to say that the Government in various departments have done the same thing. In speaking of the Government, it must be remembered that there are many departments of the Government. From one point of view, you may have the Government sitting here consulting for the general good of the country and taking broad views of the question. On the other hand, there is a department which represents the Secretary of State, who represents the positive right of the Government in their property, just as in the case of Crown lands in England. When you deal with the Government in this capacity, I am sorry to say they don't seem to be the same kind of people as the Government of India in its broader capacity. I have seen the same thing at home. I have seen what I considered to be very hard and unjust conduct on the part of the Commissioners of Woods and Forests—conduct which was worse than would be expected of any private proprietor. They are in the nature of a Corporation, which has to preserve the rights of the Crown, and they come to look on every body else as natural enemies, who are endeavouring to deprive the Crown of its rights; and I have seen a good deal of the same sort of thing in India, and I am quite prepared to believe it is true, as many of the Government officials must know, that these officers often think it their duty to exact as much as they can. I am only suggesting this as an explanation of what has been said of the dealing of officials in Government and Court of Wards' estates. Suppose there is a substratum of truth in the figures brought forward by the hon'ble member, and it should be proved that enhancements to the extent of one hundred per cent. have been made on these unfortunate Government estates, I think the Board of Revenue, on learning of the existence of such things, would put a stop to them. But if the state of things is as

has been stated to the Council it is certainly very deplorable. But it furnishes an argument against my hon'ble friend. If the Government officials, who have no personal interest in them, would do such frightful things by abusing the special summary powers entrusted to them, how much more will the managers of zamíndárs do them ?

"I have not had time to go through the details of the Bill; but I think several grave and serious questions arise in reference to it. The question of compensation for disturbance and other important questions require serious consideration, and I offer no opinion upon them at present. The practical working of the different clauses of the Bill have to be considered.

"But the great thing is to try and secure, as nearly as possible, absolute data on which to proceed. I do not believe in the beneficial effects of any form of words, unless you have facts to act on. I believe that, before the present state of things can be set straight, a full record-of-rights will have to be undertaken. I know that is not a thing which my friend will be pleased to hear. But I do say that nearly one-half the litigation in Bengal arises from the impossibility of ascertaining facts. You cannot get at the rights of any question unless you can get at the real facts. Any number of papers may be produced,—jamabandís, jama-wásil-bákis and the like,—but they are frequently worth nothing. I don't say the zamíndárs have anything to do with the presentation in Court of untrustworthy documents; many of them are very respectable people, but the *náibs* or managers think nothing of fabricating a set of papers. Now, the records being untrustworthy and the oral evidence very worthless, it is very difficult for the Courts to decide the points which come before them. I believe most of the litigation will be rendered unnecessary if you can get in Bengal a real record-of-rights, and if you get rent receipts of a trustworthy character. All these things will practically diminish litigation, and then, if you get a settlement of rents by establishing tables of rates or otherwise, which would last for a considerable timé, I do not think the zamíndárs will have any great difficulty in recovering rents, for the rent will be definitely settled. Under these circumstances, there will be very little use in false evidence, and judgment will be given, and in a month or so the holdings in default will be put up for sale. I think improvements can be made, for I think zamíndárs should have all reasonable facilities for the recovery of rent which can be given to them without causing oppression to the raiyats. If anybody can show any way of giving increased facilities in this respect, I think the zamíndárs ought to have the benefit of it.

"The Government demand is constant and inexorable, and the Government have kept in their own hands a summary and effectual process for realizing

it from the zamíndár. The Government is bound, if possible, to enable the zamíndár to realize the assessment promptly from the actual cultivator. Had the Government from the first insisted that an authentic Government record of rights and rates should be kept up, and that a reliable system of recording payments should be enforced, there would be no difficulty in complying with the demand of the zamíndár; and it would be the clear duty of Government to do so. But unless the Government will resolutely determine to face this matter, it will never be able to do equal justice to the zamíndár and the raiyat: to give the raiyat proper protection is one duty; to give the zamíndár the power to realize punctually from the raiyat that rent or revenue which the Government exacts so punctually from the zamíndár is another duty. Neither of these duties can ever be effectually performed without an authentic record of rates and payments, and if this Bill be not supplemented by vigorous executive action in this direction, it will join the long list of Acts and Regulations of high-sounding promise and little performance of which raiyat and zamíndár have been the subject."

The Hon'ble Mr. THOMAS said:—"My Lord, I had wished to speak generally in support of the Bill, from experience of like tenures in other parts of India; but, looking to the lateness of the hour and the number of speakers yet to follow, I think I shall best consult the convenience of this Council by forbearing to do so: but with reference to the quotation made by the Hon'ble Kristodás Pál with a view to show the pressure of land assessment in the Madras Presidency, from which I come, I may be allowed to say just the one word that his figures are not normal figures, and refer to the great famine time, and the uncollected arrears are the arrears mostly of men and families who had died of famine, and have no sort of relevancy to the normal pressure of the assessment there."

The Hon'ble Mr. REYNOLDS said:—"I desire to thank Your Excellency's Government for the introduction of this Bill. I think it superfluous to enter upon any discussion as to the acknowledged and proved necessity for legislation upon the rent question, after a perusal of the papers which have been laid before us in connection with the Bill. It is conclusively shown by those papers that this necessity has been recognized by the Government, by the Courts of law, by the officers engaged in revenue and administrative duties, by the zamíndárs and other rent-receivers, and by the cultivators and other rent-payers. The Bill before the Council is the result of long deliberation and patient enquiry; it is an honest attempt to hold the balance impartially between interests which, though they are really identical, are apt to come into apparent conflict at various points of contact, and the authors of it have resisted the temptation to

legislate upon new lines, or to put forward new theories of the rights of the different classes of the agricultural population. I cannot agree with the Hon'ble Mr. Kristodás Pál in the estimate which he has passed upon the Bill. I have studied the rent question in Bengal for nearly as many years as he has; I have studied it, not merely in books, but by practical experience of its working, and I have striven to make myself acquainted with its real facts and bearings; and I say with confidence, that the feature which I most admire in the Bill is the eminently conservative and constitutional character of its main principles. In some points of detail I venture to think that this character has not been maintained, and I shall not shrink from noticing these points in their proper place. But, taking the Bill as a whole, it is essentially a measure framed in accordance with the ancient prescriptive law of the country, and, as such, it ought to be acceptable to those who think that the most useful, and certainly the safest, province of legislation is to formulate and crystallize those principles which have been tested by long experience, and accepted by general consent. I think it useless to speculate upon the question whether, in ancient times, the right of property in the soil was vested in the Sovereign, in the zamíndár, or in the raiyat. That question has been discussed with more learning than I could bring to bear upon it by my hon'ble friend Mr. Evans, and I imagine he would agree with me in thinking that the expression 'right of property', when used in such a connection and employed in its modern and European sense, is altogether misleading, and connotes an idea entirely foreign to the age and the country. But there are two great principles which underlie the question of agricultural tenancy in these Provinces,—principles which took their rise in a remote antiquity, which, though they may not have been formally embodied in any statute, are written in the hearts of the people, which were not affected by the legislation either of 1793 or of 1859, and which have survived the lapse of years and the rise and fall of dynasties. These two principles are, first, that the resident raiyat cannot be ejected from his holding in the village lands so long as he pays the established rent, and, second, that it is the right and the duty of the ruling power to determine the rent payable by the raiyat to the zamíndár. I observe with much satisfaction that not only are these principles recognized in the present Bill, but that the Bill is based upon them, and that its provisions are such as naturally spring from the acceptance of them.

“Chapter II of the Bill is of comparatively little importance in Bengal Proper; but in Bihár it will be extremely valuable, if full use is made (as I trust will be the case) of the power to make a survey and register of *khámár* lands.

“In Chapter III, section 15 reproduces the present law regarding the presumption arising from twenty years holding at an unchanged rent. This pre-

sumption was first introduced by the Act of 1859, and I have always thought that it bore somewhat hardly on the landlord, and especially on two classes of landlords who seem entitled to favourable consideration,—landlords who have dealt leniently with their tenants in past years, and landlords who have purchased their estates at sales for arrears of revenue. I was at one time disposed to recommend that the presumption should be removed altogether; but I have since seen reason to modify this view, and I am now content that the section should stand, as it will always be in the power of the landlord to apply, under chapter XII of the Bill, for the preparation of a record-of-rights on his estate. It has, I think wisely, been determined to limit the sections regarding registration to tenures. There is no doubt something attractive in the proposal of the Rent Commission (which was retained in the Bill prepared by the Government of Bengal) to extend the same procedure to occupancy holdings. But the country is not ripe for this. There is no agency for carrying the measure into effect, and the law would be either a dead letter, or would be worked to the prejudice of ignorant and helpless cultivators.

“The short chapter on patni tenures contains nothing which seems to call for remark. The sale procedure, as specified in the schedule, will doubtless come under the consideration of the Select Committee. The law on this matter needs amendment on various minor points, and the Bengal Government Bill contains a number of useful suggestions and recommendations.

“Chapter V, which is really the keystone of the Bill, deals with the important subject of the occupancy-right of the tenant, and of the landlord's right of pre-emption. It avoids the fatal mistake committed in Act X of 1859 (or at least in the interpretation of that Act which has generally been accepted), of limiting the right to those particular fields which may have been held in continuous possession. It defines the settled raiyat as the tenant who has held raiyati land for twelve years in any village or estate; and it declares that such settled raiyat shall have a right of occupancy in any raiyati land held by him in that village or estate. It may be objected that the proposed definition is at once too wide and too narrow: too wide, because the cultivation of land in the same *estate* was never held to confer the position of a khudkásht raiyat: and too narrow, because a much shorter term than twelve years might reasonably be taken as evidence of settled occupation. The definition may in some measure be looked upon as a compromise: and the correspondence shows that it is not the definition originally proposed by the Government of India. But what we have to consider is the practical effect which this or any other definition will produce. Assuming the proposition (which indeed cannot be controverted) that the resident raiyat has a right of occupancy in the village lands, what is the definition which will

secure this right to the greatest number of those who ought to possess it, and extend it to the smallest number of those who are not entitled to enjoy it? I must own that I am not at present prepared to suggest a better definition than that provided by the Bill, and those who object to it may fairly be asked what they would propose to substitute for it. This, however, will certainly be one of the points upon which the Bill will be attacked: and it will be the duty of the Select Committee to see that the definition is not narrowed down by any limitations which would deprive it of its due significance or its proper effect.

“There is, however, one section in this chapter against which I feel bound to record an emphatic protest. Section 48 provides that the occupancy-right may be acquired by grant from a proprietor or permanent tenure-holder. I think I can understand the reasoning which may have led the framers of the Bill to insert this provision, but the section is, nevertheless, of a revolutionary and dangerous character, and any extension of the occupancy-right which may result from it would be too dearly purchased. It is practically an admission of the vicious principle that the occupancy-right may be made a matter of bargain or contract between landlord and tenant. The occupancy-right cannot be granted by the landlord, for it is not his to grant: it is essentially inherent in the status of the resident cultivator.

“Of the incidents of the occupancy-right, the only one which calls for notice is that which makes the right transferable. It seems probable that the right was not originally transferable; but the custom of transfer has become common, and it is for the advantage of both parties that the right of transfer should be formally legalized. The landlord's interests are sufficiently protected by the power of pre-emption which the Bill gives him. It has been said that the result of a general power of transfer will be, that the land will pass out of the hands of the cultivators into the possession of middlemen and mahájans. But experience does not justify this apprehension. The transfers which already occur every year may be counted by thousands; but the purchasers of the holdings are men of the same class as the sellers. There are at least two classes of occupancy-riyats who possess and have long possessed an acknowledged and recognized right of transfer: the *guzashtádárs* of Shahábád and the *tháni* riyats of Khurda in Púri. It is certain that with neither of these classes has the power of transfer had the effect of making the lands pass out of the hands of *boná fide* agriculturists.

“The sections regarding the right of pre-emption must be taken in connection with those relating to merger, and the Bill seems to me somewhat defective in that it fails to explain clearly the nature of the landlord's title in a hold-

ing which he may have purchased. The draft Bill of the Bengal Government contained an express provision that the doctrine of merger should not operate to convert a holding, when purchased by the landlord, into *khámár* land. The present Bill provides that, if the landlord lets the land, he must let it as an occupancy holding; but the Statement of Objects and Reasons explains that, if he pleases, he may keep the land in his own hands, and cultivate it by his servants or labourers. This is a serious departure from the rule of the old Regulations. By Regulation VIII of 1793, the zamíndár was not only permitted, but required, to let the lands of his estate; he had no power to hold them himself. If, indeed, a zamíndár may hold raiyati land in this way as long as he pleases, it is practically equivalent to the conversion of the land into *khámár*. Section 56 of the Bill will undoubtedly be evaded: and the whole question of the exact nature of the landlord's rights in a purchased holding ought to be carefully considered by the Select Committee.

“By chapter VI, the maximum rent of an occupancy-raiyat is not to exceed one-fifth of the value of the gross produce in staple crops. It ought to be clearly understood that this is a limit and not a standard: for, in the Eastern districts, any such standard as one-fifth would involve an enormous enhancement. I am also inclined to think that the period of ten years provided by section 78 is too short. The Famine Commission suggested thirty years. This is possibly too long; but, if it takes twelve years for a raiyat to become settled, twelve years is surely not too long for him to remain free from claims for enhancement, and the Select Committee might consider this point. The provisions regarding a table of rates appear reasonable and fair; but I doubt whether any extensive use will be made of them. Careful enquiries on this subject have lately been made by the Government of Bengal in a number of selected areas, and the general results tend to the conclusion that tables of rates based upon classifications of soil cannot ordinarily be prepared in the Lower Provinces. I anticipate that the provisions of chapter XI will be found more generally useful than those which relate to the preparation of a table of rates.

“I should be glad to see the provisions of section 79 extended so as to correspond with those of section 74. If a raiyat is paying more than the established rate, this ought to be a legitimate ground for an application for reduction. I have noticed the references to this point in the correspondence, and I am aware that the omission is not an oversight; but I think the matter calls for further consideration.

"In section 81 it is to be noticed that, though at present the landlord's share is in some cases nine-sixteenths of the *grain*, the whole of the straw and chaff belong by custom to the tenant. To give the landlord half the gross produce would, therefore, be giving him a larger share than he is entitled to.

"The prices spoken of in section 83 are market prices; but it is to be observed that section 75 refers to the price at which the raiyat sells his crops, and this is a very different thing from the market price. I presume the tables mentioned in section 83 are intended to assist the Courts in determining cases in which the limit referred to in section 75 comes into play; but if this is the intention, it would be well to insert words to keep in mind the fact that the price at which the raiyat sells his crop will ordinarily be fully twenty per cent. below the quoted market price of that crop in the bázár.

"The above remarks refer mostly to matters of detail; but my objections to chapter VIII are of a different character. I must own that this is the part of the Bill which I least like or approve. Short as it is, it probably contains more innovations than the rest of the Bill put together. I object strongly to the title of the chapter. The ordinary raiyat in Bengal is the occupancy-raiyat; and it is a dangerous novelty to countenance language which implies that the status of the non-occupancy-raiyat is the rule, and that occupancy-raiyats form an exceptional and privileged class. The clause relating to compensation for improvements is an innovation, but a comparatively harmless one, as a non-occupancy-raiyat would never make improvements, unless he were protected by a lease. But 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 to be objectionable. Either the landlord has the right to eject the tenant or he has not. If he has the right, he should not be required to pay compensation for exercising it; if he has not the right, no money payment ought to be sufficient to give it him. Section 91 refers to the limit fixed by section 119, which provides that the rent of an ordinary raiyat or under-raiyat shall not exceed five-sixteenths of the value of the gross produce of the land. I question the wisdom of attempting to fix by law the limit of an under-raiyat's rent. Such a law is certain to be disregarded, for it is not the interest of either party that it should be observed. But the provision which puts the non-occupancy-raiyat on the same level as the under-raiyat, and on a different level from the occupancy-raiyat, as regards the rent which he may be called upon to pay, is open to far more serious objection. It is an unconstitutional proposal; for it implies that the occupancy-raiyat is entitled to hold at a privileged rate of rent, and this is not, and never has been, the law of Bengal.

"I am fully alive to the difficulties which surround both these questions,—the question of the under-raiyat, and the question of the non-occupancy tenant. I am aware that the state of things has entirely changed since the days when the paikásht raiyat could practically dictate his own terms; and I do not object to a reasonable modification of the law to suit the altered condition of affairs. But I disapprove of any infringement of the sound principle that no raiyat, whether he has the occupancy right or not, can be required to pay more than the established rate of rent; and I therefore think that, in areas in which a table of rates is in force, it should be applicable to both classes of raiyats alike.

"In chapter IX, the provisions of section 98 regarding the instalments of a raiyat's rent seem to me to be sound in principle, but to require some verbal modification. As the Hon'ble Mr. Kristodás Pál told us in his speech, monthly instalments of rent are in accordance with the custom of the country, and should not be interfered with; but interest should not be chargeable, nor should a suit lie for arrears, unless default continues for at least three months. This is the practice of the Government in regard to its own revenue. In all the dows of the Permanent Settlement which I have seen, the revenue is made payable in monthly kists; but no measure for enforcing payment can be taken except at the quarterly days of payment. The provisions of this Chapter regarding receipts and deposits of rent seem to me to be excellent. I am inclined to doubt the expediency of retaining section 114; and I should prefer to make the division absolutely final. Indeed, the provisions of sections 114 and 115 seem to me to be inconsistent with each other. Section 118 does not go nearly far enough. It is not sufficient to say that the danabandí papers shall be filed in the Collector's office. It should be declared that these papers are to be produced on the trial of any suit for arrears of the rent of the land, and that the suit shall be decided only in accordance with the entries in the papers.

"In chapter X, the wording of section 133 requires modification. There seems to be a confusion between revenue-free land and rent-free land. I know of no reason why a landlord should not measure revenue-free land if he is in receipt of the rents. On the other hand, he ought to be allowed to measure rent-free land if it is within the limits of his revenue-paying estate. The sections regarding the appointment of a manager on behalf of joint-owners have my full approval, except that I would suggest the omission of the word 'jointly', in section 148. I see no harm in allowing the management to be restored to the owners in all cases in which it is shown that the estate will be managed by them without inconvenience to the public or injury to private right.

“ Chapters XI and XII appear to me to contain excellent provisions for settling disputes and avoiding litigation. I trust and expect that these provisions will be extensively made use of.

“ The chapter on distraint is of no great practical importance in Bengal Proper, where distraint is comparatively seldom resorted to; but in Bihár it will be of great value and use: and I attach special importance to sections 185 and 186. I have heard to-day with a good deal of surprise that illegal distraint does not exist now-a-days in Bihár. The fact is flagrant and notorious. The abuses and oppressions which have been and are still committed in Bihár under colour of the law of distraint require to be put down with a strong hand: and nothing short of an express declaration that they are offences punishable by the criminal law will be sufficient to suppress them.

“ In the remaining chapters of the Bill I find nothing which appears to me to call for special remark. In what I have said, I have commented with some freedom on what seem to me to be errors or omissions in the Bill. But I must repeat that, upon the whole, I look upon this as an excellent measure, broad and liberal in its scope, constitutional in its principles, impartially fair to the different classes whom it affects, and calculated to apply a practical remedy to the evils of which landlords and tenants alike have lately complained. If there are any members of the landlord class who consider that the Bill unduly interferes with their incomes or curtails their privileges, I believe they might safely be challenged to point to any essential part of the Bill (I do not speak of every point of detail) which touches any receipts to which they are justly entitled, or any privileges which they have not usurped. I repeat that this Bill is (in all its main features) a constitutional Bill: its object is to establish on a settled foundation, and to express in unmistakable language, principles which have always been part of the unwritten agricultural law. It is the special duty of the Government to undertake this legislation, not merely in the general interests of the country, not merely for the sake of public peace and public prosperity, but because the system by which the old law of tenancy has of late been overriden and partially obliterated has been, in some measure, the unforeseen and unintentional effect of our own legislation in the past. There can be no more striking instance of this than the example afforded by Act X of 1859. That Act was intended to be the agricultural charter of the raiyat. It has been twisted and perverted into a means of overthrowing the very rights which it was its object to establish, and this has largely been done by decisions of our own Courts of law. A day may come when the present Bill will be unsuited to the altered circumstances of the country. The Government will have the same power then, as it possesses now, of legislating for the protection and welfare of

the dependant taluqdárs, raiyats and other cultivators of the soil, and this power it will not hesitate to use when the occasion shall arise. But for the present, and under the conditions which prevail to-day, the Bill before the Council appears to me substantially to provide a remedy for acknowledged evils, a redress of agrarian abuses, and a recognition of prescriptive rights, and I shall heartily and thankfully give my vote for referring it to a Select Committee."

The Hon'ble DURGÁ CHARAN LÁHÁ said :—" I will make a few remarks, confining myself to some of the principal changes contemplated by this Bill.

The object of chapter II seems to be to restrain the practice said to be prevailing in Bihár of converting raiyatí lands into khámár or zirat lands. I must say that, if it exists, it is only confined to that Province. In Lower Bengal, I am prepared to say, there is no desire on the part of landholders to increase the area of khámár lands. On the contrary, the landlords here retain with reluctance raiyati lands in khás possession, simply because they cannot find tenants for them.

"The provisions in chapter V relating to occupancy rights are entirely new, and I must say that these changes are most objectionable. The existing law or custom does not support them, nor are they based upon the enactments which were superseded by the Act of 1859.

"Under existing law, a tenant with a right of occupancy has the right of holding his tenure so long as he continues to pay his rent, which, however, is liable to enhancement or reduction to fair and equitable limits under certain conditions. On failure of payment of such rent, he is liable to eviction under a decree of Court. He does not appear to have ever enjoyed a status higher than this. But it is now proposed to confer on him the status of a permanent tenure-holder, without fixity of rent, at the cost of the rights of the zamíndár. The right of pre-emption reserved for the latter will not serve the purpose of restraining transfers to objectionable tenants, because, in point of fact, it will involve an unnecessary outlay, for which he can never expect anything like an adequate return. Again, a settled raiyat, as described in this chapter, may have a right of occupancy in any land in the village without any reference to the period of his occupation, and in spite of any contract under which he held it.

"These and other provisions in this chapter introduce a radical change in the established law, and are calculated to create an unnecessary conflict in the relations existing between landlord and tenant.

“In chapter VIII, which deals with the ordinary raiyat, the Bill confers on him a status which is entirely novel. The result of the extension of his right—one which is not unforeseen by the framers of the Bill—will be the multiplication of subordinate tenures, which would have the effect of defeating the very object for which the provisions have been made. But it is stated that the Government will put down the evil by future legislation. To my mind it seems to be more judicious not to allow the mischief to arise, than to create complications, and then to find means to check them.

“Then as to the question of enhancement of rent. The Bill lays down that it is to be effected either under a table of rates, or, where there is no such guide, at the discretion of the Court at fair and equitable rates within certain limits, or by contract to be approved by a revenue-officer. As to the first course, I submit it will be impracticable, and, even if practicable, it will never be a safe and satisfactory guide. As to enhancement at the discretion of the Court, the matter remains exactly where it now is, with the addition of a restriction to the exercise of such discretion. And as to the last of these means, the validity of a contract being made conditional on the approval of a Government officer, a private settlement between landlord and tenant becomes at once a matter of considerable difficulty.

“In section 93 of the Bill the provision for compensation for disturbance is quite foreign to this country, and its propriety is questionable.

“The effect of this innovation will practically be to preclude the landlord from all possibility of obtaining from the tenant a fair share of increment in the value of produce.

“The subject is so vast and complicated that I cannot hope to do full justice to it. I have barely touched upon a few of the salient points embraced in the Bill, in order to show that the Bill, as it has been framed, is repugnant to the spirit and letter of the Permanent Regulations, which had guaranteed the rights of both zamindárs and raiyats, and to actual facts. It gives no practical facility for the recovery of rent, nor satisfactory means for enhancement, where enhancement may be fair, reasonable and perfectly justifiable. On the other hand, it enacts provisions intended, no doubt, for the benefit of the raiyat, but which, in course of time, will be found to operate prejudicially to the interest of the actual cultivators of the soil.

“In conclusion, I am inclined to think that this Bill will, in practice, do more harm than good, by destroying good feeling between the zamindár and the raiyat, and putting them perpetually at logger-heads. When such is mani-

festly the tendency of the Bill, a departure from the existing law in a way that will unsettle the relations between landlord and tenant cannot but be regarded as an experiment of questionable character and doubtful efficacy."

The Hon'ble MR. HUNTER said:—"My Lord, at the present stage of the Bill, I intended to say only a few words, and from a special point of view. The hour is now so late that I shall probably consult the wishes of the Council, if I curtail even those few words within the narrowest compass. I agree with the general objects of the Bill; but there are three points which I hope the Select Committee will carefully consider. These are, first, that attempts to interfere by statute, as opposed to custom, between tenants-at-will and the laws of supply and demand have seldom been successful. Second, that, although we may declare that rents shall not exceed five-sixteenths of the produce, the laws of supply and demand will, in the case of the tenants-at-will, be too strong for a hard-and-fast line of this sort. Third, that the compensation for disturbances, amounting to ten times the enhancement of the rent, is excessive, and, as such, is unjust. I had intended to insist on these points at some length, but my hon'ble friend Mr. Reynolds has already dealt with certain of them; the debate has been unusually prolonged; and the hour is very late. With regard to the general principle, I shall at present only say that the legal difficulties and supposed guarantees which seemed to some thinkers to stand in the way of this measure have been effectually disposed of by the speech of the hon'ble and learned member who introduced the Bill. The instructions of the Court of Directors before the Permanent Settlement, and the express words of that Settlement, prove to my mind that the Government of that day neither intended to make a contract with the landholders which should prevent it from afterwards securing the rights of the tenants, nor made any such contract. Even if such a contract had been made, the hon'ble and learned member has shown that it could not interfere with the rights of the tenants who were no party to it. But after these and all other legal difficulties have been cleared away, the Bill has still to be discussed and judged of on other and quite different grounds. For this Bill is in reality an attempt to counteract by legislative devices a fundamental economic change which has taken place in the relation of landlord and tenant in Bengal. It is by economic tests that the measure must now be tried, for by its economic results it will hereafter be justified or condemned. This law endeavours to reinstate the cultivators in a security of tenure somewhat similar to that which they enjoyed at the time of the Permanent Settlement. The Permanent Settlement found two classes of cultivators in possession of the soil, one of which was protected in its possession by customary rights, the other by economic laws. The first class was the *khudkásht* or resident cultivators. The

Permanent Settlement reserved the rights of this class, but omitted to define them. After two-thirds of a century had passed, Act X of 1859 endeavoured to discharge the duty thus left unfulfilled, and the present Bill completes the task which Act X began. The other class of cultivators at the time of the Permanent Settlement were the *Paikásht*, non-resident or migratory tenants, who held land in a village other than that in which they lived. These men, although possessing few rights, were at that time protected by economic laws more powerful than any legal system. There was then more land in Bengal awaiting cultivation than there were people to cultivate it. The demand was by the landlord for cultivators, not by the cultivators for land: and the cultivators had necessarily, under such circumstances, the best of the bargain. The charge of enticing away tenants by offers of land at low rent was frequently brought by one landholder against another, and had to be decided by the English head of the District. The increase of population during the past century has reversed this state of things. The population in many parts of Bengal has outgrown the soil. It is no longer the landlord who stands in need of tenants, but the tenants who are competing against each other for land. The same economic laws of supply and demand which protected the tenant at the time of the Permanent Settlement, place him, in many Districts, at the mercy of the landlord to-day.

“The present law endeavours to redress this state of things. To the *khud-kásht* or resident tenants, who were protected by usage at the time of the Permanent Settlement, it gives the protection of a Code of clearly defined liabilities and rights. For the *Paikásht* or tenants-at-will, who were protected by the economic law of supply and demand at the time of the Permanent Settlement, it creates certain legal safeguards which it hopes will save them from the extreme pressure of competition. In doing so it attempts to set up a breakwater between the operation of supply and demand and a portion of the cultivating classes. No one can read the elaborate evidence which has been submitted to the Council with regard to the state of the agricultural population in Bengal, without feeling that the Government is called to make this attempt. But no one can study the history of similar efforts to interfere, not by customary usage, but by statute, between economic laws and their economic results, without seriously asking himself whether such an attempt is likely to be successful. My hon'ble friend Mr. Kristodás Pál has shown how much can be said against such an attempt. Legal restrictions which curtail the landlord's power over his estate tend to render him averse to investing capital in the improvement of his land. Nor must it be forgotten that, in Lower Bengal itself, the circumstances of districts differ so widely as to make any single rule inapplicable to all. In Bihár and other overcrowded

tracts, the tenant is at the mercy of the landlord. In Chittagong and some other districts, there is still a surplus of lands for the cultivators to pick and choose among at their pleasure. The Commissioner of Chittagong, in a recent report, describes the practice there in vogue as a system which 'checks all disposition to rack-rent, and enables the cultivator to take up as much or as little land as suits him.' I trust that the economic difficulties of the measure will be clearly realized, and that the Select Committee will give a fair and patient consideration to the arguments of the landholding classes whose rights will be curtailed by the Bill."

The Hon'ble Rájá SIVA PRASÁD said :—" My Lord, I know I am not a good speaker or a scholar. I have not read that logic which enabled Archbishop Whately to prove that Napoleon Bonaparte was not born ; or enabled Doctor Ballantyne to prove that the moon moved on its axis against all the mathematics of Dr. Kaye. I crave your Excellency's indulgence if my ideas are crude or my arguments confused. Nay, I may be here and there, perhaps, strictly speaking, out of order, but as I have been an observer of facts my whole life, I base what I am going to say on my personal experience. I have yet only glanced over the Bill, but taking the lucid introductory speech of the hon'ble Law Member as an index or key of the voluminous records connected with the subject, and of the conclusions arrived at by the highest authorities, I had better dwell upon the speech first, and then the Bill.

" The speech commences with the refutation of some imputations. I have not heard of any ' imputation ' of the Government being ' actuated by a spirit of mischievous and restless activity', or ' being influenced by political or party considerations ' ; but I have heard of another kind of imputation, that the Government, being sorry to find their demand limited for ever by the Permanent Settlement, is now going to limit the demand of zamíndárs also, solely out of revenge. I know there is not a particle of truth in it. I can swear to the purest motives and the highest principles of the Government, but I must own that any condemnation of voluntary rack-rent in one Province comes with very bad grace from those who are forcing an over rack-rent in another. Those who are acquainted with the system of the Government revision of settlements in the unpermanently settled Provinces do not stand in need of any elucidation ; but for others I may be allowed to give one or two examples. I have a village, Gangrain, in the Gorakhpur district. The Settlement-officer fixed the rate of rent according to his whims and fancies, or according to some averages supplied to him by the Board of Revenue, and fixed the Government demand on the total of that rent. The Settlement-officer went away, and the Government sanctioned the settlement. But my tenants refused to pay me at that rate, left

the land, and ran away with heavy arrears. For several years nearly half the village, some five or six hundred acres, remained uncultivated. At last I reduced the rate and the fellows have come back and are cultivating, though I pay to the Government the same amount which was fixed,—very punctually. I have heard, though I will not vouch for its exact authenticity, that a zamíndár in the Allahabád district, finding the rates fixed by Sir Auckland Colvin, when he was Settlement-officer there, unrealizable, and being thus unable to pay the Government demand, made a bequest of that village in favour of Sir Auckland and left it. The case came to the notice of the authorities when steps were taken for the recovery of the Government revenue, and then, perhaps, the rates were modified. I suppose it was Dr. Irvine who reported through Mr. Court, the then Collector, to the Government, that in the three trans-Jamna parganas of the Allahabad district he seldom met three men of whom one was not lame, on account of eating *khidári*, a very inferior pulse, better food than which the tenant could not afford to have on account of the high rate of rent. The Government modified the settlement and lowered its demand. I do not think the Doctors find that disease here in Bengal or Bihár. Numerous instances can be quoted like the above, but I wish not to be misunderstood; it is far from my intentions to oppose any measure which aims at limiting the rack-rent by making the produce or the value thereof as an ultimate standard. What I intend to show is simply this—that it would behove the Government better if the Government were to apply the principle first in the Provinces where Government is an interested party and shares in the rise or fall of the rent: for instance, let the Government rule in the unpermanently settled Provinces that no Court is to give a decree for any arrears of rent which the tenant proves to exceed, say, half the estimated value of the estimated average produce for a certain number of years; and at the same time declare that the Government demand is never to exceed so much per cent. of the actual assets of the zamíndárs. Then, and only then, would the Government be justified in coming forward in the permanently settled Provinces and telling the zamíndárs, ‘Friends, you also cannot go beyond that’.

“Going to extremes is often to be deprecated. To say that zamíndárs had no existence at all, and are the British Government's creation, is simply to expose one's own ignorance of the country and its history. Still the copper-plates are dug up, granting villages in perpetuity, with their boundaries and all within them — *jalkar, bankar, díh, dábar, &c.*—the inscriptions generally ending with the threat that, if any one resumes the land, he will live sixty thousand years a worm in hell. Now, if these grantees had no proprietary right in the soil, what right had they? If they were not zamíndárs, what were

they? Could they be farmers or officials? Farishta writes :—‘Ala-ud-din Khilji resumed all religious endowments and rent-free tenures, and confiscated all property in the soil (*har dehe ki dar vakf ya dar inam ya dar milk i kase bud hama ra khalisa kard*)’. *Milk* means property and *malik* proprietor. Farishta goes on further to say that the ‘Emperor took half the produce of the soil from everybody, whether he was a Mukaddam or Chaudhari. The Chaudharis and Mukaddams, who once rode state horses, wore princely arms, dressed sumptuously and pursued the games like the Nobles, had at last been reduced to such extremities under this Emperor’s rule, that their women were obliged to go out and work for their bread’. Chaudhari and Mukaddam of that time seem to be synonymous words for zamindar. Firoz Shah Tughlak writes in his memoir of ‘the portion mulcted at the delivery of the *landlord’s* shares by the cultivator, and its attestations by some official’. Firoz Shah took only a tithe of the produce of land. I well remember to have read somewhere that when Humayun marched down from Agra his baggage was plundered by the zamindars in the Gangetic Doab. The Hon’ble East India Company itself had at one time purchased the zamindari of the Twenty-four Parganas from the Emperor of Delhi. Are the zamindars like the Maharajas of Bardwan, Dumraon, Darbhanga and Bettiah, or Rajas of Majhauri, Manda, Bejappur, and a thousand others of the British creation? They have still many sanads and farmans of the Muhammadan Emperors in their possession. Many will quote books that those Emperors had all along been acknowledged as the lords of land; but they forget that in the same sentence they are acknowledged as the lords of the persons and possessions of their subjects. So with this theory the Government will have the same right to interfere with one’s lands as with his person or other personal property.

“Let us see how this movement began, and how it ends. The hon’ble the Law Member says :—‘What then are the facts with which we have to do, and what are the evils for which legislation is required?’ Let us see what are ‘the facts’. Sir Ashley Eden says :—‘In Bihar what is most wanted is some ready means of enabling the raiyat to resist illegal distraint, illegal enhancement and illegal cesses, and to prove and maintain his occupancy-right.’ Sir Richard Temple intended ‘to introduce a Bill to define the principles on which the rights of occupancy raiyats and tenure-holders should be forced, to simplify the procedure for realizing the arrears of rent in undisputed cases and to make the interest of an occupancy raiyat liable to sale for default in paying rent, and transferable by private agreement’. In the Bengal Council it was ‘recognised that the legislature would have to alter the law with reference to ejection, distraint, instalment and deposit of rent, and possibly sub-letting’. The Commis-

sion propose 'to create a new class of subordinate occupancy raiyats by providing that a tenant who had held for three years and less than twelve years should be protected from ejection at the will of his landlord.' Also that 'limits were to be set to the rack-rent' and to what an occupancy raiyat 'might demand from an under-tenant'. Sir Ashley Eden writes in his letter of the 15th July, 1880, that 'he would like to see the Bengal raiyats, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times'. He wrote to the British Indian Association in December, 1880, that 'protection against arbitrary evictions must certainly be given to every settled cultivator who pays the established rent', and that 'a substantial tenantry, free from debt, and in a position to stay and bear the pressure of occasional bad seasons, is what Bengal requires. The Lieutenant-Governor desires, therefore, to see the occupancy tenure made the rule and not the exception; but at the same time he would have it kept as far as possible in the hands of *bonâ fide* cultivators, and sub-letting by occupancy tenants should be discouraged, if it cannot be altogether prevented'. The most important conclusions at which Sir Ashley Eden arrived, as given by Mr. Justice Cunningham in his Minute, are 'that the rents of Bengal were and must, in existing circumstances, continue to be customary, not competitive'; and 'to guard against the conversion by the landlord of raiyatî land, that is, land over which occupancy-rights exist, or can be acquired, into 'khámár''. 'Khámár' lands appear to have been originally merely the surplus unreclaimed lands of the village which the landlord was allowed, during the continuance of his revenue engagement with Government, to cultivate for his own benefit, but which became 'raiyatî' as cultivators settled on them'. The Famine Commission say that 'measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and widening the limits of that security, together with the protection of the tenant-at-will in his just rights and strengthening of his position by any measure that may seem wise and equitable'. The hon'ble the Law Member does not find, in any of the Regulations of 1793, words which can throw the whole of the then vast area of the unreclaimed land of Bengal into the category of khámár or private land; and so he has framed his definition so that the existing stock of khámár land cannot hereafter be increased. Now I ask him, in the name of justice, if the whole outcome of all these wishes, suggestions, reports and proposals is to culminate in depriving the zamíndárs of the right of increasing their khámár land by acknowledged legitimate means and

by most ancient customs or usages, and conferring the right of occupancy even on 'squatters and nomads', because the price of land and 'the disturbance money' are just the same to a zamíndár? There will be no ejection, and any man would acquire occupancy-right if he has pluck enough once to plough and sow the land; but the zamíndár will never, even if he pays all the gold and silver of the world. Leave the custom and usage aside, no one had even thought hitherto of such an innovation. The Government tells the zamíndárs: 'Keep so much land and no more; this is enough for you; let the others take the rest; they are in greater need than you are.' I think, if the principle is fair and equitable, it would be better to plunder all the banks and distribute the money to the poor and the needy.

"The hon'ble the Law Member says that in Bengal the raiyats are strong and the zamíndárs weak, but in Bihár the zamíndárs are strong and the raiyats weak; whereas in Bengal the raiyats combine to resist the payment of rent, in Bihár the zamíndárs destroy all the tenures and all the rights of the tenants and turn their land in zarat or khámár, or, in other words, Bihár is groaning under rack-renting and acts of lawless and high-handed oppression. My Lord, for seven years I have had to look after the affairs of Bettiah, which is one of the largest zamíndárs in Bihár, and I am in a position to assure your Excellency that I have not found a stronger set of raiyats, happier or better off, in any part of the country, from Kashmír and Rájputáná down to Púna and Haidarábád; and I am almost sure that a Briton by birth and stuff, Mr. T. M. Gibbon, C.I.E., will corroborate the truth of my assertions. I have seldom seen a more generous hearted zamíndár than the Maharájá of Bettiah. Though he has received no decoration yet from the Government, neither the Star of India, nor the Lion and Sun of Persia, to adorn his breast, but it is adorned with a heart which melts like wax for the poor. One day, nay it was about midnight, some ejected tenants came and cried out *duhai* at the gate; he begged of me to enquire about them. Mr. Gibbon told me that they were great *badmáshes*, and were legally and deservedly ejected. But the Maharájá insisted upon their immediate re-instatement, and told me that a Rájá's first duty is to protect his tenants '*Rájá ká pahlá dharmá prajápalana hai.*' The difference, in my humble opinion, between a Bengal and a Bihár zamíndár is simply this—that the Bengal zamíndárs are now highly educated, and the poor Bihár zamíndárs, with very few exceptions, are still what they were. So the Persian saying '*Yake nuksáni máyah digre shimátati hamsáyah*' (on one hand the loss of property, and on the other the abuse of neighbour) is fully applicable to them. His Highness the Maharájá of Benares has a large property (I beg pardon—I am not sure whether a zamíndári can be called any longer a property

under the hon'ble and the learned Law Member's new definition) in Bihár, and so my many other friends of Benares have, and yet the same law is proposed for Bengal and Bihár. We have a saying, '*take ser bhájt take ser khájá*' (two pounds of cake for two pice, so two pounds of salad too). Though the hon'ble the Law Member may say '*chu az kaume yake bedámshí kard na kikhá manzilát mánad na mih rá*' (if one man in a nation commit a crime, neither low nor high are to be spared; all are to be punished); if a villager killed a soldier, the whole village is to be executed, as the Russians, I hear, are doing now.

"Now I have purchased some thousands of acres of waste-land in fee-simple under Lord Canning's Resolution, and spent much money in bringing parts of it under cultivation. What will be the fate of that land, or, I may say, my own and my children's, under this Bill? The registered kabúliyats of my tenants, under the name of 'contracts', will be null and void. I will not be able to eject them, and for any enhancement I must be prepared to spend in litigation a sum the interest of which will far exceed the amount of such an enhancement. I wonder if it is known to the Government what was the cost or how much money was cast away in the great rent case of 1865. I shall feel extremely obliged if the hon'ble the Law Member would be pleased to give a short definition of the treacherous English word 'fee-simple', and a short construction of the sanad signed by a Secretary to the Government, as he has given of the words zamíndár and landlord, and of the proclamation of Lord Cornwallis. Lord Canning may be laughed at very shortly, as Lord Cornwallis is now; but allow me, my Lord, to put here on record the motive with which that great statesman was actuated. During the Mutiny of 1857 he had seen how useful and valuable these Britons were to the State. Lord Canning had seen how a Venable had held the district of Azamgarh single-handed for the State, and driven out the mutineers from it; and how many others like him had done the same in other parts of the country. He wished to increase their number. He asked men like Mr. Glyn to take land and settle in the country. They refused, under the plea that, with such a system of settlement and the rent-law, they could not persuade themselves to acquire land in India and invest their capital in improvement. Lord Canning resolved then and there to open a way for the acquirement of land in fee-simple, though, as soon as he had breathed his last, the policy was changed. I am sorry I was not living at the time of Lord Cornwallis; but if the science of spiritualism has any truth in it, his spirit may be smiling on our incapacity to understand how he had found the body of Bengal and Bihár zamíndárs, and the very constitution of zamíndári, far more useful to Government than ever Lord Canning found the whole body of Oudh

taluqdárs or all the Venables of the world. He lost no time to make a settlement with them on such a permanent basis as to secure a permanent safe basis for the future operations of the Government, which has extended its dominion beyond Attock (Atak), falsifying the very name of the place, which means 'stop'. I shall find myself much mistaken, and shall have to revise my history of Hindustan, if the zamíndárs of Bengal and Bihár, as a body, are not as loyal subjects of their Kaisar-i-Hind as any crowned head in the world, from Noah up to this moment, can boast of. I have seen with my own eyes some zamíndárs of the Benares Province placing flower wreaths on the tomb of that great and good man, Lord Cornwallis, even now. I am fortunate at present to find my waste-land situated beyond the pale of the jurisdiction of this Bill, otherwise I would have had to deplore that the land was mine on the 2nd of March, but it passed over to others on the 3rd, without any fault of mine; however, the principle of the Bill seems to be contagious. It will be better for me to look after my property before it is too late. What course is left to me to follow? I am bewildered. The only course open before my eyes just now is simply to serve notices of ejection on all my tenants before the end of this month, which is fixed by the law as the last month for the purpose in the year, and allow the whole land again to revert to its pristine condition of groaning under a thick forest haunted by the wild beasts; but allow me, my Lord, to declare most sincerely that it will be worse than death to me ever to think of your Excellency's illustrious and endeared name to be associated with any measure which may convert the land now smiling under luxuriant crops into a gloomy forest, while the policy of Lord Cornwallis has turned, as acknowledged by the hon'ble the Law Member himself, the wastes and ancient forests of Bengal and Bihár into culturable land.

"The only nail which the hon'ble the Law Member has hit on the head is a frank acknowledgment of 'the misapplication of English analogies to Indian facts'. He says that the 'Bengal zamíndár is not a landlord, or land-owner, in the English sense of the word'. I say that the money paid by an Indian tenant is not rent in the English sense of the word. For the meaning of 'rent', Malthus is no authority for us Indians, though he may be for an English Chief Justice of the High Court, like Sir Barnes Peacock.

"The word rent is misapplied in India. It is a tax on produce in its true sense and meaning. Under the sacred laws of *Manu*, acknowledged to be the most ancient, 'the King (Rájá) took one-sixth of the fruits of soil (produce); but when it was of bad quality his share was limited to one-twelfth. On the cattle, gems, gold and silver he levied one-fiftieth, and on the produce of trees,

flesh, meat, honey and the like accumulations of nature and of art, a sixth. Besides this all the artisans and labourers worked for him gratis one day in the month. He was entitled to five per cent. on all debts admitted by the defendants on trial, and ten per cent. on all denied and proved'. In this so complete a list of taxes, if one is a tax, then all the others also are taxes, and if one is rent, then all the others also are rent. The famous Káli Dás says in his *Baghuvans—Shash/hánsam vali magrahít*, that is, the Rájá took the one-sixth of the produce as his tax. It is out of this tax, or the share of the State, that all the tenures, zamíndári, mukarrarí khám, khálisa, raiyatwári, khont, mustájiri, jágír, muáfi, krishnárpan, &c., &c., have been created. Under the Slave Dynasty this tax was raised to one-fourth of the gross produce. Alá-ud-din Khiljí assessed it at one-half. Sher Sháh reverted to one-fourth, but Ákbár took one-third. In many places it is still divided half and half between the proprietor and the cultivator, or the zamíndár and the tenant. In Benares it is called *adhaiyá*, which means half and half, and this proportion has been acknowledged as customary by Lord William Bentinck in his celebrated circular. The question is, whether there is a proprietary right (*Svatva* or *Hakki Milkiyat*) possible in land or not. In England, William I conquered the land and distributed it amongst his feudal chiefs. So when the Aryans came here from the North-West and vanquished the non-Aryans (Aborigines), their Sovereign apportioned the land amongst his followers, as is written in the Vedas: 'Indra the lord conquered and drove out the Dasyus and Rakshasas and gave their land to the white-faced followers'.

"The hon'ble the Law Member says, 'that the great mass of the Bengal raiyats were, at the time of the Permanent Settlement, in the enjoyment of certain customary rights, which at least included the right of occupancy in the land conditionally on the payment of the rate of rent current and established in the locality, and, I may add, the right of having that rate of rent determined by the State'. May I be allowed simply to ask if it is not so now? Are there not fixed-rate and occupancy-tenants? Nay, are they not growing? Just the other day seven paikásht (non-resident) tenants have acquired occupancy-right in my village, Bodarvar, by lapse of time, simply through a mistake of mine in the calculation of years. The tenants in Jaunpur district have now become mostly fixed-rate. The hon'ble the Law Member quotes the Court of Directors' instructions to the Indian Government 'not to depart from our inherent right as Sovereigns, of being the guardians and protectors of every class of persons living under our Government'. May I be allowed simply to ask if any zamíndár class of persons has ever asked or expected from the Government more than the mere protection of his rights and privileges, or of his property and life, and

why the zamíndárs are denied the protection? The hon'ble member further quotes the declaration of the Governor General in Council: 'It being the duty of the ruling power to protect all classes of people'. That is our Magna Charta, and the zamíndárs can well claim that protection.

"The hon'ble the Law Member says that 'no one can acquire the status of settled raiyats, and the occupancy-right which is attached to it, unless he has been a landlord, or he and his ancestors before him have been land-holders for at least twelve years in the same village or estate. Thus mere squatters and nomads are effectually excluded', but I may be allowed respectfully to ask, will the zamíndár be allowed to eject the squatter or the nomad? Under what section? It may be said under the 'disturbance money' section. Well and good! There the zamíndár is to pay for his own land to an occupancy-tenant, who does not pay his rent and falls into arrear, in the shape of price: here a *badmásh* comes and clandestinely ploughs and sows a piece of land, upsetting all the plans of the zamíndár, and receives money from him in the shape of disturbance money, for restoring the zamíndár's land to the zamíndár. I have heard of the right of the sword, but this will form the right of the plough. Some fifty of my tenants left my village, Bodarvar, in Gorakhpur, with heavy arrears, after they had taken crops home. When I went to the village to arrange about the land they had left, I found all the land cultivated by other, say fifty, men—many of them being relatives and friends of those who had run away. I was willing to settle with them on the same terms as their predecessors enjoyed, but they refused to register their *miádi* kabúliyats. I, of course, ejected them through the proper channel, though the process cost me some thousand rupees; but, under this Bill, I would have been obliged to pay those ejected tenants a couple of thousand rupees more, in the shape of the disturbance money, or engaged *lathivedís* to stop them by force from ploughing and sowing, and bribing the policemen, at the risk of my going to jail. But what else could be done? Land is dear, it is a second wife, and many Hindús have become Muhammadans for it. There is, perhaps, Rájá Salámát Sháh at Azamgarh of this description, and many more may be found.

"The hon'ble the Law Member has given, as a sample, some kabúliyat and pattá in his speech; but, if there are Shylocks in India, there are also wise Judges, who know what is lawful and what is unlawful before they enforce any contract. I can show a hundred kabúliyats and pattás which I have given to my tenants-at-will in Benares, with occupancy-right, which they call *istinnárfí*.

“The hon’ble the Law Member talks of the wants commonly known in England and Ireland as the three Fs,—fixity of tenure, fair rent and free sale. Leaving the question of sale just now aside, and seeing that the tenants of twelve years have fixity of tenure and ‘fair and equitable’ rent, I simply remind him here that he has completely overlooked an Indian tenant’s wants, which may be called the four Ss,—supply of water, supply of seeds, supply of bullocks and saving from the Court expenses. We have a saying:—*Grāma samīpe labdhvā kṛpam-grāminah kin gayayati bhūpam* (a villager who has a well near his land does not care for a king). If one tenant is ruined by a marriage, I can point out one thousand ruined by Court expenses. Just the other day one of my tenants, Debi, refused to pay me one-and-half anna acreage for half a bighā rent-free land. I applied for recovery and obtained a decree against him for Rs. 3-11, as follows:—

	Rs.	A.	P.
Amount sued (acreage for three years)	0	2	3
Arādhā	0	6	0
Tuhānā	1	8	0
Mukhtārānā	0	8	0
Copy of decree	0	8	0
Petition for it	0	1	0
Petition for the execution of decree	0	1	0
Mukhtārānā for it	0	8	0
Interest	0	0	9
Total Rs.	3	11	0

The land was put up for sale, but as the man came to his senses, and fell upon my feet, I allowed him to remain.

All the three supplies depend upon good rent law; no bank of any kind in the world can do that.

“The hon’ble the Law Member says, ‘that the powers of transferring and sub-letting, which the Bill recognises, may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy-raiyats, but under-raiyats, with but little protection from the law, is indeed within the range of possibility; but if such a state of things would ever arise we may rest assured that the Government of the day will know how to deal with it’. I may be pardoned if I say that I cannot accept such an assurance. This is the first time I have ever heard of such a legacy. At any rate it is very curious, and indeed very bold. At the instance of the present Lieutenant-Governor, to impose some discouragement on sub-letting, the maximum rent for sub-tenants or under-raiyats not having a right of occupancy appears to be fixed at five-sixteenths, or about thirty per cent.; but what protection has been devised if the occupancy-tenant takes every year a heavy *nazrānā* (premium), besides the legal rent, from his sub-tenant under the threat of ejection? The pleaders cannot increase their legal fee or *mehantāna*, but who can prevent them from taking a tenfold *shukrāna* (*douceur*)? The real cultivators of the soil under the Bill will till the land at a rack-rent as sub-tenants, and a new class of under-

proprietors of the baniyá class will spring up as occupancy-tenants at the expense of the poor zamíndárs. The hon'ble the Law Member disclaims any merit for the originality of his proposals; but, in my humble opinion, limiting khámár and giving occupancy-right to 'squatters and nomads' is certainly very original. He says: 'We have endeavoured to hold an even hand between the two parties, and to define and adjust their rights in such a way as may be most conducive to the common interests of both'. I beg pardon; I cannot see the truth of the statement, and I leave it to the judgment of those who do not belong to any party. I have a village, Khanavan, in Benares, three-fourths of which are under general law and one-fourth under a special law. Well, in the time of Lord William Bentinck special settlement was made of this one-fourth. The zamíndár and the tenants appointed arbitrators, and the arbitrators fixed the rate of rent for ever, without any right of enhancement on any account to the zamíndár, and gave the right of occupancy and transfer to the tenants. Now, what is the consequence? Four-fifths of the land have come into my possession by right of purchase, and only one-fifth remains in the hands of others, a baniyá class of people, who also have come in possession of that by right of purchase. The descendants of the original tenants are tilling the land as sub-tenants. I have given occupancy-right to all my tenants in the three-fourths of the village, but will not give in this one-fourth.

"The hon'ble the Law Member ends his very long, exhaustive and most elaborate speech with a declaration that whatever has been 'endeavoured by the present Bill to do, is so to legislate for her as to preserve whatever is best in the spirit of her ancient institutions'. If the hon'ble the Law Member be good enough to acknowledge that the words 'for tenants' were simply, by an oversight or mistake, left out after the word 'best', I shall not speak further, otherwise it will be like the Benavá Fakír, who learnt only the first half of a verse from the Koran, that is, 'Don't pray', and ignored totally the other half, that is, 'when you are drunk'. I cannot say what may be the meaning of the word justice in the English sense, or the sense of the hon'ble the Law Member, but I can vouchsafe the meaning of the Arabi word *A'dl*, which means to mete out equally; or *insáf*, to make half and half. The hon'ble the Law Member acknowledges that formerly 'resident or chhapparband (owner of a hut) tenants were not ejected except for arrears of rent'; but he ignores totally the acknowledged right and power of the zamíndárs to allow or refuse residence. No man could come and live in the village without the permission of the zamíndár. In the Wájib-ul-'arz (agreement) it is specially mentioned that the zamíndár would not allow any thief or bad character to reside in his village. Had the zamíndár not power of refusal, this paragraph would have been superfluous. Now, if a

zamindár gives permission to a man to build a hut, which is, as a rule, done after taking some *mazráná*, (present), and cultivate without any written contract, it will be preposterous to think that the man could be ejected at the zamindár's will; but now the Bill allows every one to build a house anywhere he likes—in a field or a pasture—and even claim compensation for it, which will be of no earthly use to the zamindár. The fact is, that there was no period in history in which, with the zamindari (including *jágír*, *muáfi* and *mustájiri*, &c.) system, the system of *khám*, *khálisa* or *assámívar* had no existence, and so there was no period in which, with the occupancy-tenants (including fixed rate, rent-free, &c.), the tenants-at-will had no existence. The mistake, in my humble opinion, is simply in the endeavour to make occupancy-right universal and tenants-at-will an impossibility. Leaving possibility or impossibility aside just now, I beg simply to assure your Excellency that what the hon'ble the Law Member is pleased to call India's ancient institution has in no period of history, as far as my knowledge goes, and in no part of the country, as far as I have seen, ever been dreamed of even. Now to the Bill :—

“ My Lord, I have had time merely to glance over it. The sin lies in two ways : firstly, in commission, and secondly, in omission ; but before going into the details of the Bill, which I would rather leave to some future period, I may be allowed to state that, if the object of the Bill is to improve land and agriculture, or ameliorate the condition of the agriculturists and promote the well-being of the cultivators of the soil, the Bill does not go very far ; it totally fails, rather, in many instances ; it takes an opposite direction and makes the case worse.

“ Allow me first to say a few words about the omissions. I am surprised to find that not a single provision has been made in the Bill to supply the crying wants of the tenants. They want wells, and how does the law stand now ? If I dig a well at a cost of two hundred rupees, which can irrigate 24 *bíghás* belonging, say, to 24 tenants, I ask them to pay me the legal interest on the capital laid out, in the shape of an enhancement of a rupee per *bíghá*. They refuse to pay, simply because, if they accept an enhancement, they shall have every year to pay, but otherwise they hope sooner or later to have the water for nothing, by bribing the *patwári* and my *karanda* with a couple of rupees. The only course open to me is to serve on them notices of enhancement and fight out 24 cases up to the Board of Revenue on appeal, which will not cost, at the lowest computation, less than a thousand rupees. Now, if the law be framed so that a zamindár, before digging a well, may apply to the district officer for permission, supplying him with a plan and estimate and a list of the tenants, their

land, rent and the amount of enhancement, which is not to exceed the legal interest on the capital laid out, or to fall more than a rupee per bighá, the district officer, after giving due notice to the tenants and enquiring into their objections, if any, may give permission to dig; and when it is reported complete to his satisfaction he may order the patwári to add the enhancement to the rent in the village-records. I am sanguine that thousands of wells will at once be dug where wanted. It is now commonly said that the zamíndárs have not done their duty, but no one has taken the least notice yet how the law operates now. For the supply of seeds and bullocks, if I advance any money, I shall have to go to the Civil Court, and after all the trouble and expense, if I am so fortunate as to obtain a decree, there will be no property against which it can be executed. I cannot understand, if the Government recovers its advances as arrears of revenue, why the zamíndárs are not allowed to recover their advances as arrears of rent, provided that the interest and instalment does not exceed the limit assigned by the Government and the transaction is duly registered. If it is allowed, the cultivators of the soil will at once be placed above the want of any bank or banker. It has become the fashion of the day to vilify the bankers as takers of fifty per cent. interest. I may be allowed to explain how I take this fifty per cent. from my tenant. He wants, suppose, a maund of seed (wheat) in November, when it sells, say, at a quarter of a maund per rupee, so I give him a loan of my wheat, which is worth four rupees at the time, on a promise that he is to pay me back a maund and half (fifty per cent. more) in kind. He returns me my wheat in May, when, generally speaking, it may be selling at half a maund per rupee, so I receive two rupees worth for what was worth four rupees at the time I lent. It may be asked then, why the zamíndár lends. He lends only because in the long run he has the satisfaction to find that his grain-pits contain ten thousand maunds when he had commenced the business with only one. Besides this, if he had not lent the seed, perhaps the land would have remained uncultivated, for a tenant cannot be expected to keep and preserve such a small quantity as a maund is for seed all the year round against fire, thief, mice, white-ants, the little urchins and hungry old hags of the family. To go to the town, often fifty miles distant from his house, to borrow money from some bank, even at five per cent. interest, to purchase seed from the bázár and bring it home on the head of a hired cooly, will simply be ruinous. I do not see any provision has been made for saving the tenants from the expenses of the Court; nay, I see even an application for distraint shall be liable to the same court-fee which would be payable in a suit instituted for the recovery of the arrear therein claimed (clause (2), section 167). However, the most curious feature of the Bill is, that the Local Government may suspend the provisions of sections 166 and 184; though it does not

seem why. It seems inexplicable that, if the movement commenced to facilitate the recovery of rent, why it ends with the throwing of difficulties in dis-traint. Sir Ashley Eden's beau-ideal tenantry of Bengal can only be hoped for, under such a Bill, when the millennium comes under the prophecies.

“It is quite unnecessary to search out for antediluvian proofs, or prehistoric customs and usages. I mean the procedure followed under the Native rulers before the Hon'ble the East India Company acquired the sanad of DÍwání. The Government proclaimed its intention to protect and maintain the existing rights, privileges, customs and usages, as found or acknowledged, and let it do so now. Any demur on the part of the Government to fulfil this promise, or at least expectation, will be fraught with mischief.

“The Bill aims, as I think I have said already, at making the occupancy-right universal (sections 45, 49 and 56), and ejection, except for arrears in rare cases, practically impossible (section 149), by limiting the khámár and zarat land to its present extent and preventing its future growth (chapter II), and by making all private contracts against these drastic measures null and void. My Lord, may I be allowed to ask if, in any period of the historic age, in any part of the country, under any kind of rule, such a limit was ever put to the acquirement of the khámár and zarat land? The zamíndár has a right to let out his land at any rent, whether one-half or one-quarter of the would-be so-called pargana rate to A or B. But if this A or B relinquishes the land, or runs away with arrears, or even for five rupees arrears the zamíndár pays ten rupees for the land which, at any rate, was once his own, at the sale for a decree, the land cannot be again his. Any man may come, cultivate it, build on it, and make it his own; but it cannot revert to the poor zamíndár, its rightful owner (section 56), because it is out of the khámár and zarati entered in the register now to be made. It was the tyrant Alá-ud-dín Khiljí only who, professedly to keep the people living from hand to mouth, had ordained that no one was to possess any land beyond a certain extent, and that no one was to possess more cattle than a fixed number; but in the 19th century, in the reign of our Most Gracious and Beloved Kaiser-i-Hind, Victoria (God bless her), a Bill is brought before your Excellency's Council, the effect of which will be that, if I purchased a piece of waste-land under Lord Canning's Resolution and brought it under cultivation at a heavy expense, it was mine on the second of this month, but will not be mine on the third. I should have to add a codicil to my will, and all my plans will be castles in the air. Sir Richard Garth, who is truly called Chief Justice, may well denounce such a spoliation in the strongest term—a ‘spoliation’. But I may be allowed again

to ask, if a zamíndár enters in the village-records all the land in the names of his relatives and confidential men, how the law can prevent him from reaping the advantages of khámár or zarati, though the law may promote litigation, fraud and perjury to its fullest scope, which is the tendency, I am grieved to say, of this age of high education and new civilization? What will be the result of all this (I do not know really what to call, but let me call) drastic measure? A new set of petty sub-próprieters, as I have already said, generally of the baniyá class, will arise. The so-called tenants of to-day will all become pakka (strong) proprieters, only to transfer their land to baniyás, pocketing all the money which now may find its way to a certain extent to the purse of the natural and lawful proprietor, the zamíndár, and still of as little use to the State in the time of need as a straw. Your Excellency told the taluqdárs of Oudh, just the other day, 'that the primary and essential condition of agricultural prosperity is the well-being of the cultivators of the soil; the promotion of that well-being the Government has very earnestly at heart, and it attaches to it an importance of the highest kind.' Now, my Lord, most respectfully I beg to ask, does the Bill in any way ameliorate the condition and promote the 'well-being' of the cultivators of the soil, who will always be, generally speaking, sub-tenants and form the mass of rural population? The Bill limits the rent demandable from an under-tenant or an under-raiyat (section 119). Will that do any good to the poor under-tenants? It is just like sending the paper horses, which the Lamas do according to M. Haçç, for the sick and the weary travellers. Now, suppose I am a tenant, and I have a sub under me for whose land, suppose, the Bill limits the rent to Rs. two. I tell him, 'My friend, the law does not allow me to demand from you more than Rs. two in the shape of rent, but unless you pay me Rs. three more annually, as a nazráná, in advance, I will not allow you to cultivate my land. Go away to some other place.' Now, what will the poor sub-tenant do? He must pay whatever I ask for. The law may go further and give occupancy-right to the sub-tenants too, and make it criminal for the tenants to take more than what may be fixed by law. But how can the law prevent the tenant from colluding with the zamíndár and relinquishing the land or having it sold for arrears, solely to ruin his sub-tenants? The law may make the tenure of a sub-tenant as secure and profitable as that of a tenant, but then he also may have a sub-tenant, and so on, till the cultivator of the soil will have only enough to live from hand to mouth, and to whom an occupancy-right or any right will be quite worthless. The cultivators of the soil in India, who form the mass of the population, are generally labouring classes, and Providence has ordained that they are to earn their bread by the sweat of their brow; to place them above want is, in my humble opinion, above

any human power. I have heard of more poverty and misery in Europe, even in England, than in India. However, worse than this limitation of the *khámár* and *zarati* land is to make null and void any contract between a tenant and a *zamindár* (sections 45, 47 and 49). India has been famous for the honour of her contract. It will be a pity to teach her now that a man's contract is nothing; that even legal contracts are good for nothing. This very Council passed Act X in 1859, under which, having full faith and confidence in the Acts of the Government, suppose I let out ten *bighás* of land to A—never mind for the consideration passing between me and A, whether to my loss or profit, or A's loss or profit, but it was agreed upon that after five years the land will again be at my disposal, and it will rest with me to re-let it or not. The agreement, *pattá* and *kabúliyat*, have duly been registered and they were as legal and binding documents, at least in my humble opinion, as the Government promissory notes are, or a treaty between the British Government and any independent Chief of India, on the 2nd of this month; but on the 3rd, if the Bill passes, they are a mere piece of waste-paper. I am quite bewildered what history will have to say of such transactions. I know of a Commissioner of a revenue division, who was writing a history of India, but when he came to the transaction between Clive and *Amín Chand* he tore up all what he had written, saying that he could not perpetuate such a blot on the character of his countrymen. Reduce the twelve years period for the growth of occupancy-right to twelve days; reduce the rent from Rs. twelve to twelve annas—anything may be done, but for goodness sake do not repudiate legal contracts so publicly and without any tangible excuse. The Canal Bill, or whatever its true designation may be, brought forward by the brother Stracheys, which proposed to levy a compulsory rate of water and revive a modified *begar* system, and which consequently was vetoed by the then Secretary of State till those two objectionable sections were removed, was nothing compared to this Bill, limiting the *khámár* and *zarati* land, and making null and void legal contracts. I do not find in the long and exhaustive speech of the hon'ble the Law Member anyone or anybody, whether Sir Ashley Eden, Sir Richard Temple, Sir George Campbell, the Rent Commission or the Famine Commission, proposing this kind of drastic measure.

“I never doubt for a moment the power of your Excellency's Council or the legality of its acts. The Council can repeal all the Regulations of 1793 if they like, and make even the Permanent Settlement itself a matter of history; but the question is simply this, whether it is wise and politic to enforce such measures, the need and necessity of which are not at least apparent to those who are mostly affected by them. Let us see what Sir James Stephen said on

the 6th April, 1871, at Allahabad, on the occasion of passing the Local Rates Bill. He said:—

‘We are not a representative Government. With every wish on the part of every member of the Government to use his powers for the benefit of those whose interests they affect, it is impossible not to feel at every turn how great are the differences between the governors and the governed, and how supremely important it is for all parties that, whatever else the people of the country may feel about their rulers, they should feel perfect confidence in their good faith and in their scrupulous observance of their promises. A really representative Government may deal with the pledges of their predecessors in a very different way from a Government like ours. If Parliament, representing as it does the views and feelings of the population of the United Kingdom, should see fit to re-open the question of the Scotch and English Church Establishments, it would be absurd to say that they were debarred from doing so by the Act of Queen Anne. They are themselves the representatives of the descendants of those by whom the Act of Union was passed, and they have the same moral right to undo what their predecessors did in a matter affecting the English nation for the time being, as a man has to reconsider resolutions which he has made at any particular period of his life as to his own subsequent conduct, in matters in which he has entered into no contract with others. We, on the other hand, are in a position more nearly resembling that of a person who has made a contract to his release from which the consent of the other party is necessary.’

“It is true that there is no contract or compact here concerned as between two Powers, like Russia and China; and I am not one who always brings forward the common phrase ‘Permanent Settlement’ as a great bugbear. I know very well that it settles only the Government demand, and no question of Government demand or revenue law is just now before us. I own that it is the great duty of the legislature to protect the just rights of the tenants and promote the welfare of the cultivators of the soil; but at the same time the duty is not a bit less to protect the just rights of the zamíndárs. We, zamíndárs, do not want the rights of an English landlord, whatever he may be—a lion or a bull—we are zamíndárs; and let us have a zamíndár’s right. The Government proclaims by tomtom or, at any rate, gives us to understand that every one’s right is to be protected. Now, is the right which has been enjoyed by the zamíndárs, at least for the last ninety years, which has been acknowledged from time to time by the law and by all the Courts of British India, and on the faith of which acknowledgment millions and millions of money have changed hands, no right at all? One has a kabúliyát duly executed and registered under section 7, Act X of 1859, that never any occupancy-right is to accrue in the land: or, according to the established custom and usage, has entered some land relinquished by his tenants in his own name, as sír or khámár or zarat in the village-records, for which he pays revenue, and now and then lets it out wholly or partly to the villagers from year to year. Now this Bill in one breath

makes the kabúliyat null and void, and the zamíndár's sír, khámár or zarati land becomes the property of a ploughman, only because it was not held by the zamíndár continuously for twelve years. Act X of 1859 can be repealed, but how on earth all the contracts entered into under it can be made null and void and all the decisions of the Court upset? When the Government makes legal, private contracts null and void, how it can be expected to respect long its public contracts?

This is, perhaps, the last time in my life that I shall have the honour of speaking anything in the Viceregal Council, and I am very sorry indeed that I have not been fated, like my hon'ble friend Mahárájá Sir Jotíndra Mohan Tagore, to thank your Excellency for the fulfilment of a 'pledge'; but the onerous duty which I have to discharge, though sad and painful, compels me to warn that, if such a Bill passes, it will shake the faith and confidence of the people, not only of British India, but of all the Foreign States, in the Government to its foundation. I sincerely hope no one may have ever to say what the 'vakíl' of the then Mahárájá of Jaypur had said to General Ochterloney, when he handed over the Jaypur State to the tender mercies of Scindhia, that the conscience of the Government is subservient to the exigencies of the time. Englishmen have an adage that 'necessity has no law', and so the Muhammadans, '*gar Zarurat buwad ravá báshad*'; but we Hindus have a different kind of belief. Our great and famous Rájá of Ujjain, Bhatrihari, says: 'Let the people praise or abuse, let wealth come or go, let death approach this moment or remain far away, great men never depart from the path of justice.' (*nindantu nítí nipuná yadi vá stuvantu,—Lakshmi samá visatu gachhatsu vá yatheshítam adyaiva vá marana mastu yugántare vá—nyáyat pathah pravichalanti padam na dhíráh*). I am not an alarmist. I never doubt the prowess of the British nation, or the proverbial loyalty and submission of the Indians. If to-day the Government orders a general confiscation, even of the moveable property, I am certain that the loyal zamíndárs of Bengal and Bihár will bring all they possess, except what they may conceal underground, on their heads and shoulders to the treasury. But I may be allowed, my Lord, to repeat here the words of the erudite Sir James Stephen that 'whatever else the people of the country may feel about their rulers, they should feel perfect confidence in their good faith and in their scrupulous observance of their promises.' In conclusion I may be allowed, my Lord, to hope that I may not be misconstrued. It is only a sense of duty, and a deep sense of duty, which has compelled me to occupy so much of the time of the Council."

The Hon'ble MR. HOPE said:—"As this Bill comes under the broad designation of a revenue Bill, and as I may, perhaps, to a certain extent claim to

be considered a revenue expert, I should, under ordinary circumstances, think it my duty to enter into the question which it deals with at some length. But, considering that the Bill relates to only one Province of British India, and that Province is represented by so numerous and able a body of members in this Council, I do not feel myself called upon to offer more than a few very general observations. As regards the Bill itself, in its general lines, I have very little to say; except that, though I approve of it so far as it goes, I must confess I should have been glad if it had gone somewhat further in the direction of ascertaining and recording, not merely rights, but equitable and fair rates of rent, which would have been useful as a standard for all classes of landlords and tenants to refer to; and if it had cast aside altogether the idea of determining the raiyat's status according to the time for which he may happen to have held his land, an idea which has done so very much harm in the past in these Provinces. Still I am well aware there are excellent reasons for bringing forward the present proposition in the form in which it stands. I can only say that, such as it is, it will command my cordial and, if necessary, my active support. There is, however, one class of argument which has been brought forward by those who do not regard the Bill with favour, to which I must for a few moments give more detailed notice. The Hon'ble Kristodás Pál, if I rightly understood him, endeavoured to fortify the position of the Bengal zamindárs, by asserting that their tenants were, through their means, in prosperous circumstances, and by contrasting the good condition of the cultivators of Bengal with the wretched condition of the cultivators in Bombay and other parts of British India. I think I may leave the condition of the raiyats in Bengal to the Bengal members who will follow me, and who will, if they feel inclined, offer proof of what I consider to be notorious, namely, the wretchedness of the raiyats of that Province. But as regards the condition of the raiyats in the Bombay Presidency, which the hon'ble member has described as being wretched in the extreme, I must emphatically deny that any such terms, or any such description, can be applied to them. If the means were here at hand, I could show with the greatest readiness, from the most ample statistics, reaching back for a number of years both of trouble and of plenty, that the Province has gone on increasing in wealth and prosperity during the last fifty years in which British rule has been gradually consolidated and elaborated. This growth and prosperity I could prove, not merely as regards the Presidency generally, but as regards particular districts. Taking even the districts to which the Dekkhan Agriculturists Relief Act applies, it would be easy to show that these very districts have largely increased in population, cattle, cultivated land, wells and other substantial signs of wealth. Taking the districts of the Presidency generally, they pay larger stamp

and excise revenue than any other portion of British India, and taking even the four Dekkhan districts under the Act, they were able, when the famine came upon them, to send large sums in ornaments from their savings to the Mint, and they thus offered the best evidence which any unprejudiced man could desire of having been long rising under a beneficial system of assessment. But how, then, it may be asked, can these assertions be reconciled with the fact of the Dekkhan Agriculturists Relief Act, and the outcry about the over-assessment of the land-revenue in those parts? In the first place, the Dekkhan Riots Commission only declare that in these districts one-third of the population were in serious debt at all. Moreover, the bulk of those said to be in debt were not resident in any of those districts or taluqás which had been subject to the revision of assessment referred to in the extracts which the hon'ble member has read. I altogether deny that the revenue assessments are high. So far from reaching forty per cent. of the gross produce, as the hon'ble member supposes, they have been found to be only on an average from one-eighth to one-sixteenth of that produce. I would, moreover, state that the assessments are not based on the barbarous and unsound system of taking a fixed proportion of the gross produce, because in the Bombay Presidency we are fortunate enough to have a classification of lands, which renders any such rule-of-thumb method unnecessary. Whatever hardship or oppression may have been caused by the assessment has not been owing to the severity of it, but to certain incidents in the mode of its collection,—incidents which, I am glad to say, have considerably altered since I first alluded to them in this Council. If we now turn from this fact of light assessment to seek the causes of the indebtedness of the raiyat, I would point out that one of the principles of them is one which renders the analogy, which the hon'ble member has attempted to draw, altogether a false one. One of those causes is, that the land of the Bombay raiyat has been for the last thirty years transferable, while the land of the Bengal raiyat is not, or is not recognised to be so. In consequence of this transferability, the raiyats were of course able to borrow, and during certain prosperous times in 1865 they were tempted to borrow beyond all reason. When the times changed, the meshes of legal entanglement did not permit them to recover themselves. What, then, it may next be asked, have you to say about the throwing up of land? I reply that we in Bombay are fortunate enough to have still remaining to us that customary law of India which the Bengal zamíndárs have overridden, and that the status of a raiyat over there does not depend either on contract or on the period of his occupation of the land. A raiyat there may, by giving notice, throw up his land when prices are lower or drought has weakened his cultivating powers, and may take it up again in better times, without any loss of status in conse-

quence of not having held it during the intervening years. In short, we have an elastic system, which enables him to vary his responsibility at will, and to contract his operations in any year owing to famine or other causes. But, then, it may be asked, what is the cause of this outcry in Western India? That outcry, I reply, is essentially a *zamindár's* outcry, and has been raised by two well-known classes of persons. In the first place, there are various petty Native chiefs within British territory who systematically take rents far above those fixed by the revenue survey and assessment, and they dislike that assessment, because it is a just standard, according to which they are periodically pressed by their own raiyats to moderate their demands. Again, there is a class of superior holders, who take from their tenants a certain share of the produce, and who, according to the customs of the country, pay the Government revenue out of their share. Consequently, they of course are anxious to see that revenue reduced to the lowest possible amount: and even though it were abolished altogether, these are the men who would be the gainers, and not the raiyats whose advocates they pretend to be. These, then, are the causes which give rise to this outcry. And in this fact, that the outcry is a *zamindári* outcry, is, perhaps, to be found the real reason why certain members of this Council have testified their great sympathy with the circumstances of the raiyats in a far distant Province—a Province whose prosperity they have no eyes to see, and of whose circumstances they are profoundly ignorant. But the point in the argument of the hon'ble member, if I rightly understand it, is somewhat of a *tu quoque* nature. Supposing, he says, that our *zamindárs'* rents are rather high, the rents received by Government are high also, and as we are more or less in the same position, you should give us the same facilities you have yourselves to recover these rents. This argument is partly a retort, and partly an appeal for stronger powers and a simple procedure for recovery of *zamindárs'* rents. So far as it is a retort, it is, as I have amply shown, incorrect in fact, and devoid of application. So far as it is a basis of appeal, I would beg to point out that in the Western Presidency these powers, which he covets, are used where the assessment has been carefully graduated in accordance with the capabilities of the soil after a careful survey and record-of-rights; where there is a complete recognition of the customary tenure of India, and a system which has the elasticity to adapt itself to variety of seasons and means, and where, moreover, the assessment, which is fixed under this system, has been fixed for thirty years.

In Western India, I am glad to say that a large and increasing number of Native chiefs and landholders, who have sufficient enlightenment to recognise the advantages of this system, have called in the Revenue and Survey Depart-

ment to survey their lands and fix their rents for them, have agreed to abide by their decision, and have introduced rates accordingly. Assistance to recover such rates is readily obtainable from Government. I would recommend the same course to the zamindárs of Bengal; and when next they desire to come before the Government asking for additional powers to recover their dues, they had better accompany their request with the other, that these rents may be fixed on scientific principles for a term of years. I think, my Lord, that this is all that it is necessary for me to say regarding the Bill in its present form; but I may repeat that it will receive my hearty support."

The Council adjourned to Tuesday, the 13th March, 1883.

CALCUTTA; }
The 12th March, 1883. }

D. FITZPATRICK,
Secretary 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 Tuesday, the 13th March, 1883.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I.,
G.M.I.E.

His Honour the Lieutenant-Governor of Bengal, 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.

Major the Hon'ble E. Baring, R.A., 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 Rájá Siva Prasád, C.S.I.

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

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.

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

The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

[The adjourned debate on the Bill was resumed this day.]

The Hon'ble MR. ILBERT said:—"My Lord, I propose to leave to my hon'ble friend Sir Steuart Bayley, in whose charge the Bill is, the task of replying generally to the arguments which have been urged against it; and the very able speech of my hon'ble and learned friend Mr. Evans has relieved me from the necessity of dealing with such of those arguments as appear to be of a specially legal character. I do not intend to pursue further the discussion as to the precise position and rights of raiyats and zamíndárs, respectively, at the time of the Permanent Settlement. The interest of that discussion is mainly antiquarian; and the most important of the practical questions connected with it are, how far we have redeemed the pledge given to the raiyats in 1793,

and whether what we now propose involves any violation of the contract entered into with the zamíndárs at the same time. I have endeavoured to answer both those questions to the best of my ability, and after listening very carefully to what my hon'ble friend Mr. Kristodás Pál had to say on the subject, I cannot help thinking that the argument based on the breach of contract is an argument on which he himself does not rely, and which, in fact, he does not even seriously urge. I may, however, be permitted to take this opportunity of removing some of the misconceptions which appear to be entertained as to the meaning of one or two expressions which I used in the course of my introductory speech. When I compared the use of the term 'proprietor' in Indian revenue language, to the use of the word 'owner' in English statutory language, I did not mean to suggest that the position of the former was or might be that of a mere agent or trustee. I merely meant to point out that in the one case, as in the other, the legislature had pitched upon one of several persons having an interest in land, and treated him as an owner or proprietor for certain State purposes, without entering into the question of the interests of other persons. Still less did I mean to suggest, as the Hon'ble Rájá Siva Prasád thought I suggested, that the zamíndár is not entitled to call himself proprietor, or to speak of his interest as his property. My hon'ble friend, as every other zamíndár, was fully entitled to describe himself as proprietor of his interest in the land, and to speak of that interest as his property; but that fact does not exclude the co-existence of any number of other interests of any number of other persons in the same land. I am afraid, from the way in which the hon'ble member spoke of the Bill, that he is irreconcilably opposed to its principles, as well as to its details. But, however that may be, I can assure him that any suggestions which he may make for the improvement of the provisions of the Bill will receive most careful consideration from the Select Committee. I entirely concur with him as to the expediency of affording every facility to the landlords for making improvements upon their lands, and I understand that for this purpose he suggests, among other things, that when a landlord has made, or has proposed to make, an improvement, such as a well, he should be enabled to go to the Collector or some other officer and obtain from him a certificate showing the description of well he has made, or is about to make, the area likely to be improved and the probable expenditure on the improvement (the hon'ble member will correct me if I am wrong); and that, upon the strength of that certificate, he should be entitled to make a corresponding increase in his rents. I think this a very useful suggestion, and it is one which is well worthy of consideration.

"Just one word about the *pattá*. I have not seen the Government form of *pattá* to which the hon'ble Mr. Kristodás Pál has referred,

and I daresay my hon'ble friend the Lieutenant-Governor will have something to say about it. But, of course, I never intended to suggest that each and all of the stipulations contained in the *kabūliyat* which I read out were illegal or unfair. On the contrary it was obvious enough that the zamíndár had taken a common form, and had engrafted on it some variations of his own, and it was those variations that were open to objection. It is all very well to say that stipulations for the payment of interest at an exorbitant rate, or for the payment of cesses imposed by the landlord, are stipulations which no Court would enforce. But it is precisely this fact which makes them so mischievous. These stipulations are, in fact, attempts on the part of the zamíndár to make the raiyat pay, under colour of a contract, what no Civil Court would ever force him to pay."

Major the Hon'ble E. BARING said:—"My Lord, before proceeding to comment on the important question upon which this Council is now called upon to deliberate, I should wish to make one preliminary observation. It is, I am aware, difficult to argue the issues involved in the discussion on this Bill, without appearing a partisan of either the zamíndárs or the raiyats. For my own part, however, I altogether deprecate any such inference. My wish is—and I am sure the wish of the Government collectively is—to preserve an attitude of strict impartiality, to consider carefully the arguments which may be advanced, whether in support of this Bill or in opposition to it, and ultimately to assist this Council in arriving at such decisions as may be most conducive to the public welfare and most just to the conflicting interests involved.

"My hon'ble friend Mr. Kristodás Pál commenced the able and interesting address which he delivered to the Council yesterday, by saying that he must not be regarded solely as an advocate of the zamíndárs, for that his sympathies and convictions were quite as much with the raiyats as with the zamíndárs. I was glad to hear that statement of my hon'ble friend, but I must confess that, although I listened with great attention to my hon'ble friend's speech, I did not hear any arguments advanced from the point of view of the raiyat. I do not at all complain of this. On the contrary, I think it is a matter of congratulation both to the Government and to this Council that the views of the zamíndárs should be so ably and fully represented in this Council, as they are by my hon'ble friend. On the other hand, I trust my hon'ble friend will not be surprised if to some extent I take up the converse of his situation, and that he will not think, if I dwell more specially on those views which are especially associated with the interests of the raiyats, that I have any bias in the matter. I have no such bias. The reason why on the present occasion I dwell more

especially on the claims of the raiyats is, because the superior education of the zamíndárs, and the fact that their interests are ably represented both in and out of this Council, enables them to bring forward their views to greater advantage than the circumstances of the case permit to the raiyats. It is, therefore, desirable that the arguments from the raiyats' point of view should be fully and publicly stated and examined.

“My hon'ble colleague Mr. Ilbert, in moving for leave to introduce this Bill, explained the circumstances under which the present Government has thought it its duty to undertake a general revision of the rent law in Bengal. It is not necessary, therefore, that I should dwell on those circumstances. I will only make one observation on the past history of the case.

“In the course of the discussions on this Bill, it may perhaps be said—and, indeed, outside the walls of this Council room it has already been said—that your Excellency's Government, finding the relations between the zamíndárs and raiyats in an unsatisfactory condition, resolved, *proprio motu*, to initiate legislation, with a view to placing those relations on a more satisfactory footing. A statement of this sort would very inaccurately represent the facts of the case. Whatever may be the individual views held by members of the present Government upon the important political, social and economic problems involved in the legislation now proposed, nothing is more certain than that those individual views have in no way contributed to raise the issues now under discussion, nor have they accelerated or retarded by one day the advent of the time when the reform of the land laws of Bengal must, perforce, have been undertaken.

“In order to appreciate the reasons, whether remote or immediate, which have rendered legislation on this subject an unavoidable necessity, it is necessary to look back to a time when the *personnel* of the Indian Administration—whether that of the India Office, of the Imperial Government of India, or of the Local Government of Bengal—was different to that which at present exists.

“The facts which the present Government of India found in existence were, first, that, after some tentative efforts at partial legislation, a Commission had been appointed as a preliminary measure to a general revision of the rent law of Bengal; and, secondly, that the majority of the Commission, backed by the concurrent testimony of a long array of high authorities in past years, were of opinion that such a revision should be undertaken. Lastly, the Government of Bengal urged that a general revision of the rent law should be undertaken, and submitted a draft Bill having that object in view. Under these circumstances,

I venture to think that it would have been a dereliction of duty on the part of the Government, if we had declined to undertake the onerous and responsible task which now lies before us.

“Independently, however, of this issue, which is one of comparatively minor importance, it remains to be considered whether the Government—in which term I include both the Government of Lord Lytton, which appointed the Rent Commission, and the present Government, which has to deal with its report—is justified in undertaking a legislative measure of such importance.

“It appears to me desirable that this question should be further examined, especially as the necessity of any general revision of the rent law has been denied by my hon’ble friends the Mahárájá of Darbhanga and Mr. Kristodás Pál.

“The necessity for legislation is urged from two quarters. The zamíndárs wish for certain amendments in Act X of 1859, their main grievance being that the existing law does not give sufficient facilities for the enhancement and recovery of rent. The grievances of the raiyats may conveniently be summed up in the phrase—borrowed from the discussions on the reform of the Irish land laws—that they desire, in a greater or less degree, the attainment of the three Fs.

“I am aware that my hon’ble friend the Mahárájá of Darbhanga stated yesterday that the zamíndárs of Bihár do not require any legislation at all. At the same time I think I shall be right in saying that very recently the desirability of amending the law in the sense of giving greater facility for the recovery and enhancement of rent was not generally disputed, and that even now a very large body of opinion is in favour of such legislation. I need not, therefore, discuss this branch of the question. But the necessity of any further considerable revision of the law beyond what is necessary to facilitate the recovery and enhancement of rent is disputed. It is alleged that the present system of land tenures in Bengal has not hampered the prosperity of the Bengal peasantry; that no sufficient evidence exists which would justify a general revision of the rent law, and that, before any such revision is undertaken, further detailed enquiry is necessary.

“Then there is another argument to which allusion has not been made in this Council, but which I have seen frequently stated outside the Council. It is well known that the advocates of legislation adduce the riots in Pabná and elsewhere as a proof of the necessity for legislation. To this it is replied that these riots were caused by Government officials. As regards this statement,

I will only say that there is a strong presumption that it is unfounded. I have certainly never seen any evidence in support of its correctness, and I observe that Sir George Campbell, speaking some while after the riots, said that he 'believed, speaking generally, it is certain that the law was, and, so far as the original matter of dispute goes, still is, with the raiyats.'

"I confess that an argument of this sort reminds me of those well-known lines in 'Rejected Addresses' which, I remember, have once before been quoted in this Council—

'Who makes the quartern loaf and Luddites rise?
Who fills the butchers' shops with large blue flies?'

"And then the author goes on to say that the Emperor Napoleon I was responsible for these things. To the best of my knowledge and belief, the officials in Pabná and elsewhere were no more responsible for the disturbances some few years ago than Napoleon I was for the flies in the butchers' shops, and they are, perhaps, less responsible than that potentate was for the high price of the quartern loaf.

"Turning now to the question of the prosperity of the peasantry, I wish to remind this Council that my hon'ble friend Mr. Kristodás Pál cited the rapid growth of the Excise revenue as a proof of the growing prosperity of the people. No doubt the Excise revenue has of recent years grown rapidly, and the growth of this revenue is an indication of increasing prosperity. But my hon'ble friend must pardon me if I say that this fact does not prove his case. The question to be decided, for the purposes of the present issue, is not whether the peasantry of Bengal are prosperous or the reverse. Prosperity is a relative term. The question at issue is, whether the existing laws regulating the system of land tenures in Bengal hinder the peasantry of that Province from being as prosperous as they otherwise would be.

"It may tend towards the elucidation of this question if I give some figures with a view to showing the measure of agricultural wealth possessed by the population in the principal Provinces of British India, more especially as this is a point to which my hon'ble friend Mr. Kristodás Pál alluded in the course of his very able and interesting speech of yesterday. In the Central Provinces, the yearly value of the crop, per head of population, is Rs. 21·6; the payments for purposes of Government and irrigation, per head, amount to Re. ·72; the balance is Rs. 20·9. In Bombay, the yearly value of the crop is Rs. 22·4; the payments Rs. 2·2; the balance Rs. 20·2. In the Panjáb, the yearly value of the crop is Rs. 18·5; the payments Rs. 1·4; the balance is

Rs. 17.1. In Madras, the yearly value of the crop is Rs. 19.0; the payments Rs. 1.7; the balance Rs. 17.3. In Bengal, the yearly value of the crop is Rs. 15.9; the payments Re. .81; the balance Rs. 15.1. In the North-Western Provinces and Oudh, the yearly value of the crop is Rs. 16.4; the payments amount to Rs. 1.6; balance Rs. 14.8. It would be easy to show that, of the total payments, including rent, made by the people of each Province of India, a great deal less finds its way into the Government Treasury in Bengal than elsewhere. Thus, in Bombay, where the land-tenure is nearly all raiyatwári, eighty-eight per cent. of the payments made are devoted to purposes of Government, being either paid into the Treasury as revenue, or devoted to the support of establishments required for public purposes. In Madras, where about four-fifths of the country is under the raiyatwári tenure, the proportion is sixty-nine per cent. In the North-Western Provinces and Oudh, under a zamíndári system and temporary settlements, the proportion is sixty per cent. In the Panjáb, where there are a very large number of cultivating proprietors, the proportion is fifty-four per cent. In Bengal, under the Permanent Settlement, the proportion is believed not to exceed thirty-three per cent. This, however, is not the point with which I am immediately concerned. What I wish to show is the degree of agricultural wealth possessed by the several populations. I am aware how dangerous it is to place implicit reliance on statistical calculations of this sort. Notably, in this instance, it is to be observed that the produce of the cultivated area is not the only source of income to the cultivators. Milk, ghí, curds, hides, wool, live-stock and fuel have to be taken into account. For instance, the value of stock, dairy and forest produce in the Panjáb has been calculated at no less than twelve crores of rupees annually. At the same time, when we find that statistics, worked out without reference to any particular result,—for these calculations were not made with special reference to the measure now under discussion—lead to the same conclusion as those which would result from general knowledge of the subject, and from *a priori* inferences, it is, I think, impossible not to attach some importance to them. What, therefore, is the conclusion to which these figures point? They show, in the first place, that, under certain conditions, the raiyatwári and zamíndári tenures are consistent with an equal degree of agricultural wealth. Thus the agricultural wealth of the Central Provinces stands at the top of the list. The reason is obvious. In the Central Provinces, there is no keen competition between cultivators for land, but rather there is competition between landlords to get cultivators. But if we find a combination where the zamíndári system exists, accompanied with great pressure of the population on the soil, but unaccompanied with any sufficient protection afforded to the cultivator against the landlord, it is there that we should expect to find the least degree of agricultural wealth; and that is precisely what we do find.

The degree of agricultural wealth in the North-Western Provinces and Oudh and Bengal is considerably less than that of the other Provinces of India, and the North-Western Provinces and Oudh are in a slightly worse position than Bengal, because we know that the pressure of the population on the soil in those Provinces is somewhat greater than is the case in Bengal.

“I have so far compared the agricultural wealth of Bengal and other Provinces. I now proceed to institute a comparison between different portions of the Province of Bengal itself. The circumstances incident to the tenure of land, and consequently the degree of agricultural prosperity attained in different parts of the Province, present some wide differences. Thus, in the Chittagong Division, we are told by the Commissioner that the landlords ‘stand in awe of their raiyats’. In some other districts, Dinájpur for instance, there is evidence to show that ‘the demand for raiyats by zamíndárs is more than the demand for the lands by raiyats’.

“Of course where any real competition for raiyats exists, the latter, if they are unduly pressed, move off to other estates. In other districts, where this state of things is reversed, and the congestion of the population leads to excessive competition for land, there is abundant evidence to show that, under the existing condition of the law, the agricultural prosperity of the country is hampered. Perhaps the best way of bringing this point out clearly will be to compare the condition of different parts of the Province, which present dissimilar features in respect to the system of land tenures.

“Many official reports might be quoted to show the prosperous condition of the people of Bákírganj and the adjoining district.

“Thus an official report written in 1868 speaks of the cultivators of the Bákírganj district as ‘litigious’ and ‘very easily excited.’ But the report goes on to say—

‘Nothing strikes one more in going through a village in this district than to see substantial homesteads, well-kept gardens, well-stocked poultry and farm-yards. It is no uncommon thing for the substantial howaldars of this district to keep their own poultry, not only for sale, but also for home consumption.’ Then again ‘I do not think the raiyats of any other district would have borne the heavy losses in cattle, from the murrain which has raged here to a most appalling extent, so well as the Bákírganj raiyats have done. I have sometimes been really surprised to see how easily the raiyats have replaced their losses by the purchase of more cattle. * * * * In the steady social advancement of the people, in their independence and substantial comfort and well-being, Bákírganj, a district comparatively unknown, neglected and despised, is about the best illustration of the blessings enjoyed under our rule.’

“Many passages from recent reports might be quoted in corroboration of this description. Thus, in the annual report on the Dháká Division for the year 1877-78, the following passage occurs :—

‘The great and astounding calamities which followed the cyclone have been met and tided over; the soil is fertile; the people self-relying, industrious and perfectly able to defend their own’.

“Why is it that, in Bákirganj and in some of the adjoining districts, such a remarkable degree of prosperity exists? The reason is not far to seek. ‘Bákirganj,’ an official report says, ‘is essentially a district of peasant proprietors.’

‘Almost all the actual cultivators,’ another report says, ‘have to a certain extent a proprietary right in the land they cultivate’.

“I do not say that this is the only reason why these districts are exceptionally prosperous. I am aware that the rise of the jute industry has poured considerable wealth into these districts. But when this wealth accrued, what was the first use to which it was turned? The cultivators knew well enough that the acquisition of a proprietary right in the soil was essential to their permanent welfare, and, accordingly, we find that the first use to which they turned their newly acquired wealth was to take every opportunity of acquiring such right. The statistics of registration show that, in the three years, 1877-78, 1878-79 and 1879-80, no less than 342,596 perpetual leases were executed in Bengal, by far the greater portion of which were executed in the districts of Jessore, Bákirganj, Faridpur, Noakháli and Chittagong.

“I turn now to Bihár, and the contrast is indeed remarkable. There we find a peasantry which is described by Sir Richard Temple, speaking with all the weight of his great experience, as ‘in a lower condition than that of any other peasantry with equal advantages which he had seen in India’. I see no reason to suppose that this description is in any way exaggerated. It is corroborated by the late Colonel Hidáyat Alí, himself a zamíndár, well acquainted with the habits and customs of the people of Bihár, and whose opinion is stated, on reliable authority, to be unprejudiced and valuable. ‘The raiyats of this Province’, he says, ‘namely, the heads of families, and even the women and the male adult children of the agricultural classes, though they labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid on them’. Let any one look at tables giving the average monthly wage of an able-bodied agricultural labourer, which are periodically published in the *Gazette*. He will find that the average wage in the Patna district is from Rs. 3 to Rs. 4 a

month; in the Gya district, from Rs. 2-8 to Rs. 3; in the Shahábád district, Rs. 4; in the Darbhanga district, Rs. 2 to Rs. 3. Elsewhere in the rural districts of Bengal, we find the wage of the agricultural labourers ranging from a minimum of Rs. 5 in the Murshidábád district, to somewhat over Rs. 9 in Bákirganj, Maimansingh, &c., the usual rate being about Rs. 7 or Rs. 7-8. These, I think, are very eloquent facts. If any further evidence be needed, it is sufficient to compare the remarkable recuperative powers shown after the disastrous cyclone by the cultivators of Bákirganj and the adjoining districts, with the feeble powers of resistance against famine shown by the peasantry of Bihár in 1874. Those who were concerned with the administration of India in that year are not likely to forget the fearful rapidity with which, in spite of every effort of the Government, scarcity was with the utmost difficulty prevented from turning into widespread mortality from starvation in those poverty-stricken districts. What is the reason of this condition of things? It is thus stated by two very able officials, Messrs. Geddes and MacDonnell, in their report of January 7, 1876:—

‘The whole conditions of agricultural industry in Bihár,’ they say, ‘are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money or of credit. * * * The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry’.

“It is well known that in Bihár a large quantity of land is held under what is termed the *bhaoli* or *métayer* system of tenure. All who are conversant with questions of this sort know, generally, what there is to be said for and against this system of tenure. It has found an apologist in one of the most able economic writers of the century. I observe, however, in a series of articles republished from the *Hindú Patriot*, and in which the cause of the zamíndárs is defended with remarkable ability, that it is stated that ‘the *bhaoli* tenant is as much secured in the possession of his holding as the *métayer* tenants are in Continental Europe’. A description is then given of the *métayer* tenancy in France. This description is taken textually from the pages of Arthur Young, who was a very acute observer on agricultural matters. It describes, not the *métayer* tenancy which now exists in some parts of Europe, but that which existed in France before the Revolution. It was in respect to this tenancy that Arthur Young said that:—

‘there is not one word to be said in favour of the practice, and a thousand arguments that may be used against it. * * * * * Wherever this system prevails it may be taken for granted that a miserable and useless population is found’.

“It was strongly condemned by one of the greatest French administrators—Turgot. Mill has, indeed, defended the métayer system, but then, after alluding to the alleged prosperity of the people of Italy, where this system of tenure exists, he says :—

‘I look upon the rural economy of Italy as simply so much additional evidence in favour of small occupations with permanent tenure’.

“Now, in the first place it is to be observed that Mill’s account of Italian prosperity under the métayer system, which was based on the account given by Sismondi, is now believed to have been incorrect. It was refuted in a report by Mr. Herries on the land-tenures of Italy, which was laid before Parliament in 1871. And, in the second place, permanent tenure, which, as Mill says, will always generate considerable agricultural prosperity, even under the disadvantages of the peculiar nature of the métayer contract, is exactly what the Bihár tenant has not got. This is what the Bihár Committee said on this subject :—

‘An examination of the *jamabandí* papers of Bihár estates has shown that, while sixty per cent. of the present raiyats have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. * * * This is an evil which is due to the general failure on the part of the landholders to comply with an obligation which the law has, from the earliest period of our rule, imposed upon them, namely, that of giving *patás* to their tenants, specifying the boundaries and areas of their holdings’.

“The meaning of this is, I conceive, that the intention of the legislature in 1859, which was to facilitate the acquisition of occupancy-rights, has been completely defeated. But the whole of the report of the Bihár Committee should be read, in order to gain an accurate idea of the evils of the *bhaoli* system. It is shown by the report of that Committee that, when the raiyats decline to accept the zamíndár’s terms as to the share of the produce, the zamíndár declines to make the appraisalment. Further, when the appraisalment is made, the zamíndárs do not allow the raiyats to take away the grain. ‘It will be seen’, the Committee says, ‘that the zamíndárs of South Bihár practically take by way of rent as much of the crop as they choose to claim’.

“I think, with such facts as these before us, it is impossible to deny that the relative prosperity of the people of the Eastern districts in the one case, and the relative depression of the agricultural classes in Bihár in the other case, must to a very great extent be traced to the different systems under which land is held in those districts of Bengal.

“It is said that sufficiently detailed enquiry has not yet been made, and that sufficient evidence has not yet been accumulated, as to the necessity of any

general revision of the rent law of Bengal. I am unable to admit the validity of this contention. Abundant evidence might be cited to show that in some parts of Bengal greater facilities are required to enable the zamíndár to recover the tenant's rent. As, however, this point is not, generally speaking, disputed, I need not dwell on it any longer. Looking at the question from the raiyats' point of view, we have the concurrent testimony of a large number of experienced officials, both past and present. We have the further testimony of a Committee composed of experienced gentlemen, both official and non-official, on the condition of the affairs of Bihár. We have the very able report of the Rent Commission. We have the concurrent testimony of four successive Lieutenant-Governors. We have, moreover, as regards the levy of illegal cesses, the results of very careful enquiries instituted by Sir George Campbell in 1872, supplemented in many cases by abstracts of oral evidence, and a large quantity of documentary evidence.

“It will be borne in mind that, as could readily be shown by reference to contemporaneous literature, one of the chief objects of the authors of the Permanent Settlement was to prevent the levy of *abucábs*, or illegal cesses. Nothing is more clear than that this object has not been attained. I should like to read to the Council a list of the cesses which were reported by the Commissioner of the Presidency Division, in 1872, to be levied in the Twenty-four Parganas. They are no less than twenty-seven in number. They are as follows:—

(1.) *Dák kharácha*.—This cess is levied to reimburse the zamíndárs for amounts paid on account of zamíndári dák tax. The rate at which it is levied does not exceed three pice per rupee on the amount of the tenants' rent.

(2.) *Chánda*, including *bhikya* or *maugon*.—A contribution made to the zamíndár when he is involved in debt requiring speedy clearance. It will be seen, therefore, that if, as my hon'ble friend (Mr. Kristodás Pál) says, the raiyat goes to the zamíndár when he is in difficulties, it sometimes happens that when the zamíndár is in difficulties he goes to the raiyat.

(3.) *Parboony*.—This is paid on occasions of pujá or other religious ceremonies in the zamíndár's house. The rate of its levy is not more than four pice per rupee.

(4.) *Tohurria*.—a fee paid on the occasion of the audit of raiyats' accounts at the end of the year.

(5.) Forced labour or *begár*.—This labour is exacted from the raiyats without payment.

(6.) *Marucha* or marriage-fee,—paid on the occasion of a marriage taking place among the raiyats. It is fixed at the discretion of the zamíndár.

(7.) *Ban-salami*,—a fee levied on account of the preparation of gur or molasses from sugarcane.

(8.) *Salami*, including all fees paid on the change of raiyats' holdings, and on the exchange of pattás and kabúliyats.

(9.) *Khárij Dákhil*,—a fee commonly, at the rate of twenty-five per cent., levied on the mutation of every name in the zamíndár's books.

(10.) Taking of rice, fish and other articles of food on occasions of feasts in the zamíndár's house.

(11.) *Battá* and *Multá Kumrae*.—The former is charged for conversion from Sikká to Company's rupees; the latter on account of wear and tear of the same.

(12.) *Fines*.—These are imposed when the zamíndár settles petty disputes among his raiyats.

(13.) *Police Kharcha*,—a contribution levied for payment to police-officers visiting the estate for investigating some crime or unnatural death.

(14.) *Junmojattra* and *Rash Kharcha* are exceptional imposts, levied on occasions of certain festivals.

(15.) *Bardari Kharcha*,—a fee levied at heavy rates by a farmer taking a lease of a mahál.

(16.) *Tax or income tax*, levied by a few zamíndárs, to be reimbursed for what they pay to Government on account of this tax. (The list, from which I quote, was, it will be remembered, prepared in 1872 when the Income Tax was in existence.)

(17.) *Doctor's fees*.—This is levied exceptionally by a few zamíndárs on the plea that they are made to pay a similar fee to Government.

(18.) *Taukkur*.—A tax of four annas levied from every weaver for each loom.

(19.) *Dhaie mahál*,—a fee levied from every wet-nurse carrying on her profession on the zamíndár's estates.

(20.) *Anchora salami*,—a fee levied by persons carrying on an illicit manufacture of salt.

(21.) *Halbhangun*,—a fee paid by a raiyat on his ploughing land for the first time in each and every year.

(22.) *Mathurt jama*,—a tax levied on barbers.

(23.) *Shashum jama*,—a tax levied on muchís for the privilege of taking hides from the carcasses of beasts thrown away in the bhagar of a village.

(24.) *Punniah Kharcha*.—The contribution made by the raiyats on the day the *punniah* ceremony takes place.

(25.) *Bastu pujá Kharcha*,—a contribution made for the worship of *bastu purush* (god of dwelling-houses) on the last day of the month of *pous*.

(26.) *Rashad Kharcha*,—a contribution levied to supply with provisions some district authority or his followers making a tour in the interior of the estate.

(27.) *Nazrándá*, or presents made to the zamíndár on his making a tour through his estates.

“I took this list at hazard from a number of others given in the reports addressed to Sir George Campbell in answer to his enquiry in 1872. It does not appear to represent an exceptional case. In some districts, fewer cesses are levied; in others, the evil has apparently attained even larger dimensions. Indeed, a case is cited in Orissa, as an example of the credulity of the raiyats, where the fixing of a line of telegraph posts was made an excuse for the levy of an additional cess.

“It is sometimes said that the raiyats themselves have not asked for any legislation. That statement is not correct. The raiyats have in some cases petitioned Government, and, if they have not come forward more fully on their own behalf, the reason is not far to seek. The Collector of Bhágálpur reported on the 15th May, 1872, that—

‘if a formal enquiry were instituted, it would be almost impossible to make any raiyat come forward to divulge what he had paid; it is only incidentally that we come to hear of the exactions.’

“And, in forwarding the reports of 1872 to Sir George Campbell, the member in charge of the Board of Revenue (Mr. Schalch),—whose views, generally, were certainly not unfavourable to the zamíndárs—expressed himself in the following terms;—

‘Even when the raiyats are aware of their rights, they very naturally prefer to bear the almost insupportable burden of oppression, rather than to follow a course of opposition which would probably result in even greater oppression,—nay, even in utter ruin.’

“I do not think that, under these circumstances, it can be any matter of surprise that the raiyats in some parts of Bengal have not spoken out more plainly than has been actually the case. Rather I think it a matter of surprise that they have spoken out so clearly as they have done.

“It appears to me, therefore, that the evidence upon which the necessity for a revision of the rent law is based is sufficiently conclusive.

“I now turn to the consideration of a wholly different point.

“It has been urged that legislation of the nature now proposed is contrary both to the spirit and to the express terms of the Permanent Settlement; in fact, that it involves a breach of the contract made in 1793 between Lord Cornwallis, on behalf of the British Government, and the zamíndárs. So much has already been written and said on this subject that I will not attempt to discuss it at any length. Nevertheless, the imputation of breach of faith is so serious, and the moral obligation on the part of the British Government to adhere scrupulously to any solemn pledges given to the Natives of India, of whatsoever class, appears to me to be so binding, that I should wish to state, as briefly as possible, why I consider that the argument adverse to the present Bill, based on the supposition that it involves a breach of contract, is wholly untenable.

“I do not know that the spirit in which, as it appears to me, the British Government should approach the question of dealing with the Permanent Settlement has ever been more clearly and comprehensively treated than by Sir James Stephen in his speech on the Local Rates (North-Western Provinces) Bill in 1871, and I wish to dwell briefly on Sir James Stephen’s opinions, because, if I understood rightly, they were, I think, somewhat misapprehended by my hon’ble friend Rájá Siva Parsád in the address he delivered to the Council yesterday. Arguments had at that time been advanced to the effect that, as no one generation of law-givers can irrevocably bind another to a certain course of conduct, it was idle to object to any law on the ground that it was a violation of the pledges given at the Permanent Settlement.

“ Sir James Stephen said that he had heard these arguments with regret, all the more ‘ because they undoubtedly have a certain *substratum* of truth.’ ‘ The objection to the theory’, he added, ‘ of which they are applications is, not that it is false, but that it is partial, that it applies to legal right and wrong, and does not deal with the question of moral right and wrong.’

“ Sir James Stephen then pointed out that it was specially to be borne in mind, in considering the moral justice of making any change in the terms of the Permanent Settlement, that the Government of India was not a representative Government. ‘ A really representative Government’, he said, ‘ may deal with the pledges of their predecessors in a very different way from a Government like ours.’

“ I think these observations of Sir James Stephen must command universal assent. Occasions may arise in India, as elsewhere, when it becomes both necessary and desirable for the legislature of one period to modify, or even deliberately to reverse, the measures adopted at some previous period. But certainly, in dealing with so solemn a compact as the Permanent Settlement, the very strongest possible necessity would have to be shown in order to afford a moral justification for any legislation which might involve a violation of previous engagements. We are fortunately not called upon to decide whether in the present instance a sufficiently strong case exists for any modification in the terms of the Permanent Settlement, for I venture to think that it may be conclusively shown that the legislation now proposed is in strict conformity both with the letter and the spirit of the engagement taken by Lord Cornwallis.

“ I say both the letter and the spirit, because high legal authorities differ in their opinion as to whether, in endeavouring to arrive at a decision as to the intentions of the legislature of 1793, we are confined to the text of the Statutes, or whether we may seek for a further exposition of those intentions in contemporaneous official literature. On a point of this sort the opinion of a layman is of little value. But I may perhaps be permitted to quote what so high a legal authority as Sir James Stephen said as to the latitude allowable in construing the text of the Permanent Settlement :—

‘ When I say,’ he said, ‘ that in my opinion the Permanent Settlement ought to be scrupulously observed, both in letter and in spirit, I do not mean to exclude the right on the part of the Government, which is essential to the true interpretation of all such transactions, to take into consideration the gradual alteration produced by time and circumstance, and the influence of surrounding facts. A great public act like the Permanent Settlement is not to be interpreted, and can never have been meant to be interpreted, merely by reference to the terms of the document in which it is con-

tained. Its meaning must be collected from a consideration of the circumstances under which, and of the objects for which, it was made; and in considering what is, and what is not, consistent with its terms, we must look at the gradual changes which have occurred in the condition of the country since it was enacted. This is the only way in which it is possible to understand fully transactions of this kind, and it is peculiarly necessary in the case of a transaction which, however important, neither is, nor professes to be, a complete and exhaustive statement of the relations between the Government and its subjects. The Permanent Settlement regulates only one branch of one part of those relations, and it must be interpreted by reference to others.'

"Whether, however, we look for the intentions of the legislature solely in the text of the Regulations, or whether we admit contemporaneous literature as evidence of those intentions, it appears to me that, in so far as the immediate point under discussion is concerned, we arrive at the same conclusion.

"Looking first at the precise words which the legislature employed, the text of Regulation I of 1793 (clause 1, section 8) is sufficiently clear. It reserves to the Government full powers to interfere 'for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil.'

"It has, however, been urged that Regulation II of 1793, which was passed on the same day as Regulation I, qualifies the reservation in section 8 of Regulation I. This argument is based upon the fact that the preamble to Regulation II of 1793, after dwelling on the expediency of abolishing the Courts of *Mál Adálat* or Revenue Courts, and transferring the trial of suits which were cognizable in those Courts to the Courts of *Dwánt Adálat*, goes on to say that—

'no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected.'

"I must confess that I altogether fail to see how the language thus used in Regulation II qualifies the legislative power expressly reserved by Regulation I on behalf of dependent taluqdárs, raiyats and other cultivators of the soil. If the whole of the preamble to Regulation II of 1793 be read, the intention of the legislature becomes perfectly clear. Prior to 1793, rent and revenue suits had been tried in what were then known as the *Mál Adálat* or Revenue Courts. In these Courts Collectors of Revenue presided as Judges. It was pointed out in the preamble to the Regulation that—

'the proprietors can never consider the privileges which have been conferred upon them as secured whilst the Revenue-officers are invested with these judicial powers * * *
* * * The Revenue-officers must be deprived of their judicial powers.'

“Further, these officers were to be rendered ‘amenable to the Courts of Judicature.’

“When this was done, the Regulation went on to indicate :—

‘No power will then exist in the country by which the rights vested in the landholders can be infringed or the value of landed property affected.’

“In point of fact, it is quite clear that the sole intention of the legislature was to give further security to the zamíndárs in respect to the permanency of their revenue assessment by a separation of judicial and executive functions, instead of allowing them to be united in the same individuals as was heretofore the case. The explicit reservation made in Regulation I of 1793 does not, therefore, appear to be in any way qualified by the provision enacted in Regulation II.

“I have so far dealt only with the text of the Regulations of 1793, and I have endeavoured to show that full power to legislate, with a view to the protection of the interest of the raiyats, was expressly reserved by the legislature. If, however, we admit contemporaneous official literature as evidence of the intentions of the legislature, the case becomes even stronger. In the well-known letter to Lord Cornwallis of the 19th September, 1792, the Court of Directors express themselves as follows :—

‘But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the raiyats or the sums paid by them, with any view of an addition of revenue to ourselves, we expressly reserve the right, which belongs to us as Sovereigns, of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and, instead of diminishing, will ultimately enhance, the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár, for otherwise such a rule would be nugatory ; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.’

“ Again, somewhat later, but before Regulation I of 1793 was passed, the Court of Directors expressed themselves as follows :—

‘ In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the raiyats and subordinate landholders, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as Sovereigns, of being the guardians and protectors of every class of persons living under our government.’

“ Whether, therefore, we look to the letter of the Regulations of 1793, or whether we look to contemporaneous official literature for a further indication of the intentions of the legislature of that period, it is abundantly clear that power to legislate, in order to define the relations between the zamíndárs and the raiyats, was expressly reserved at the time the Permanent Settlement was made.

“ I now turn to another cognate point. It is admitted on all sides that the *khudkásht* or resident raiyats had certain rights at the time of the Permanent Settlement. A great deal of learning and research has been devoted to enquiring into the precise nature of those rights. I do not propose to discuss this point. But I wish to say something about the rights of a certain important class of cultivators which accrued subsequent to the passing of Regulation I of 1793. At the time that Regulation was passed, a large tract of waste and unoccupied land existed in Bengal. These lands were not assessed to the payment of revenue. The whole of the rents payable in respect to these lands was left to the zamíndárs, under the terms of Lord Cornwallis’s settlement. ‘The rents of an estate’, Lord Cornwallis said in his Minute of February 3rd, 1790 ‘can only be raised by inducing the raiyats to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste-land which are to be found in almost every zamíndárf in Bengal.’

“ It has been argued on high authority that, under the Permanent Settlement, the zamíndárs were left free by the legislature to let these unoccupied lands to raiyats upon whatever terms they thought proper; that, in respect to these lands, they had almost as much freedom as English landlords; and that the terms upon which these lands were let were a matter of contract regulated by the ordinary principles of demand and supply.

“ It would perhaps constitute a sufficient reply to this argument to say that the reservation made in section 8 of Regulation I of 1793, which I have already quoted, expressly declares that, if necessary, legislation will be undertaken

with a view to the 'protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil'. No class of cultivator was excluded.

"But I venture to think that the argument admits of a further answer. It implies that the authors of the Permanent Settlement deliberately intended to introduce freedom of contract as the economic basis on which the relations between the zamíndárs and the raiyats in respect to a very large class of lands was to rest.

"Now all the evidence which has come down to us goes, I venture to think, to show that the authors of the Permanent Settlement never intended anything of the kind. Lord Cornwallis, in his Minute of February 3rd, 1790, after speaking of the privileges enjoyed by the raiyats in certain parts of Bengal, goes on to say :—

'Whoever cultivates the land, the zamíndárs can receive no more than the established rent, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving land to another would be vesting him with a power to commit a wanton act of oppression from which he would derive no benefit.'

"Moreover, section 5 of Regulation IV of 1793, which was passed less than a year after the Permanent Settlement, prescribes that, after the completion of certain formalities, 'pattás according to the form approved, and at the established rates, will be immediately granted to all raiyats who may apply for them.'

"The 'established rates', it is to be observed, apply under this Regulation to all raiyats. No exception is made in respect to raiyats who cultivate, or to raiyats who might subsequently cultivate, the lands unoccupied at the time of the Permanent Settlement. And yet it is surely not unreasonable to suppose that, if the legislature had intended to deal specially with the raiyats cultivating those lands, which then formed so large a proportion of the culturable area of Bengal, its intention would have been expressly stated. Lord Cornwallis and his contemporaries were not ignorant of the fact that rents in Bengal were universally settled with reference to general or local usage, and that freedom of contract, in the sense in which we employ that term, did not exist. On the contrary, abundant evidence might be adduced to show that they were fully aware of it. Indeed, perfect freedom of contract was expressly excluded from the legislation of 1793. Section 65 of Regulation VIII of 1793 runs as follows :—

'No proprietor of land or dependant taluqdár shall contract any engagement with any under-farmer, or authorize any act contrary to the letter and meaning of this Regulation.'

“It does not, therefore, appear to me that, in respect to the unoccupied, any more than in respect to the occupied, lands, it can be contended that the Permanent Settlement placed the zamíndár in the position of the English landlords, free to regulate their relations with the raiyats without reference to customs. As Mr. O’Kinealy has said :—

‘All that the Permanent Settlement did, all that the great founder of the settlement ever intended it should do, was to give zamíndárs, subject to custom, a perpetual lease of the lands at a fixed assessment, and subject to the restriction of State intervention if the conditions of their leases were violated to the injury of the raiyats.’

“I have said that Lord Cornwallis and his contemporaries did not intend to introduce freedom of contract as the economic basis which was to regulate the relations between landlord and tenant in Bengal. I may add that, had they endeavoured to do so, they would almost certainly have failed in the attempt. It is sometimes said that an Act of Parliament can do anything. It would be more correct to say that an Act of Parliament may prescribe that anything shall be done. However omnipotent may be the voice of the legislature, whether of England or of India, there is one thing that cannot be accomplished, whether by an Act of Parliament or by an Act of the Indian legislature. The habits of thought and customs of a vast population cannot be changed by any legislative enactment.

“What has been the result of endeavouring to plant freedom of contract in respect to land on the uncongenial soil of Ireland? It is told by the Bessborough Commission, in words that would apply with but little change to Bengal.

‘That condition of society’, the Commissioners say, ‘in which the land suitable for tillage can be regarded as a mere commodity, the subject of trade, and can be let to the highest bidder in an open market, has never, except under special circumstances, existed in Ireland. The economical law of supply and demand was but of casual and exceptional application. It is generally admitted that, to make it applicable, the demand must be what is called ‘effective’; in this instance it may be said that, whatever was the case with the demand, the supply was never effective. In the result, there has, in general, survived to him (the Irish farmer), through all vicissitudes, in despite of the seeming or real veto of law, in apparent defiance of political economy, a living tradition of possessory rights, such as belonged, in the more primitive ages of society, to the status of the man who tilled the soil.’

“Again, the legislature of 1793 endeavoured to introduce into Bengal written engagements between landlord and tenant, but failed in the attempt. Neither can this be any matter of surprise. I conceive that, generally speaking, the

Bengal raiyats, like the Irish cultivator, regarded a written agreement, not as a means of acquiring something which he did not possess, but as a recognition that he might be called upon to sacrifice something which was already in his possession,—not as prolongation of his yearly tenancy, but as abridgment of the traditional tenancy which allowed him to hold his land as long as he paid the customary rate of rent.

“We know now a great deal more about the historical development of the idea of property in land than was known to Lord Cornwallis and his contemporaries. The researches of Sir Henry Maine, M. de Laveye and other eminent men have thrown a flood of light on the subject. We know that the separate ownership of land is an economic idea of relatively modern growth; that in almost all countries the soil originally belongs to communities; and that, as society has advanced, a natural movement has taken place from common to separate property in land as in chattels. Without attempting to discuss the precise status of the cultivators of Bengal at the time when English rule was established, this much at all events may, I venture to think, be said with confidence, that the disintegration of the small societies holding land in common, which existed in other parts of India, and which still exist amongst the Slavonic races of Europe, was almost complete in Bengal. On the other hand, the idea of individual property in land, in the sense in which we are accustomed to employ the term in England, had not nearly been attained. An intermediate stage had been reached. Community of property no longer existed, but perfect freedom of contract in respect to the land was wholly foreign to the ideas of the people. Custom and not contract regulated the relations between zamindárs and raiyats before the Permanent Settlement, at the time of the Permanent Settlement and subsequent to the Permanent Settlement; and custom, and not contract, regulates, to a very large extent, those relations still, and would, without doubt, regulate them to even greater extent, if the legislature of 1859 had not imported into the country the alien theory of prescription.

“I should certainly be the last to press for the interference of the State in the regulation of any matters which can, without detriment to the public welfare, be left to settle themselves without any such interference. I dislike State interference, and regard with some apprehension the modern tendency, not only in India, but in England, to call in the aid of the State on occasions when it appears to me to be scarcely necessary. I should be the last also to say anything which might appear adverse to the application of sound economic principles to the solution of Indian questions. But I conceive that nothing is more likely to check the advance of sound economic knowledge in India than the misapplication of the canons of political economy.

To quote a single trite instance of such a misapplication. If scarcity arises in any district of India, the surplus food from other districts will, provided there be roads, be poured into that district, in order to meet the demand. That is what political economy means when it says that the supply will follow the demand. But, if no roads exist, the supply will not, and cannot, follow the demand, and mortality from starvation will ensue, as it has before ensued. So also, when political economy speaks of freedom of contract, it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth. There are, according to the Famine Commissioners, 9,752,000 tenants in Bengal, of whom 2,789,000 pay a rent of from Rs. 5 to 20, and no less than 6,136,000 pay a rent of less than Rs. 5, which latter rate, I may observe, implies a holding of from two to three acres. Can anyone who is acquainted with the facts say, in respect to the majority of these tenants, that their education, their knowledge of law and the circumstances under which they till the soil are of a nature to admit of that free and intelligent choice which is in the essence of the economical, as it is of the legal, theory of freedom of contract? I venture to think that any such contention cannot be maintained. The mass of the raiyats are uneducated. In Bihár, with its population of 22½ millions, less than one and three-quarters per cent. of the population can read and write, and elsewhere in Bengal the proportion is under four per cent. Many raiyats are ignorant of their legal rights, and others, when cognisant of those rights, are afraid to make any attempt to enforce them. Agriculture forms, and must continue to form, their only means of gaining a livelihood.

‘The raiyats’, the Rent Commissioners say, ‘cultivate for subsistence, not with the immediate view to profit. * * * There is no wages fund, there are no labourers paid from capital. There are practically no manufactures, no non-agricultural industries, no great cities of work where a surplus rural population can find employment.’ -

“Under these circumstances, it is idle for the present generation to think of establishing freedom of contract as the economic basis on which the relations between landlord and tenant in Bengal can be made to rest. The legislature must recognise the facts with which it has to deal, and the leading fact with which it has to deal is, that custom, and not contract, has in the main governed the relations between the zamíndárs and raiyats in Bengal from time immemorial, and that custom, and not contract, must in the main continue in the future to govern those relations.

“If the practical aspects of the situation are such as to necessitate the rejection of the theory of freedom of contract, and to force on the Government the obligation of interfering by legislative enactment in order to regulate the

incidents of land tenure in Bengal, it is on every ground desirable that that interference should be effectual to remedy the evils which it is intended to cure. Whether that interference will be effectual,—whether, on the one hand, due facilities will be given to the zamíndárs to make good their equitable rights; whether, on the other hand, tardy effect will now to a sufficient degree be given to the original intention of Lord Cornwallis and his contemporaries, in the sense of maintaining the raiyats in the enjoyment of their customary rights,—must mainly depend on the decisions which this Council will ultimately take. The Bill introduced by my hon'ble colleague Mr. Ilbert will, should it be passed into law, do much towards the accomplishment of these objects. It would, in my humble opinion, have done more, and it would have given greater hope of finality in the settlement of the difficult question now under discussion, if the land, and not the status of the tenant, had been taken as the basis of the recognition of the right of occupancy.

“But even as the Bill stands, it proposes a large and beneficial measure of reform. I hope and believe that it will be very generally regarded in this light, and that, both in and out of this Council, it will be discussed with the calmness and deliberation that the importance of the subject demands.

“In the remarks which I have addressed to the Council, I have confined myself to certain specific points. I trust that I have shown, first, that, so far as the present Government is concerned, it would not have been performing an act of public duty if it had declined to undertake a general revision of the rent law of Bengal; secondly, that, whether from the point of view of the zamíndárs or from that of the raiyats, the evidence upon which the necessity of a general revision of the law rests is conclusive; thirdly, that the legislation now proposed involves no breach of the contract made with the zamíndárs at the time of the Permanent Settlement, but may rather be regarded as the tardy fulfilment of the pledges given to the cultivating classes in 1793; fourthly, that the contention that freedom of contract must, under the terms of the Permanent Settlement, regulate the relations of the zamíndárs and the raiyats in respect to the lands unoccupied in 1793 cannot be maintained; fifthly, that custom, and not contract, has from time immemorial regulated the incidents connected with the tenure of land in Bengal; and lastly, that in view of all the circumstances with which we have to deal, the recognition of this fact should be made the basis of any measure which is now passed into law.

“I leave the discussion of the further very numerous points which arise in connection with this Bill to a later stage of the proceedings, when they will, without doubt, receive ample treatment at the hands of other and more competent authorities than myself.”

His Honour THE LIEUTENANT-GOVERNOR said:—"It was impossible to listen to the admirable statement of the hon'ble member on the introduction of this Bill, or to the later speeches addressed to this Council on the subject, without feeling what must be felt by anyone, even the least conversant with the voluminous literature and controversies on the question, that we are approaching the public discussion, and, I hope, the equitable settlement of a large question which intimately affects the interests of a great majority of the people of this Province. I am quite well aware that your Lordship's rule has been signalized by the consideration of many other very extensive reforms of political and administrative importance, and that these questions are still pending a solution; but though of the Local Self-Government scheme it may be asserted that it is taken up chiefly by the highly educated classes, and is with them rather a measure on which hopes and expectations are founded, and though we may lose our tempers over amendments of the criminal procedure to which the mass of the community is profoundly indifferent, here we are face to face with a problem in which nearly the whole of Bengal as an agricultural population is directly interested, and in which, therefore, to use the words of my hon'ble friend Mr. Kristodás Pál, the solution 'involves the life-problem of the people' of the country.

"Most who have preceded me have spoken as to the necessity for legislation. The statement made by the hon'ble and learned member in his opening address, the remarks which fell from the Hon'ble Kristodás Pál and the facts brought forward by the hon'ble member Major Baring confirm that necessity; and, if anything further was needed, it would be found in the annexure to the Government of Bengal's letter of the 21st July, 1881, which shows that, for the last ten years at least, a general revision of the substantive portions of the rent law has been regarded as inevitable, and has been advocated by every section of the agricultural community, including prominently the British Indian Association, which represents the zamindárs of Bengal. This call for a revision of the Rent Code has, I admit, not found expression only among those who claimed for the raiyat a clearer and wider declaration of his rights and privileges, but has been pressed as often and as strongly by those who demanded, in the interests of the zamindárs, a simple procedure for the collection of rents, and the abrogation of sections which interfered with enhancement. Before Act X had been very long in force, in 1864, Sir B. Peacock raised objections to section 6 of that Act, on the ground that, in these permanently-settled districts, the rights of occupancy had been improperly enlarged; and, in the amendment to the law proposed by Sir William Muir a year or two later, the same objection was taken, in the view that the law of 1859 was unreasonably

adverse to the proprietors of the North-Western Provinces. The demand, too, upon Government to reopen and examine the question as a whole is enforced again, not by isolated facts of a similar character from one part of this vast Province, but upon different and varying facts of a disturbing kind from every part of the Province. If the raiyats of the Eastern districts have learnt (mainly, I insist, by the exactions and oppressions practised upon them) the power they possessed in unions and combinations to resist the encroachments of the landlords and their agents, and have carried their opposition so far as to justify the plea of the zamíndárs that the refusal to pay the ordinary and regulated rents required the intervention of the legislature; if the agrarian disturbances in Bákirganj, Maimansingh, and notably in Pabná, disclosed the strained and hostile relations which existed between landlords and tenants, calling for special police arrangements for the preservation of the peace, what are we to say to the gross abuses which prevailed throughout Orissa, where specially, by the exaction of illegal cesses, the raiyats are described as the most impoverished and oppressed tenantry in India? and what are we to say to the systematized ignoring and nullification of the law in Bihár, because the cultivators were ignorant of their rights, and were subjected to the universal jugglery with holdings in the jamabandí papers, thus leading to the continual shifting of the raiyats from their lands, to prevent the accrual of the right of occupancy? In that part of the country, too, the peculiar system of thíkádári assignments, and the quasi-feudal compulsion of indigo cultivation, gave additional cause for fear, inasmuch as all official enquiries tended to show that the whole conditions of agricultural life in Bihár were precarious in the extreme, notwithstanding the existence of a large and industrious population, of a fertile soil and of many advantages of climate and position; so that, as the official report of the day said, 'the people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry.' All these were indications of a kind demanding the interference of the Executive Government, and we find through the whole of this period, which extended to some ten or twelve years, that successive Lieutenant-Governors of this Province, brought to deal with the excited state of the country which these revelations disclosed, attempted, each in his turn, to provide by legislation for a modification of the evils. There is little doubt that radical remedial measures would have been adopted at a much earlier period, if many disturbing circumstances in the country, and especially the famine in Bihár and other places, had not necessarily diverted immediate attention from the subject; and when at last, in Sir Ashley Eden's administration, recourse was had to legislation, and then mainly in relief of the zamíndár for the speedier recovery of his rents, it was found that, in every different branch of this large and complicated subject, the

controversies were so great, and the differences of opinion were so wide, that nothing satisfactory could be effected without a thorough re-examination of the questions connected with ejection, distraint, instalments and deposits of rent, transferability of tenure and the numerous incidents involved in sub-letting. It was thus clear that the matter of the entire revision of the existing Rent Code had to be faced. Hence the Commissions in Bihár and, at a later period, in Bengal, and the amalgamation of the two proceedings with the one report upon which the late Lieutenant-Governor based his proposals, and upon which the Government of India submitted their views to the Secretary of State. The outcome is the Bill which we are now called upon to consider. I am sure no one, even looking at the mass of correspondence and reports which these volumes contain, can fail to see that it has been examined and discussed and reviewed, both officially and non-officially, with an industry, research and ability which few subjects have ever received even in this country. Official investigations have throughout been assisted very much by the independent labours of the Famine Commission, and, if I may be allowed to express now my hearty general concurrence in the measure presented to us, it is in the conviction that, while the right of the occupancy raiyat is maintained on the prescription which the twelve years' rule of Act X of 1859 established, provision has been made to enable the raiyat to maintain that right, to be certified exactly of the amount which he has to pay for it, to resist illegal distraint, illegal cesses and illegal enhancements, not simply by the clearer declarations of the law, but by the power which the Bill confers to secure the survey of every estate and the record of every right upon it.

“I think we all agree that it would be impossible, on an occasion like this, to enter upon any minute examination of the details of this measure.

“It is a large, bold and comprehensive measure; but it has yet to undergo, I am glad to know, the careful scrutiny of a Select Committee, and perhaps what is of more importance, before it reaches the Select Committee it has to pass the ordeal of a more thorough criticism at the hands, not only of the experienced and able officers of Government, but of those who directly are interested in the land, and whom it will more immediately concern. If the general principles of the Bill be accepted, and the vote of to-day will affirm that point, I have no doubt, when the Select Committee begin to consider it in November next, and further, when the Select Committee have finished their labours, we shall find the Bill changed and improved very much in its diction, definitions and, possibly to some degree, in its principles, by the attention which a wide collective opinion will bring to bear upon its contents. I am not careful, therefore, to follow the

example which some of the previous speakers in Council have set, of examining the precise details of its sections and chapters; and I will limit my observations to the two principal features which seem to me to mark, in an especial manner, this new legislation, namely, the resolution of the Government to give a clear and established prominence to the fixity of tenure, including, thereby, a limitation of rents, and the freedom of transfer, and, secondly, to secure that result, not by the declarations of the law alone, but by the power also of enforcing those declarations by executive action. Perhaps the principle of the position which the proposed Bill has now most prominently asserted is that the raiyat with the right of occupancy must hereafter be regarded as a co-partner in the land which he occupies and cultivates. To the extent of his holding, he is to enjoy powers and privileges which, whatever the past policy or practice in different parts of the country may have been, the zamíndár will be bound to respect. The practical enforcement and recognition of this position will depend, not only, as heretofore, upon what the law declares (for experience has too clearly shown that is insufficient), but upon the executive ascertainment and record of the fact. I can quite imagine that it may be difficult for the zamíndár to accept this proposal without demur, for his claim has always been to an absolute proprietorship, in which the right is put forward in one shape or another to do what he likes with his own. But, subject to the conditions that we are dealing here with the raiyat whom, in my judgement, the old Regulations of 1793 alone attempted to protect, who rejoiced then in the name of the *khudkásht* raiyat, and who was established as the resident raiyat with the right of occupancy in the Act of 1859, I believe myself that such a raiyat has as strong a claim to the help of the Government and of the law to maintain and secure him in his position as long as he pays his rent, as the zamíndár has to be maintained and secured in his estate as long as he pays his revenue. The contention of the Government here is, I think, unassailable. It is supported by the positive declaration of the Regulation of 1793 which affirmed the Permanent Settlement; it is proved by its survival through all the controversies and struggles of more than half a century, up to 1859, and this against the always increasing predominance of the zamíndári influence, and, I may truly add, of the culpable negligence of the Government throughout that period: and it is established definitely, notwithstanding the strongest opposition from the zamíndárs all over the country, by the substantive declarations of Act X of that year.

“It seems to me that it would be utterly unreasonable to attempt now to go behind the law of 1859. If, as your Lordship is aware, I have contended strenuously in the past discussions on the subject, that the legislators of 1859 were justified, under all the circumstances of the case, in fixing the status of a

raiyat with a right of occupancy by the twelve years' prescription, and that it would be unreasonable and inequitable to extend the benefits and privileges of the right of occupancy to every raiyat in the country, on the theory that Act X was a mistake, and that the intentions of Lord Cornwallis and his advisers included all raiyats in their benevolent protection, I am equally urgent in the present case that we cannot go back upon any discussion as to whether the occupancy right and such privileges as it carries with it must be limited, by the supposed intention of Lord Cornwallis and the Regulations of 1793, to the few *khudkásht kudimí* raiyats of that day, and those who can now establish themselves as their direct descendants: our new point of departure must be the law of 1859. The despatch of the Government of India showed that their aim was, in recognition of the constitutional claims of the raiyats, to provide that 'the great body of cultivators shall be restored to the position which they held under the ancient law and custom of the country,' and it is seen from the reply which the Secretary of State has given to that despatch that the object could be attained by the maintenance of the principle of the twelve years' rule, as supporting 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. In the justice and wisdom of this decision I most cordially concur; because, whether we look at the case from the position of the Government in 1793, or the position of Government in 1859, the rule laid down in the last-named year has always appeared to me a just and equitable adjustment of the question, though I am ready to admit that, in some respects, it must be regarded as a compromise. I suspect that our judgment is warped too frequently in this matter by the tendency of looking upon present circumstances from the stand point of a very remote and different period. It has been urged more than once in this debate, and it is beyond dispute, that the position of landlords and tenants was in 1793-94 altogether different from that of the present day. In Lord Cornwallis' time, there was more land than there were people to till it. The competition was among the landlords for tenants, and not among the tenants for land. Under such conditions, every cultivator was welcome to clear the wastes. He was welcome, further, to remain upon his holding as long as he pleased; and, so far from eviction and enhancement being in vogue, the rivalry between landlords was to attract people to their zamindári by more favourable terms than were recognized under the pargana rates. As the Permanent Settlement receded, and the pressure of population upon the soil increased, this condition of things was very gradually reversed. The peace and order of British rule helped to promote the change. In Bengal (the Lower Provinces), wars, and even violent disturbances, have for long ceased. Pestilences and famines are yearly brought more under control, and the result has been an

enormous increase of the population. According to the computations of the last census, it may be said that during the last century the population of Bengal has increased three-fold. But all this while the actual area of the land has stood still, and the surplus population, dependent almost entirely upon agriculture for its livelihood, has been forced either to fall back on inferior soils, or to crowd each other within the old margin of tillage. Both these processes have taken place, and both processes have led, by the operation of economic laws, to an increase of rent. As far as can be ascertained, the Government of the country never took any practical steps to act up to its earlier reservations in favour of the cultivator. Indeed, such interference as it did exercise was in the direction of the right of the landlord to enhance rents (Regulation V of 1812), and by the sale laws of 1841 and 1845 to declare his power of eviction of all but the settled resident cultivators. It was only when, some twenty-five years ago, the oppressions of the landlords threatened an agrarian revolution that the Government stepped in by a legislative enactment to arrest the natural increase of rent in Bengal, and the result was the land law of 1859.

“ It is the fashion now-a-days to disparage the value of Act X of 1859; though, when it was passed, it was recognized as the Magna Charta of the raiyats. It is talked of now as a very inadequate instalment of what was due to the peasantry; and its imperfections and defects are imputed to its limitation of the benefits of the right of occupancy to a particular class of tenants, while the zamindárs have always condemned and opposed it as an infringement of the Permanent Settlement. Here again, it seems to me, we ignore the position and circumstances with which the Government and the legislature had to deal when it undertook the rent legislation of that year. The fact is that, whereas ninety years ago the State divested itself of most of its rights as landlords, and created a proprietary body, and although it very carefully reserved to itself the power to take such measures as might seem expedient for the protection of the raiyats, no kind of attempt was made to act upon that reservation by a positive definition or declaration of the right till 1859. In that interval of sixty-six years, that is, between 1793 and 1859, while the proprietary body grew in strength and prospered in wealth, village communities perished, the ‘pargana rates’ (by which the assessment of the resident cultivator’s rent was limited) disappeared, and almost every vestige of the constitutional claims of the peasantry (if ever such existed beyond a small privileged class) was lost in the usurpations and encroachments of the landlords. In that interval, all that Government had ever done was to confirm and consolidate the position of the zamindárs as absolute owners of the land. They had done so by their legislation and by their executive orders and arrangements. The zamindárs were

made every year more and more responsible for the peace and order of the districts in which their estates were situated. They had to supply provisions for the military expeditions and marches of troops passing through their properties; they had to maintain at their own cost the rural constabulary required for the public tranquillity; they were chargeable at their own expense for the performance of many duties which, if they relieved the Government, enhanced the zamindár's influence and independence; and, while the zamindár's power grew and strengthened, the rights of the cultivators of the soil gradually diminished, and almost disappeared. This is no exaggeration of the state of things upon which the rent law of 1859 supervened. Feudalism on the one side, serfdom on the other, was the problem Government had to deal with, and that in a case in which its most solemn pledges had been given for securing to the cultivators their rights and the enjoyment of the fruits of their industry. I cannot describe the position more effectively than in the words which Sir William Muir used, when considering the amendment of the law some six years later.

'There is', he wrote, 'a very general consent that in the Native state of things, the resident raiyat, simply as such, is throughout the Continent of India possessed, as a rule, of a right of hereditary occupancy at the customary rates of the vicinity. This may easily be conceived as the normal condition of the cultivator, where there is no proprietary right, properly so called; or where the zamindár and village communities possess (as under Native rule) the proprietary right only in their own fields, and the remainder have merely the right of management. But the question arises whether such a condition is compatible with the system under which we have recognized a proprietary right in the zamindárs over the entire area of their estates, or have conferred it upon strangers. It is true that the proprietary right has nowhere been created without the stipulation that all other rights existing by the custom of the country shall be maintained. Everywhere the subordinate rights in the soil have been strictly guaranteed. But it is conceivable that a right immediately accruing from the simple occupation of land,—when that land is claimed by no proprietor,—should not accrue, at least so simply and easily, where a proprietary title in the land already vests in another. The change of circumstances would naturally require, at any rate, a longer and stronger prescription. From the proprietor's point of view, it has been urged that no hereditary title can accrue at all by prescription subsequent to the creation of his property. From the raiyat's point of view, it is urged that the title of the resident cultivator is one of the subordinate rights which the Government has bound itself to maintain, as before, inviolate. Every shade of opinion exists between these extreme views. The doubt and difficulty surrounding the question has arisen from the natural endeavour of the British Government to combine the benefits of a full proprietary title with the maintenance of the rights of cultivators as customary throughout the country.'

'In the course of time this question was answered, but very indefinitely, by enactments recognizing the privilege of hereditary occupancy, as created, no longer by simple residence, but by residence of *long* duration. Long residence was held to confer the old hereditary right

of the country. But no attempt was made till the passing of Act X of 1859 to define by law what precise length of residence was requisite for the purpose.

'The first draft of that Act contained a provision which constituted *three* years as the term of prescription for a resident raiyat.* The section was criticised on the one hand as too narrow, because confining the privilege to 'resident' raiyats; on the other as too wide, because not requiring a longer period to establish the prescriptive right. A general consent of opinion was found to prevail, both in the North-Western Provinces and Bengal, that twelve years would be a more appropriate term; and that was, accordingly, adopted in section 6 absolutely and without reference to residence.'

* 'Resident raiyats cultivating land not previously in their occupancy shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same—for a period of three years.' (Section V of Bill read a first time on 10th October, 1857.)

"Now this twelve years' prescription was not arbitrarily selected period. It was originally proposed that a three years' rule should be made as the term of prescription for a *resident* raiyat. It is observable that the search was always for that which would most fairly and accurately describe the resident raiyat, because it was to the resident raiyat, and to him alone, that any ancient privileges and rights appertained. But the enquiries of the time most clearly established that a twelve years' prescription would more appropriately define the class to whom the benefits should be declared by the law. I think, therefore, myself have should have committed a great error if we had given up this rule of twelve years. It has now been in force for nearly a quarter of a century, and is generally understood and accepted, and we cannot lightly ignore what I believe to be the long recognised custom of the country, sanctioned by the policy and laws of the Government.

"Frequently we have heard in the course of this discussion that the zamíndár considers it a great grievance that facilities should be afforded for the accrual of the right. Now, I have never been able to understand on what motive, except that of an immediate temporary gain, the zamíndárs have insisted on any right of unlimited enhancement, or of the prevention of the growth of the right of occupancy. Certainly, it is a very short-sighted policy, and whenever it has been practiced by the high-handedness of the zamíndár, it has found its retribution in a hostile tenantry, in combinations and leagues to repudiate rents altogether, and, when times of scarcity or famine come, in the utter ruin and desolation of the peasantry, on whose exertions depend the effective cultivation of the soil and the payment of the rent to which the zamíndár looks for his income. Let me read to you the description of a peasantry whose rights in these directions have been respected. We had to make enquiries the other day into the question of the preparation of the table of rates, and through the courtesy of the Mahárájá of Dumraon, one of the areas selected was a portion of his property in the

Shahábád District. Regarding this, the Collector of the District, Mr. Nolan, wrote as follows :—

‘The peculiarity of the selected tract is, that it is cultivated by raiyats of whom a considerable proportion have these *guzastha* rights, while nearly all have occupancy rights, and that the same leniency of the landlord which permitted such privileges to grow up and continue has prevented him from generally enhancing rents on other lands. It is not, therefore, a good example of the general condition of the district, and I objected to its selection for these enquiries, on the ground that it was not typical, and that there was no prevailing rate. But, if in these respects it affords less information than could be wished, its condition is worthy of the attention of the framers of the Bill on other grounds. It is the object of some of the framers of the present Bill to secure for the raiyats of Bengal, as a body, rights of occupancy at moderate rents, which, they contend, would insure superior cultivation through the improvements to be expected from those who enjoy security of title, a certain prosperity in ordinary times, with the credit necessary to enable cultivators to tide over periods of famine, without becoming a burden on the taxes, and which would also, it is urged, tend to give to the tenants the independence and manliness of character generally found among peasant proprietors. On the other hand, there are many who believe that low rents and security end in sloth, the sale of the land to speculators, and in the end to sub-letting at a rack-rent. It would be most important to ascertain whether, in the selected tract, the conditions which it is proposed to create elsewhere have led to the results anticipated by the one school or the other.

‘I think that there can be no doubt on such a question. Sub-letting is not unknown in Bhojpur, and some of the cultivators are in debt; but these are exceptional cases. The general rule is that the raiyats cultivate their own lands with their own small capital, and, where they sell their holdings, it is to others of their own class. Their industry is marked and has resulted in the clearing of the jungle with which much of the land was covered fifty years ago, and the creation of a cultivated area as well planted with fruit trees, as well irrigated from wells, and as well fenced, as any I have seen in India. No one can encamp for a day in the tract without being struck with its exceptional prosperity, which contrasts strongly with the backward state of three parts of the district in which rents are high and occupancy rights unknown. The credit of the cultivators is so good that, as you informed me, they generally borrow at the rate of twelve per cent., that is, on as good terms as their landlord. There would, therefore, be no anxiety whatever as to their surviving without assistance a period of ordinary famine. As to their character, the objection I generally hear to it is that it is too manly and independent. The Bhojpur wrestlers have a name throughout the country, and every man carries the large Bhojpur *lathi*, which he can use with great skill. They are equally ready to defend themselves in law Courts with which the complication of rights inseparable from any system where the majority possess interest in land has rendered them familiar. I have always found them open, communicative, ready to deal or to serve, and their honesty is proved by the low rate of interest demanded from them; but they have another side of their character for any one who attempts to oppress them.

‘I think that these facts should be brought to the notice of Government as having a certain bearing on the general policy of the Bill. In the area to which your enquiries are

confined, it would, I submit, appear that rights of occupancy at easy rents have been followed by comparative industry and prosperity, and with their usual effects in the moral character of those who enjoy them.

‘With regard to your remark that the low rents may be due to mismanagement, I may say that it has been the misfortune of the Indian raiyats that so many have considered the raising of rents a proof of business ability. In this instance, the raiyats have not, as in most estates, been transferred from one purchaser at an auction sale to another, until they fell into the hands of some speculator in land who could enhance the old rents to excess. They remain under the Dumraon family, who have owned the land for centuries. That such a family, wealthy even with existing rents, should have allowed them to remain at a rate consistent with the happiness and prosperity of the dependents, I consider a proof of excellent management, and presume it was under such an impression that Government conferred titles on the late Maharájá and the present manager. I think the Rájá must be better off, surrounded by contented and loyal peasantry, than he would be if his family increased their income at the expense of alienating the feelings of their tenantry, as others have done. I do not say this as imputing an opposite view to you, but because I think it of real importance that, in any public correspondence, conduct which contributes to the happiness of the country should be recognized. The opinion of the older families, as to whether they should respect their own good traditions in this respect, may be represented as wavering under the influence of the example of the new auction purchasers, and an impression that Government regarded their leniency as weakness and mismanagement would have a bad effect.’

“I cannot help thinking that there is a great deal in this rather long extract which I have read from a district report, which is pregnant with facts which the zamíndárs of the country would be wise to lay to heart. If they do so, we may realize the hope of a successful adoption and practical application of a measure which, in its primary object of securing fixity of tenure on reasonable and equitable rents, will give to the country a contented, peaceable and thriving agricultural community.

“Now, my Lord, to come to my second point. I am free to confess that, in my belief, the enactment of even such a liberal measure as that now before your Lordship’s Council will not produce these desirable results, if unsupplemented by executive action of a kind to which I think hardly sufficient attention has been paid in the course of this debate. I am very glad to find from Mr. Evans’ remarks that he is quite in accord with me on this matter. If there be any who think that the rights of the many millions of people who subsist on the soil of Bengal can be defined and secured by the enunciation of inflexible rules of law; if there be any who, heedless of the lessons of the past, trust for the welfare of the community to the resolutions of this Council alone, I certainly am not of them. Rather, I am among those who believe that, in such a momentous undertaking as this Council is now concerned with, the battle is

but half won when the legislators' work has been successfully accomplished. He only reaps the full fruits of victory who pushes his advantage; and, unhappily, the history of this Council is not free from cases, where legislative successes not followed up by executive action have resulted in administrative failure. By the Bill now before us, the declaration of liberal principles in dealing with rent, and the recognition of tenant-right, have been carried, if I do not say too far, certainly as far as the circumstances of the case demand; but I have no hesitation in asserting that, if the Government of Bengal were to rest satisfied with the sanction which the Bill, when passed into law, will confer on these principles, this controversy would in a very few years be re-opened afresh, with far slighter chances of a peaceable solution than now exist. We cannot alter the state of the country, nor amend the abuses of generations, by a stroke of the pen. The utmost that this Council can do is, by wise legislation, to create a tendency towards improvement, which, if followed up by well directed and persistent executive action, may, in course of time, lead to better things. This Bill undoubtedly possesses potentialities for good. But so did Act X of 1859 in the opinion of all the able men who assisted at its enactment. If this Bill, a quarter of a century hence, is not to be exposed to the animadversions levelled to-day at Act X, then the Government of Bengal must adopt active measures to enforce its provisions. It must, by a detailed record of rights and liabilities of all interested in the land, provide against the continuance and renewal of abuses which now weigh on the springs of industry and check the prosperity of this Province. Such a record-of-rights is no new panacea for the agrarian difficulties by which we are now surrounded, neither is it an untried experiment. In his Minute of the 8th December, 1789, Sir John Shore recommended such a procedure to Lord Cornwallis, who, though acting, as all know, from the most benevolent motives, unfortunately rejected the counsels of his sagacious adviser. That Lord Cornwallis's rejection of Sir John Shore's advice was unfortunate most men now admit; for, wherever circumstances have since permitted of the enforcement of the principles then advocated by Sir John Shore, whether in permanently or temporarily settled estates, such enforcement has been followed by complete success. Wherever it has been ignored, difficulties and troubles have been the consequence. I find some apposite illustrations of these circumstances in the papers now before the Council. For instance, in a letter from the Collector of Gházipur, dated 15th December, 1881 (written in answer to some enquiries originated by the Revenue and Agricultural Department of the Government of India), the following important passage occurs:—

'We have had a record-of-rights (in the Gházipur district) for the last forty years, which, though prepared with extreme haste, has been throughout that period the touchstone of all rights. So far as tenant-right is concerned it is incontrovertible, for there is nothing to pro-

duce to contradict it. Both zamíndárs and tenants appeal to it on all occasions as to the ultimate criterion of the rights. With regard to village boundaries, the details of the plan then adopted left an opening for a good deal of vexatious litigation, which is not quite yet extinct. As to proprietary right, the record is not very full, although it was in this direction that the greater number of contests arose during its preparation. On the other hand, the said record, prepared by Messrs. C. Raikes and W. Vynyard in 1840-41, has been *the salvation of the tenants' rights*, especially of those who claim to hold at fixed rates.*

“That, my Lord, is evidence of undoubted authenticity. Comparing the state of affairs in Gházipur, a permanently-settled district, as described by that evidence, with the state of affairs in the adjoining district of Sáran, as described in the rent papers, the difference at once challenges our attention, and proclaims the efficacy of the procedure which can compass such admirable results.

“Nor is the testimony of facts wanting in Bengal itself to the same effect :

‘Had a work of the sort’, says Sir Henry Ricketts, referring to the settlement of Katak, ‘never been accomplished, there might be misgivings and hesitation before commencing such an undertaking. But such a work has been accomplished, and the success has been greater than was expected, even by those who expected most. Previously to the settlement of Katak, the Province deteriorated each year, the people were discontented and embarrassments and difficulties increased. Since the settlement, the Province has flourished, the inhabitants have been among the most peaceful and well disposed of our subjects ; there has been less agitation than in any other part of the Empire. Let Bengal be treated in precisely the same manner, and there is no reason why there should not be the same result.’

The passage I have now quoted was written twenty years ago ; and it was written by a gentleman, one of the ablest revenue-officers in the country, who was the author of the settlement and who had a parental fondness for his work. But there was the fatal fault in Katak, that no proper provision was made for the maintenance of the record, and the result was what we find described in the 9th paragraph of the Government of India’s despatch of the 21st March, 1881, namely, the loss of all the advantages by the utter failure to keep up the records in order and accuracy.

“If it be, as it ought to be, an admitted principle of revenue administration in India, that the rights of the several classes interested in the soil shall be expressly declared and recorded by some method or other, in documents accessible to all, then it must be confessed that the revenue administration of this Presidency is defective. Settlement proceedings, involving records-of-rights, secure in many portions of India that essential condition of agricultural prosperity, but there is no such assurance in Bengal. Having rejected the wise counsels of Sir John Shore, to which I have already alluded, the framers of the Permanent Settlement sought to secure the objects at which he aimed—objects recognized by them, as well as by him, to be of the utmost im-

portance—by inculcating the necessity of an interchange of lease and counter-part between zamíndár and raiyat. How far they were successful, even when an interchange was effected, the case ‘from real life’ cited by my hon’ble friend Mr. Ilbert, when introducing this Bill, will satisfy the Council; and I am afraid what he has brought forward is only illustrative of what takes place in many portions of this Province. This is how the case stands—I quote from the report of a respectable pleader, himself a zamíndár, which the Council will find among the Bihár papers:—

‘The law entitles the Bihárá raiyat to a pattá and receipts, yet he seldom, if ever, gets any. The law declares the exaction of *abwábs* as illegal, yet how numerous and heavy are the *abwábs* that we zamíndárs exact from him.’

“My hon’ble friend Major Baring gives us a very instructive list of the irregular cesses levied in Bengal. The quotation proceeds—

‘His hereditary tenures are altogether exempted by law from liability to enhancement yet how, at each stage in the transfer of the zamíndárá, and how easily, when he sets up his head against us, we, without regard to law and justice, add something to it every year. The law protects him against ejection, yet how often without any (effective) opposition from him, or without resorting to law and procedure, we turn him out of his and his father’s land. It is illegal and a criminal offence to extort rent from him by duress, yet our *gumáshtas* (agents) and *herábils* (runners) sit at the door of his house preventing egress and ingress, and deprive him of the use of the village well (the writer might have added of every other convenience of life) until he pays off our rent. How frequently, for the same purpose, we bring him to our Kachahrí and detain him there against his will till he satisfies our demands.’

“Such, from the lips of a Native zamíndár, appears to be a faithful account of what happens in many portions of Bihár, where no written contracts are exchanged; and, if Bengal claims exemption from such an indictment, I would point to a register of petitions from raiyats to Government (a copy of which I hold in my hand), showing that every form of complaint of oppression and illegalities has been represented to Government from every part of the country.

“I might, with extracts of a similar character, detain this Council for many hours longer, but each later fact would be in substance but a repetition of each earlier one, and all would point to the same conclusion, namely, that no matter how excellent and liberal the rights provided for by a law may be for such a population as we have to take count of, it cannot be doubted that, until a record-of-rights shall have been completed, the peasantry will, to use Sir John Strachey’s words, ‘remain the victim of chicanery and oppression, and that our Courts will be systematically made use of for the perpetration of injustice.’ ‘We shall probably,’ says Sir George Campbell in 1873, ‘have the whole of the real question in our hands, if we make an attempt to settle any

considerable part of it; and we shall scarcely be able to stop till we have made a settlement of Bengal, adjusted and recorded all rights and all incidents of tenure, and created a machinery for perpetuating and continuing the record-of-rights and keeping accounts by public officers under a system such as the framers of the Permanent Settlement designed, but their successors wholly abandoned,—a very long, difficult and expensive, but a necessary, process it will be.' Long it undoubtedly will, and expensive it may, be, though not so expensive as some may think. But the duration and the cost will be as nothing compared with the manifold blessings such a measure would confer on this Province. It will be a permanent possession, restoring peace and preserving peace; for, thenceforward, all will know that nothing can be gained by disagreement. Your Lordship will, therefore, understand what high value I place on those provisions of the Bill which provide for a field survey, a settlement of rents and record-of-rights, and how anxious I am that those provisions should be hedged round with no needless limitations.

“So far, my Lord, I have dealt with the main points of principle to which in my opinion especial attention is necessary. I have not attempted to enter upon any discussion of the details of the Bill. In my judgment, the Select Committee must do that after the full consideration the measure will receive during the next few months. But I cannot help saying that, as at present advised, I am unable to accept the provisions of chapter VIII of the Bill, which bears upon the question of compensation for improvements and for disturbance. I think, too, though I myself have suggested a twenty per cent. limitation, that it may be impossible to enforce a uniform limitation of that kind in all parts of the Province, and the proposal, I understand, is only suggested tentatively, and will come up for the full deliberation of those who will have to consider the Bill in Select Committee. So also with the chapter dealing with the procedure for the realization of rents; it requires in my opinion very much more examination than it has yet received. In India, it is said, as in Ireland, it has been too much the custom to assume that the landholder is exclusively to blame for the existing state of things as regards the generally unsatisfactory condition of the agricultural districts; but, while the wrongs of the raiyats are freely discussed, the case of the landlord is hardly ever thought of; and yet there is a zamíndári side to the question, which it is impossible to ignore. I know that the landlords of these Provinces have been very often to blame; many of them deal harshly with their tenants, and but few have done much to improve their estates. From all;

however, that has come out in the published papers, it is certain that remedial measures in the interests of the tenants must be accompanied by some provisions to secure the interest of landlords as well. The existing system of coercive processes, and the agency through whom they are served, requires thorough reform. The execution of decrees for instance, which is a most important part of the process for realizing the demand, is inefficiently directed. The whole of this branch of the subject is of extreme importance, both from the zamíndár's and the Government point of view. The Government is the possessor of large estates of its own, which it manages through its own officers, and any means to facilitate the collection of rent will be of great advantage. But the importance of the matter goes further, and it is one which has an especial interest for the Financial Member, that the Government depends for its revenue upon the punctual payment of the rent to the zamíndár. If we cannot give facilities for the realization of one, we incur some risk of losing the other.

"It remains to me, my Lord, to refer to one other point, and that is the statements which my hon'ble friend Mr. Kristodás Pál made yesterday in reference to the kabúliyat to which the Hon'ble Mr. Ilbert took exception in his opening speech. I understood my hon'ble friend to say that the kabúliyat which fell under censure was simply a reproduction of the form of kabúliyat which the Government used on its own estates, and that, at any rate, any censure which might be passed on the zamíndár must fall in the same measure on the shoulders of the Government and its officers. I am not here to defend the Government, as an immaculate body which is above suspicion; much less to defend all the mistakes of my predecessors. But I really do not think, when we come to examine the matter, that my hon'ble friend has in this instance made out any case for condemnation of Government. I may say that, before this subject was referred to in this Council, I had heard something about it from an anonymous petition which I received on the subject. As a rule I do not deal with anonymous petitions, except to throw them into the waste-paper basket; but the statements made on this occasion were so very definite with reference to the alleged malpractices of an officer of Government in his dealings with his raiyats, that I thought it my duty to ask the Collector of the Twenty-four Parganas whether there was any truth in the charge which the anonymous writer had brought to notice, namely, that a criminal information had been laid against the agent of the zamíndár on a charge of cheating, and that several cases were pending in the Courts regarding these particular kabúliyats. The reply which I got from the Collector was that the statements were quite true, and that the raiyats had a strong case. It was alleged that the

kabúliyat given to the raiyats was entirely different from the arrangement which had been made between the parties pending the exchange of agreements; that this charge had been tried and had fallen through; but, as the writer of the anonymous petition said, not from entire disproof of the correctness of the charge of cheating, but from want of sufficient proof for a conviction.

“ Now, as regards the Hon’ble Mr. Kristodás Pál’s statement in respect to the condemned kabúliyats, that they differ in a small degree only from similar documents issued by the Government, I have taken some pains to ascertain what the facts were. The facts are these: Sir R. Temple having wished to encourage the exchange of pattás and kabúliyats, and to facilitate the general registration of such documents, caused a form of pattá to be prepared which would contain all the ordinary stipulations in such cases, together with those of an exceptional nature. A printed form, general in its application, it was thought, would save all parties a great deal of trouble, and would secure other advantages. The form was not put forward as a perfect form, which the Government, if it could have its way, would have always enforced. The object was chiefly to facilitate registration, and as such a form must provide for a diversity of customs in various districts, it consequently embraced some provisions which were contradictory; and when his hon’ble friend quoted the eleventh provision in the form as being discreditable to the Government, he ought in fairness to have stated that an alternative provision was before his eyes. The Government was only anxious that whatever provisions were adopted should be expressed in the document, so as to induce a freer recourse to registration. I have before me a translation of the form of kabúliyat which the Government issued, and all I can say is that if anything can be different from the form of kabúliyat which my hon’ble friend Mr. Ilbert read out, it is this document. To make this clear to the Council I will read out this translation:—

‘ Kabúliyat.

To the noble (landlord’s name).

I (tenants name) son of _____ inhabitant of village _____, execute the following kabúliyat:—

In the district _____ subdivision _____ tháná _____

within the confines of your honour’s estate situated in the village _____ I acknowledge to hold a plot of land measuring _____ bighás in extent as specified below, and to be responsible for the payment of an *annual* rent of _____ rupees in the instalments specified below. For the privilege of cultivating (this land) during the period specified below I, of my own free will, execute this kabúliyat and agree to perform the undermentioned stipulations except those that have been excepted. To this I shall not object. If I do, my objection shall not be admitted.

Duration (or term) of kabúliyat.

Conditions.

- (1) I will pay each month interest on arrears at the rate of per cent.
- (2) I will maintain the boundaries.
- (3) I shall enjoy the produce of the trees.
- (4) I will not fell trees without permission.
- (5) I will not alter the (character of the) land by excavation or otherwise.
- (6) The landlord shall be at liberty to measure and charge rent at current rates for excess lands.
- (7) Should the measurement show that I hold less land (than specified in this kabúliyat) I shall be entitled to abatement of rent.
- (8) The landlord shall not be at liberty to measure during the currency of the lease.
- (9) I shall not dispose of or mortgage my jote.
- (10) The jote, on my decease, shall descend to my heirs.
- (11) On my death, the landlord shall dispose of the jote or make any other arrangement he pleases.

“It will be observed that Nos. 6 and 8, and Nos. 10 and 11, are mutually contradictory.

“It will be observed, further, that the rate of interest is left to be filled up as might be agreed in each case; that all payments are to be *annual*; and that it is only from month to month that interest on arrears is stipulated for. I understood from my hon'ble friend that in the Government form of pattá the Government declined to entertain applications for remission on the ground of diluvion. The seventh clause of the Government kabúliyat expressly contains a stipulation for abatement of rent where measurement shows a diminution in the area of the land held, and the tenth is in direct contradiction to the contents of my hon'ble friend's kabúliyat. But I have to go further. This is the form of kabúliyat which Sir Richard Temple introduced in 1876, with the view of securing wider registration; but the success of the measure was not very great, and I understand that, in 1878, this form of kabúliyat was entirely abandoned. The form of kabúliyat for rights in Government and wards' estates which was adopted in 1876 remained in force for two years. It was superseded in 1878 by two forms which were then sanctioned by the Board of Revenue; these forms are quite unexceptionable and are in force now. They correspond in no sense with the document adduced in the case which has given rise to this

discussion, and if anyone wishes to study them, or better, if any zamindár wishes to see what a model form of kabúliyat should be, he will find it recorded under Nos. 23 and 24 at page 58 of the Board of Revenue's manual. It is impossible for anything to differ more widely from the indefensible document which was brought forward yesterday ; and I may add that within the last few weeks we have issued, through the Board of Revenue, strict orders showing that the right of occupancy is to be strongly protected, and, with the permission of the Council, I will read the circular. It runs thus :—

‘ I am to remind you that it is no longer open to a manager or to local officers to discuss the policy of allowing raiyats to acquire a right of occupancy in their holdings. The policy has been fully adopted by the legislature and the Government that it is good that raiyats should have the right of occupancy. If the raiyats of the estate do not understand the right of occupancy used in its legal sense, the sooner they cause it to be explained to them the better. The Board expect that the officers engaged in the present settlement proceedings will take the opportunity to dispel their ignorance of legal rights, and they desire that you will take care that no misunderstanding on this subject is allowed to exist among managers of estates in your division. It should be made a distinct instruction to them that there is to be no attempt to discourage the growth of legal occupancy rights ; and that, when they have accrued, they must be fully recognised in all zamindár papers.’

“ The only other question I have to refer to is the question to which my hon'ble friend Mr. Kristodás Pál has referred as to the management of Government estates. Here I cannot appear as the defender of all that has been done in the past. I believe myself that there is a great deal in our khás mahál administration which is capable of improvement, and, therefore, I have interested myself in the subject and have called for a special report from the Board of Revenue on the subject. Indeed, in the case of one large Government estate, to the charge of which I have recently appointed a Covenanted Civilian, I am trying, by way of experiment, to learn whether we cannot introduce a better system of management, by spending more money in the opening out of more roads in the backward parts of the estate, and by inducing immigration to promote the extension of cultivation. The subject has received my personal and careful attention. But my friend went on to say that the khás management of Government maháls in Tipperah and Chittagong and Mednípur was so bad as to create a scandal. I am not aware of the particular cases he referred to in Tipperah and Chittagong ; but if he will bring them to my notice afterwards, I shall investigate the matter. I am however acquainted with the circumstances of the cases which occurred in Mednípur. They refer to two temporarily settled estates in which the last settlement was made about forty years ago. After regular settlement proceedings, the rents were enhanced in

these two estates to the extent of fifty per cent., and the raiyats objected. This happened three or four years ago. Some people have taken exception to the settlement as exorbitant and unjust to the tenants. But, having regard to the long interval since the last settlement, and to the enormous rise in the value of produce in that period, the revenue authorities maintain that the new demand is not unreasonable. The raiyats, however, would not pay at the enhanced rate and, thereupon, the Government proceeded in the matter constitutionally and according to law, and not as has been done by some zamíndárs without any reference to law. The Government sued the raiyats in the Munsif's Court and obtained decrees: appeals were made to the Subordinate Judge's Court and were dismissed. The raiyats again went up from that decision on special appeal to the High Court, and the order of the Lower Courts was again confirmed. So far it may be assumed that the action of the Government had justice and moderation on its side. I understand that the raiyats in these two Parganas spent a lách of rupees in contesting what seemed a moderate enhancement; and it may be thought that, after the decision of the High Court was given against them, they would have submitted. But that was not the case. We have had to send a special officer to ascertain the circumstances under which the raiyats refuse to pay the rent which is now legally demandable from them, and the matter is still under enquiry. In the meantime, to show the leniency with which these raiyats have been treated by the Government, I may mention that one and a half years' rent of the whole body of the raiyats has been remitted; but not satisfied with this concession, they claimed the remission of three years' rent. So far from a case being made out, of oppression and hardship or abuse of the law, I most positively affirm that our revenue-officers have acted here, not only in strict accordance with the law, but with moderation and indulgence. But the result remains that, even after the enhancement, the rents of these estates were under the prevailing rates of rent paid by neighbouring raiyats. And as regards the recusancy of the raiyats, it is only another argument in favour of giving the Government, as well as the zamíndár, some assistance in realizing the rates of rent which the Courts have finally decreed."

The Hon'ble SIR STEUART BAYLEY said:—"My Lord, in replying to the objections which have been offered to this Bill in its present stage, I may as well begin by saying that it is my intention only to reply to objections offered on the ground of the principles of the Bill, not to points of detail. In the first place, time would not permit, on such a long and elaborate Bill, of my entering into criticism of its details; but, more than that, I wish it to be distinctly understood that, on many points of detail, the provisions of the Bill are only put

forward tentatively, in order to elicit criticism, and that we are quite prepared to reconsider and amend them in Committee, on sufficient cause being shown. I may, moreover, say that I came here unprepared to throw a doubt on the intelligence of my audience, by again examining the necessity of the introduction of some such Bill as the present one. I fully endorse every word my hon'ble friend Mr. Ilbert said on this score in his opening speech, and if there is anyone still unpersuaded of the necessity of legislation by the arguments he has used, neither would he be persuaded though one rose from the dead. Certainly nothing that I can say would convince him. Yet we are told that in Bihár neither landlords nor raiyats want legislation; that in Bengal landlords do indeed want it, but not for these objects; that landlords and raiyats are on most friendly terms; that there is no rack-renting, no eviction, no enhancement; that the zamíndárs have peopled the jungles, dug tanks once upon a time and had made roads; that they subscribe largely to education, to dispensaries and to other charitable objects; that the Bihár zamíndárs gave land free for road making, and behaved well to their raiyats in the famine, for which they received the eulogium of Sir R. Temple. Well, though some of these facts require considerable modification, I am not going to traverse this description of the typical zamíndár. I have to oppose their interests in the interests of a more helpless class; but this line of policy can be justified without vilifying the zamíndárs. I have no doubt they merited Sir Richard Temple's somewhat generous compliments as much as I did myself, or as a good many other officers of Government did. I have no doubt that as a class they are just what their environments make them, and there are many good ones among them. I know that their liberality and usefulness are great, but while I am far from saying they make a bad use of the money they collect from the raiyats, I do wish that the sums thus extracted should be regulated by law and not left to the arbitrary discretion of the zamíndár. No, if the zamíndár is as considerate and merciful as he is said to be by my honourable friend, then this Bill can have no terrors for him. The law is a terror to evil-doers, not to them that do well. If they neither enhance the rents of their tenants exorbitantly, nor threaten them with eviction in case of their refusal, the prohibition against such practices cannot affect them; but, unfortunately, all landlords are not of this type, and, certainly, all landlords' agents are not so, and I shall, in the course of my speech, I fear, bring ample evidence that there are landlords who require to be restrained. As I have said, I am not going over the ground which has been already fully occupied in Mr. Ilbert's speech, as to the demand which the landlords themselves made for legislation. I need only refer on this point to the memorandum published as Appendix I to the Bengal Government Report. But to show that the state of things is not quite as Arcadian as has been described, Mr. Thompson

has told us that he has a list of no less than 80 petitions addressed by raiyats to the Government of Bengal in the last three years, complaining of acts of oppression on the part of zamíndárs. Most of these petitions are complaints of undue enhancement of rents; others of the exaction of illegal abwábs; others of measurement by an illegal standard; others of dispossession of occupancy-rights. We have been told that there are no evictions in Bengal. Though eviction through the Courts is not frequent and, consequently, statistics are not forthcoming, our police registers tell a very different tale. In one district, a Magistrate (Mr. Edgar) tells me he compiled from these registers a list of no less than 500 such complaints in two years, and the complaints to the Bengal Government of dispossession of occupancy-rights mean the same thing. Eviction in itself is of little value. It is of value as a weapon for enforcing enhancement. I also have a list of applications for the quartering of additional police during the same period, on account of disputes between landlord and tenant. They amount to 16. These applications were all made by the Magistrates; they came from Bákirganj, Jessore, Kalna, Farídpur, Mednápúr, Maimansingh, Noakháli, Nadá, Pabná Rajsháhi, Tipperah, and Orissa; they cover a force of 410 constables, besides officers, all applied for for the purpose of keeping the peace between zamíndárs—and in zamíndárs I must include the Government itself—and their raiyats. It will be noticed that none of these come from Bihár, not, I fear, because there is less oppression in Bihár than in Eastern Bengal,—in fact we know the case is the very reverse of this,—but because the oppression has been so effectual that the raiyats are incapable of resisting, and there is no fear there of disturbance. In one part of the country, we have disputes requiring an armed force to prevent their culminating in disturbances; in another, we have a peasantry too helpless to resist oppression, and in both, I say, there is urgent demand for legislation which shall enable such a state of things to cease.

“The two main objects of the Bill are described to be, in the words of Mr. Ilbert,—

‘(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.’

“The objections taken in regard to the manner in which the first of these two objects is dealt with in the Bill group themselves naturally round—

(1) the extension of the right of occupancy;

(2) the limitations to enhancement;

- (3) the transferability of the raiyat tenures;
- (4) the overriding of contract.

“The objections taken to the extension of the right of occupancy are, mainly, that this extension goes beyond what was the customary right at the time of the Permanent Settlement; that it certainly goes beyond what Act X of 1859 defined to be the right; that it will, taken in connexion with the power to transfer, do no good to the cultivating classes, while it will do unwarrantable injury to the zamíndár. I am not going at any length into the question of the position of the resident raiyat at the time of the Permanent Settlement. After the admirable exposition of the question which we, or at least some of us, enjoyed yesterday from my hon'ble and learned friend Mr. Evans, this is not necessary. I was in hopes that this controversy was settled, but after what we have heard from the hon'ble gentleman opposite, from Rájá Siva Prasád, as to the indefeasible rights of property conferred on zamíndárs by the Permanent Settlement, I feel bound to touch on the argument. While it is admitted that raiyats who received pattás at the Permanent Settlement (or who otherwise had their rents at the time fixed), and their representatives, had the right of occupancy, by which I mean the right to hold on undisturbed so long as they paid established rates (I am not here referring to the question of enhancement), it is asserted that outside that class, the raiyats had no rights at all, except those which they derived from the zamíndár. It is singular that this controversy should still be deemed an open one. Only the other day, in studying the literature connected with this subject, I came across a paper published as an Appendix to the Select Committee's Report of 1832, written by Mr. Campbell of the Madras Civil Service. He says, after noting that the partial extension of the permanent zamíndári system to Madras had not in that Presidency succeeded in materially impairing the prescriptive rights of the tenants, that ‘in Bengal, on the contrary, though a mass of evidence exists in support of similar right on the part of the cultivators in 1793, and though some of the oldest servants of the Company, such as Mr. Harington, Mr. Colebrooke, with many of their most distinguished civil officers examined before the Committee, have most strenuously advocated them, there are others of great experience who declare that the raiyats in Bengal have no rights and never had any.’ This was published fifty years ago. The description of the controversy might equally be applied at the present day.

“But can anyone who has read the papers circulated with this Bill resist the light thrown upon the question in those papers, especially by the annexures

to the Report of the Rent Commission, and by the researches of Messrs. Mackenzie and O'Kinealy?

“These gentlemen give in every instance their authorities, and there is an overwhelming balance of testimony in favour of their view, that all resident raiyats once admitted to the village, whether before or after the Permanent Settlement, had a right of occupancy in their lands so long as they continued to pay the established rent, and they had a right to have that rent fixed by the ruling power. The position of the raiyats and zamíndárs after the Permanent Settlement is clearly declared in Regulation VIII of 1793, sections 7 and 8, and Regulation VII of 1822, section 4. Their rights were the old customary rights, except where changed by the Regulation. That is, in addition to the old customs, they were bound to confine their contracts to the terms of the Regulations (section 65, Regulation VIII of 1793). They must frame their leases conformably to the circumstances of the estate and submit them for the Collector's sanction; none else were valid (section 58, Regulation VIII of 1793); they could make no lease for more than ten years, could not exact more than the customary rate of rent (section 7, Regulation IV of 1794), or for doing so were liable to a penalty of three times the amount (Regulation VIII of 1793, section 55). The raiyats on the other hand had a right to perpetual renewal at the customary rate (Regulation XLIV of 1793) wherever and whenever they were once let in as cultivators of the village. The only power to eject was that afforded by the sale law of 1822 to auction-purchasers in regard to unprotected tenancies, and this, though renewed in 1845, was taken away by Act X of 1859. They quote, as their authorities, Sir John Shore, Lord Cornwallis, Mr. Colebrooke, the Government letter of 7th October, 1815, Mr. Sisson's letter of 2nd April, 1815, Lord Moira, Mr. Holt Mackenzie's Evidence of 1832, and Mr. Harington's *passim*, and they show that, whatever the practical result of Regulation V of 1812, which was admittedly a new departure, the intention, as shown by the preamble and by the Sadr Court's circular of 1816, was expressly to maintain existing restrictions as to the rights of raiyats to a renewal of their pattás at the established rates. They also show that these views were in the main held by the great majority of the Judges on the Bengal rent case, especially by Messrs. Trevor, Campbell, Norman, Kemp, Morgan and Seton-Karr.

“I feel confident that no one who has carefully studied their notes, and certainly no one who, as I have done, has gone back and studied the original references themselves, can doubt that they have made good their propositions. I will content myself with showing that this view has been also consistently maintained by the Court of Directors and by the Secretary of State. One

hon'ble gentleman yesterday expressed a wish that he had been born in Lord Cornwallis's time. I was almost tempted to re-echo the wish, for I am sure he would have had a much more correct appreciation of what the Permanent Settlement did and did not do for the zamíndárs than that which he put forward yesterday. The first quotation I will read is from the Court's letter of the 19th September, 1792, the early part of which has already been quoted by Major Baring. It runs thus :—

' Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár, for otherwise such a rule would be nugatory; and, in point of fact, the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.'

" My next quotation is from the Government letter addressed to the Court of Directors on 7th October, 1815—

' We consider it as a principle equally applicable to all the Provinces immediately dependent on this Presidency, and we believe we might safely add to the whole of India, that the resident raiyats*

(and recollect that Sir J. Shore defined a *resident* cultivator as anyone who cultivated the land in the village in which he lived)

have, by the Government letter of 1815, an established permanent hereditary right in the soil which they cultivate so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different Governments of India, that the quantum of rent is not to be determined by the arbitrary will of the zamíndár, but that it is to be regulated by specific engagements, or, in the absence of such engagements, by the established rates of the parganas or other local divisions.

* * * * *

' With these impressions respecting the rights of the peasantry, such parts of the provisions contained in Regulation XLIV of 1793 and XLVII of 1803 as declare that pattás shall not be granted to raiyats or other persons for a term exceeding ten years, appear to be fundamentally erroneous. The natural and obvious tendency of that rule was to limit and restrict those rights which the peasant possessed in a much more extended sense by virtue of the constitution of the country itself.'

" In reply to that letter, the Court of Directors, writing on 15th January, 1819, went into the whole question. They began by saying that, ' though the

use of the terms 'actual proprietors', 'landed estates' and 'under-tenants', has contributed to impair and, in many cases, to destroy the rights of individuals, yet it is clear that the rights which were actually conferred on the zamíndárs, or which were actually recognised to exist in that class by the enactments of the Permanent Settlement, were not intended to trench upon the rights which were possessed by the raiyats.' They quote Lord Cornwallis's Minute, their own order of 1792, the distinct provisions of Regulations I of 1793 and VIII of 1793, and then ask, how it is 'that our institutions are so imperfectly calculated to afford the raiyats in practice that protection to which on every ground they are so fully entitled, so that it too often happens that the quantum of rent which they pay is regulated neither by specific engagements nor by the established rates of the parganas, but by the arbitrary will of the zamíndárs.' They quote with approval the statement of Mr. Cornish, Judge of the Patna Court of Circuit, to the effect that—

'the raiyats conceive they have a right to hold their lands so long as they pay the rent which they and their forefathers have always done. The zamíndárs, although afraid to avow, as being contrary to immemorial custom, that they have a right to demand any rent they choose to exact, yet go on compelling them to give an increase, and the power of distraint vested in them by the Regulation soon causes the utter ruin of the resisting raiyat.'

"They then say—

'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.'

"They then condemn Regulation V of 1812 as a very '*imperfect corrective*' of the evils which it was intended to remedy, and especially condemn it in reference to the construction put upon it that it gave zamíndárs power to demand from the raiyats any rent they think proper, without regard to the customary rate of assessment in the pargana.

"The discussion goes off into the measures requisite to avoid a repetition of these evils in the temporarily settled Provinces, and finally led to the enactment of Regulation VII of 1822 and to the draft Regulation drawn up by Mr. Harington in 1826. But I have quoted enough to show the opinion arrived at by the Court of Directors in the early part of the century, after a discussion scarcely less exhaustive than that recently accorded to the question of the raiyats' rights in Bengal. Before leaving this part of the question, I will

ask you to hear the conclusion come to by the Secretary of State after perusing the discussions of the Bengal Rent Commission. He says :—

‘Whatever may have been the exact position, actual or legal, of the bulk of the Bengal raiyats prior to the Permanent Settlement, there can be no doubt, after the exhaustive investigation which the question has now undergone, that their customary rights at least include the right of occupancy, conditional on the payment of the rate current and established in the locality.’

“To this extent His Lordship authorized us to endeavour to restore the raiyats to their original position, and it is to this aim that those portions of the Bill which deal with the growth and incidence of the occupancy-right is devoted. I have left untouched the argument derived from Regulation II of 1793 and the quotation of the preamble ‘that no power will then exist’, &c.; because this has already been disposed of by my hon’ble friend Major Baring, but I may point out that in quoting the preamble of Regulation II of 1793 my hon’ble friend opposite, Rai Kristodás Pál, omitted to quote that part which would have upset his view of the complete and absolute proprietary right of the zamindárs before and after the Permanent Settlement. It said :—

‘The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the raiyats or tenants for each bighá of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom, or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury.’

“So much for the Permanent Settlement. The question remains—Are we, as a high authority tells us, unwarrantably extending the right of occupancy as settled and defined by Act X of 1859? In the first place, I may observe that, if the present discussion has brought out nothing else, it has very prominently made manifest the fact that Act X neither did nor was intended to settle and define the right of occupancy. It is admitted by the same high authority that the Act of 1859 did not affect the right of raiyats to establish, by custom or otherwise, a permanent title. It only fixed a period of prescription. In other words, it was an additional and not an exclusive enactment. The history of

Act X of 1859 is very clearly summarised in the Minute of Mr. Justice Cunningham. He says—

‘No one can understand the true position of the several parties to the controversy, who has not studied the original frame and language of that Bill. Its object was, not to codify the law, but to amend one particular branch of it,—that relating to the recovery of rent
 Mr. Currie, 10th October, 1857. At the same time it was thought expedient, as its mover explained, ‘to re-enact in a clear and distinct form the provisions of the existing law connected with rent suits, and sections 3, 4 and 5 accordingly set forth what had been the law since the time of the Permanent Settlement’.

‘Section 3 provided that ‘hereditary raiyats’ at fixed rates were entitled to patta’s at those rates; ‘all other raiyats and cultivators’ were entitled to patta’s *at the rates established in the pargana for similar lands, or, if no such rates could be discovered, at the customary rates for similar lands, in the vicinity.*

‘Section 4 provided that ‘every resident raiyat and cultivator has a right of occupancy’, except in the cases (1) of *shir-lands* leased for a term, or year by year, and (2) lands sub-let by an occupancy-tenant to a resident cultivator.

‘Section 5 reserved express agreements as to rent, clearing leases and right of re-entry, and provided that resident raiyats cultivating lands not previously in their possession, without a patta, should not acquire a right of occupancy till they had paid rent for three years.

‘The Select Committee reported that no alteration in the principles of the Bill was necessary; but they recommended, in the case of raiyats at fixed rents, that twenty years’ holding at fixed rates should raise a presumption of having held from the time of the Permanent Settlement; in the case of other raiyats the Committee reported that they were entitled to hold at pargana rates; that this had been admitted to mean ‘customary and fair rents’; that ‘*khud-kasht* raiyats were spoken of as possessing rights of occupancy’, and that ‘*khudkasht*’ was held synonymous with ‘resident’; but that it had been pointed out that ‘residence’ is not always a condition of occupancy, and it appears that after much inquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with general practice and recognized rights, that a holding of the same land for twelve years should be held to give a right of occupancy. We have followed this precedent.

‘This was the origin of the rule that twelve years’ continuous holding creates a right of occupancy.

‘It was, however, from the twelve years’ rule that the most serious consequences to the raiyat’s position resulted. This appears to have been adopted, not only without due consideration of its necessary results, but under actual misapprehension of the real purport of the rule which the Select Committee considered themselves to be adopting. The admitted law was that all resident raiyats had rights of occupancy; but then it was found that some non-resident raiyats had such rights, and it was proposed to meet these cases by adopting a rule in force in the North-Western Provinces, that an ousted tenant could, by a summary process, recover possession by showing twelve years’ occupation. The effect of converting this rule into a

general definition of occupancy-rights was that on the one hand many undoubted occupancy-tenants found their title endangered by not being able to prove twelve years' continuous occupancy, and, on the other, that tenants not otherwise entitled to occupancy-rights were able to claim them whenever they could show residence for the required period. The results were, in the language of the Lieutenant-Governor of the North-Western Provinces, 'wholesale enhancement of rents and ejection of raiyats who had a customary claim to occupancy.'

"My answer then to the question must be that we have undoubtedly gone behind the letter of Act X; nay, more, we have endeavoured to undo some of the injury which that Act unwittingly brought about, but we have on this point of occupancy-rights carried out, as nearly as circumstances permitted, the intentions which the framers of Act X deliberately and expressly set before themselves. We have not got rid of the twelve years' prescription, though in the opinion of some of us the maintenance of a fixed period of prescription is neither historically correct, nor practically convenient; in fact, as Mr. Cunningham has said, 'you can never have peace between two parties, one of whom will, at a certain period, become entitled to a privilege at the expense of the other'; but we have got rid of the anomaly by which a resident cultivator would be ousted from his prescriptive rights by the mere device of his landlord shifting him from one patch of cultivation to another. We are told that the practice of shifting cultivators is not common in Bengal, but so convenient a device is not likely to be long left a monopoly in the hands of the zamíndárs of Bihár, where it is common, and we are legislating for Bihár as well as for Bengal. Allow me to quote to you the resolution arrived at on this point by a meeting of landholders in the Shahábád district on the 30th October, 1880. They resolved, with reference to the original proposal to confer modified rights of occupancy on three years' raiyats, that—

'This concession is strongly deprecated. At present land-owners prevent the growth of occupancy-rights by granting leases for five years only, or by changing lands, or by managing so that a raiyat shall never hold at the same rent for twelve years.'

"Now what Mr. Cornish said in 1815, that the raiyats conceive they have a right to hold their land so long as they pay the rent, is equally true of the present day. Mr. MacDonell, writing of Darbhaghá says—

'Illiterate, and in the hands of the zamíndár as far as accounts go, the raiyats cannot prove the status required of them, though the universal sense of the Province believes this status to exist. Our registration offices show that these occupancy or kashtkari rights are now mortgaged; our Civil Court records and our registration offices show that they are sold.'

“Mr. Edgar, writing of Bihár generally, says—

‘I hold that the vast majority of raiyats in Bihár have, at the present moment, strong occupancy-rights in the land which they cultivate; that these rights are based, in the first instance, on the living custom of the country, a custom which no Court of law could ignore, if it was properly pleaded before it * * * I freely acknowledge that this right has, in many cases, been destroyed by the illegal action of the zamindár, most of them acting through *thikadárs*, whether European or Native; that great sweeps of land, once held by raiyats with rights of occupancy, have been turned into indigo zarats; that lands have been arbitrarily taken from one raiyat and given to another; that holdings have been changed at the pleasure of the zamindárs.’

“But over three-fourths of the land of the Province, he says unhesitatingly, occupancy-rights are the rule. Are we to allow such rights to be broken by the simple device above alluded to, or by what Mr. McDonell declares to be equally frequent, ‘the manipulation by *patwáris* of the village *jamabandis* to prevent the identification of the plot held this year with the plot held five years ago,’ or by the custom confessed to, with cynical naïvete, by the *Shahábád* landholders, in the paper from which I have already quoted, namely, that ‘all lands become *zarat* (or private land), when taken into the landlord’s hand’? No. The evidence throughout these papers is overwhelming that there is a strong and increasing tendency among landlords to break down occupancy-rights by every possible device, and we are bound to do our best to protect these rights; and the provision formulated by the Secretary of State for giving these rights to every cultivator who has held land for twelve years within the same village or estate, is quite the minimum protection that can either be accepted for the rights that have been acquired in the past, or to enable the raiyat to have some fixity of tenure in the future.

“On the economical side of the question I need not detain you long. The argument of the opposition on that point is more directed against the transferability, than against the accrual, of these rights, though I have seen references to Mr. Ross’s Minute of 6th March, 1827, arguing that by protecting raiyats you do not make the ground more productive, but only increase the number of mouths deriving subsistence from it. Well, I think Major Baring has sufficiently answered the point, and you have heard also what the Lieutenant-Governor has said about the condition of the *guzashtadárs* of Bhojpur; but I may also add the following testimony from the Famine Commission to the same effect. They say—

‘In the case of these large cultivating classes, security of tenure must have its usual beneficial effect, and, as a rule, the cultivators with occupancy-rights are better off than the tenant-will. Whenever enquiry has been made, it has been found that in all matters relating to

material prosperity—such as the possession of more cattle, better houses and better clothes—the superiority lies on the side of the occupancy-tenants, and the figures in the preceding paragraphs also show that as a rule they hold larger areas of land. Where the sub-division of land among tenants-at-will is extreme, any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and of peace of mind such as can hardly be conceived by a community where a diversity of occupation exists, and where those who cannot find a living on the land are able to betake themselves to other employments. It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the members of the occupancy class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will who, owning no permanent connection with the land, have no incentive to thrift or improvement.

“ This, I think, is the view that all sensible men must take of the benefits given by fixity of tenure, and all the best zamíndárs to whom I have spoken take the same view. I quite believe what the Maharájá of Darbhanga told us yesterday, that good landlords do not, as a rule, object to a raiyat being secure in his tenure, and it may safely be said that the power of ejectment is valued, mainly, if not entirely, as a means of extorting enhanced rent, and to this desire, having otherwise provided a reasonable means and measure of legitimate enhancement, the Government should, I think, make no concession.

“ And this brings me to the question of limitation of enhancements. To those who wish that enhancements should be left to the discretion of the parties, in other words that there should be neither restriction of ground, nor limitation in amount of enhancement, the Bill will certainly not be satisfactory.

“ We are told that enhancements do not take place in Bengal. I can only say that the experience gained by Government officers in managing Wards' estates is the reverse of this. I could easily show from a recent resolution of the Board of Revenue that the great difficulty the Government officers have in these estates is to collect rents, because these rents all include illegal abwábs and undue enhancement. Witness Salkhira, with an arrear of $6\frac{1}{2}$ lákhs against a rental of Rs. 3,50,000, and in Kassimbázár and in Chándal in Máldah. But without going further into this question as it exists in Bengal, I do not think anyone can doubt the frequency of excessive enhancement in Bihár; and in the face of these facts, if we accept the view of the authors of the Permanent Settlement, that the resident raiyat had a right to hold his land at rates not higher than the pargana rates, the necessity of some limitation is apparent. Whether, before Act X of 1859, the landholders had any legal right to enhance on the ground of

increase in the value of produce, has been shown to be exceedingly doubtful; but any way the right to enhance on certain grounds was allowed by that Act, and the present Bill, so far as the grounds on which enhancement can be demanded, makes no material alteration in them: we have, it is true, not confined ourselves to the rule of proportion which the majority of the Judges of the High Court accepted as the best means of giving effect to the intention of Act X, but we have maintained that rule as a maximum. The real innovation which we have introduced is the limitation we have applied to the enhancement of money rents. These are, in regard to occupancy-raiyats, that the enhancement shall not do more than double the old rent, (this does not refer to area, but to rates); that the enhanced rate shall not exceed twenty per cent. of the gross produce; that the rent shall not be enhanced a second time within ten years. To all those provisions objections have been taken. It is urged that, if a raiyat's land can bear a rent enhanced more than one hundred per cent., there can be no reason why the landlord should not get it. There is a very good reason—a reason which is constantly preached and very generally (I wish I could say universally) practised in framing revenue rates in temporarily settled provinces,—and that is, that a great and sudden increase to this extent means such a great and sudden diminution in the cultivator's income, as must, in most cases, destroy his means of proper cultivation, in other words, must injure the agricultural prosperity of the country.

“Then, in regard to the other, and probably the very much more important, limitation of the enhanced rent to a fixed proportion of the gross produce of the soil, there are very numerous objections taken. Some of these, I confess, are not quite easy to answer. Mr. Ilbert explained last week that the limit of twenty per cent. had been substituted at the last moment for twenty-five per cent. at the request of the Government of Bengal. This exact percentage is for the moment tentative. I can only say that twenty-five per cent., besides being the *reba* of the Muhammadan administration, was the percentage suggested by the British Indian Association in 1875, and that twenty per cent. was the limit suggested by the landholders of Eastern Bengal, and in that part of the country the landholders at present, as a rule, get nothing like that proportion. But the objection to the special fraction taken as the percentage is of less importance than the objection, on principle, to taking a percentage of the gross produce at all, as a test of the rent rate. It is obvious that, in fixing a rent rate for special fields, not the gross produce, but the nett produce should be the test. Expenses of production vary enormously, and, whereas on some soils twenty per cent. of the gross produce may be the true economic rent, in others it may be really a beneficial rent, and in others again it may be a rack-rent or more, trenching on the actual labour-wage

of the cultivator. This objection, which would be fatal to a scheme for actually deciding the rent of each holding by this standard, and which is fatal in my opinion to the proposal made yesterday, that a fixed proportion of the gross revenue should be substituted for the table of rates, is not of the same force when the percentage is taken, not as a standard, but as the maximum. Our scheme starts from existing rents, which shall, in the absence of evidence to the contrary, be taken as fair and equitable, and the twenty per cent. maximum is itself balanced by other limitations, such as doubling the present rent, and by the proportion-rule in those cases where increase of prices is the ground of enhancement. There is yet another ground of objection, namely, that the use of this test will work very unequally in different parts of the country: whereas, in some parts of the country, money rents expressed in staple produce do not at present exceed ten to fifteen per cent. of the gross produce, we know that in other parts of the country they rise as high as thirty per cent. In fact, we were told yesterday, what I hope is only true of produce and not of money rents, that in Bihár they range from forty to sixty per cent. of the gross produce. Well we do not propose to bring down existing rents anywhere by the application of this standard, a decision quite in accordance with the existing law on the subject, and with the distinctly declared intention of Sir A. Eden, but we do definitely say that there shall be some security that the rents of occupancy raiyats shall not be enhanced beyond a point which shall leave them no margin whatever, and the percentage test is the proposal which has found most favour as the means for giving effect to this decision.

“ If I am told that no such minimum at all is required, the description of the Bihár peasantry as given in the Hon’ble Major Baring’s speech is surely a sufficient answer. There we have the fact stated that over a great part of the country rents have been doubled in sixteen years. But, as Mr. Ilbert said, an ounce of fact is worth a ton of theory. The hon’ble gentleman yesterday quoted from a paper by Mr. Finucane, who has been deputed to prepare experimental tables of rates on the Nurhan Property in South Tirhút. Allow me to refer also to the same paper. He says:—

‘ Take the instance of village Jaezotee. The present proprietor of this village, Bábú Nandan Lal, has inherited it from his adoptive father, Bábú Bri Behari Lal, who was in possession when the Permanent Settlement of the mahal was made in 1247 F. S. (1840 A. D.). The area then under cultivation was 106 bighás, the then gross rental, which was taken as the basis of settlement, being Rs. 151, and the average all round rate being Re. 1-7 per bighá. The Government revenue was fixed on the basis of half assets: and, as the settlement records, which I have examined, show, the very moderate amount thus fixed was objected to by the present proprietor’s father, on the ground that the rental of Rs. 151 taken as the

amount of assets, was more than the raiyats really paid. The objection was, however, overruled, and the settlement was accepted in 1247 F. S. (1840 A. D.)

‘(a.) After the lapse of forty-three years, what do we find in this village? We find that

• Area under cultivation in 1847, 106 bighás.
Area now under cultivation shown in the jamabandí, 102 bighás.
Rental in 1247 F.S., Ra. 151.
Present rental, Ra. 905.

the area under cultivation has decreased by four bighás, while the rental is now* almost exactly six times the rental of 1247 F.S. (1842 A. D.). In other words, the average

rates all round have been enhanced by *five hundred per cent. in forty-three years*, the rise in prices during the same period being at most *seventy-three per cent.* There is reason to believe that the state of things existing in Bábú Nandan Lál’s property is not very materially different from what exists in other properties in the Darbhanga, Muzaffarpur and other North Gangetic districts of Bihár.’

“And how is this brought about? He gives the history of recent enhance-

† Tubka Khás, Tubka Maghribi, Mahomedpur Sunhara.

ments in various villages, of which I will read only the three first, † beginning with Tubka Khás.

‘TUBKA KHÁS.

‘2. *Past history of the village.*—The jeth raiyats say that Máhtáb Singh was thikádár in the time of Ram Narain Singh, who was the present minor’s grandfather. He took half an anna karcha (*abwáb*) on the old rates. He was succeeded by Bechuklal Misser, thikádár, who incorporated with the rent the half anna taken as karcha by his predecessor, and then realized an anna in the rupee as karcha on his own account. Bechuklal’s lease having been renewed, he similarly again incorporated previous karcha with the rent and levied an anna per rupee as karcha in addition. On the expiration of Bechuklal Misser’s lease, the village was leased to the Dalsing Serai Factory in 1270 F.S. (1863 A. D.). The first lease to the factory was for seven years. This lease was renewed for a further period of seven years, and was again renewed for a term of nine years, which term will not expire before 1292 F. S. (1885 A.D.).

‘The factory enhanced the rates by one and a half-annas in the rupee during the currency of its first lease in 1275 F.S. (1868 A.D.), and again enhanced the rents by half an anna in the rupee last year. This so-called enhancement consisted in simply ordering the patwári to enter the amount as a demand in the village papers against each raiyat.

‘TUBKA MAGHREBI.

‘3. *Past history.*—The mauza was leased to Bekram Lal from 1250 to 1256 F.S. (1843 to 1849 A.D.). The rates prevailing in this period are not known. From 1257 to 1274 F.S. (1850 to 1867 A.D.) it was leased to Máhtáb Singh. He raised the rates by four annas per bighá in 1257 F.S. (1850 A.D.).

‘From 1275 to 1283 F.S. (1868 to 1876), the village was leased to Dalsing Serai Factory. This lease was renewed for a further period of nine years, which will expire in 1292 F.S. (1885 A.D.).

'The factory raised the rates by one and a quarter annas in the rupee in 1275 F.S. (1868 A.D.). In 1284 F.S. (1877 A.D.) part of the village was again given in lease to the Dalsing Serai Factory and the rest was leased to Targuman Misser and Medini Thákur, who are themselves raiyats.

'The factory has, during the currency of its last lease, demanded an enhancement of a half anna in the rupee, and entered this demand in the jamabandi.

' MAHOMEDPORE SUNHARA.

'5. *Past history.*—This village was leased to Dalsing Serai Factory for three years, 1267 to 1269 F.S. (1860 to 1862 A.D.), at Rs. 850. The jeth raiyats say that the rates then were from Rs. 2.8 to 8 annas.

'From 1270 F.S. to 1276 F.S. (1863 to 1869 A.D.) it was leased to Behari Raout at a jama of Rs. 1,151. During this period the thákádár raised the jeth raiyats' rates by eight annas per bighá in 1275 F.S. (1868 A.D.), and the raiyats' rates by four annas.

'From 1277 to 1285 F.S. (1870 to 1878 A.D.), the lease to Behari Raout was renewed for nine years, at a jama of Rs. 1,600. During the currency of this lease, the thákádár again raised the jeth raiyats' rate eight annas and the raiyats' rates twelve annas per bighá. In 1285 F.S. (1878 A.D.), finding he could not realize rent at the above rates, Behari Raout reduced them by two annas and three pies per bighá. From 1286 to 1292 F.S. (1879 to 1885 A.D.), the village was again leased to Behari Raout at Rs. 1,900. He has this year relinquished the lease, being apparently unable to realize his enhanced rents. His relinquishment has been accepted. The present jama, inclusive of Tola Jagarnathpore, is Rs. 2,839. It thus appears that the reserved rental payable by the thákádár to the proprietor has been more than doubled in the course of twenty years. Further, excluding Tola Jagarnathpore, for which the materials for comparison are not available, it appears, as already noted, that the mufassal jama of the remaining portion of this mauza was Rs. 1,648 in 1275 F.S. (1868 A.D.), while in 1279 F.S. (1872 A.D.) it was raised to Rs. 2,600, and was reduced in 1285 F.S. (1878 A.D.) to Rs. 2,435; in other words, an increase of fifty per cent. was made in the gross rental in the course of the past fifteen years, the cultivated area remaining the same, or rather having decreased by two bighás.'

"And this is the conclusion he comes to as to the average enhancements in this part of the country:—

'That, while the average rise in prices of staple crops for the past forty-five years have been only seventy-three per cent., the increase in rent rates in these villages has been respectively one hundred and eighty-eight and one hundred and sixty-four per cent.

'That, as regards all the villages in this tract appertaining to the Narhan Estate, there has been an average increase on rates of one hundred and thirty-six per cent. during the past forty-five years, the rise in prices of staple products during the same period being only seventy-three per cent.'

"Recollect these are increases on rent *rates*. The actual increase in the rental, allowing for increased cultivation, is much greater. In the two villages

for which data of comparison are available, he shows that in one, while cultivation has extended by forty-seven per cent. in the last half century, the rental has increased by three-hundred and twenty-one per cent. In the other, where cultivation has increased by thirty-nine per cent., the rental has increased by two hundred and sixty-nine per cent.

“I will give one more instance from another part of the country. Two years ago, Mr. Edgar had occasion to make an inquiry of a similar nature, but for a different object, in the west of the Champáran District. This is what he says in his report:—

‘Tuppeh Dohosoha was settled in perpetuity in 1850. The area of the five maháls at the time of settlement was ascertained to be 15,888 bighás, of which 9,690 bighás were cultivated or temporarily fallow. The rental was then calculated to be Rs. 17,342, of which one-half, or 8,671, was fixed as the Government demand. After the conclusion of the settlement, the Bábu seems to have begun enhancing the rents, and the process was carried on so effectually through *shikádars*, that in the road-cess returns of 1873-74, the rental of the five maháls was shown as Rs. 86,175, that is, five times the settlement rental and ten times the Government demand. The cultivated area at that time had risen to 10,827 bighás.’

“In other words, in less than a quarter of a century the rental had been increased to five-hundred per cent.; the cultivated area had increased by about eleven per cent. The same report says that there was no real change in the condition of the land between those years, and the same means of irrigation as existed in 1872 had been in existence at the time of settlement. We have been told that similar enhancements have been made in Government estates in Chittagong, Chutiá Nágpur, &c. I am informed that in regard to Chittagong this is a mistake. The rent rates of the raiyats have been actually reduced, though owing to increase of area the *revenue* assessed upon the taluqdárs or contractors has been increased. The Chutiá Nágpur increased rates, I am informed, have not as yet been sanctioned, but I am not here to defend the system of management in Government estates. It has, doubtless, been bad in the past, though since Sir George Campbell's time not nearly so bad as has been stated. Anyway, in regard to enhancements, the raiyats of Government estates will have the same protection as other raiyats, and what I hope I have succeeded in showing is that, if the occupancy-right is to be of any value at all, it must be protected by some limitation of the maximum amount of enhancement. With the method of enhancement and the table of rates I shall deal at a later period of my reply.

“Turning now to the question of the transferability of occupancy-rights, we are told that this is an innovation which will ruin the landlord while it will do no good at all to the cultivator. In the first place, as the Commission have shown, the transferability of occupancy-rights is in most parts of the country

an absolute fact. It is stated then that the registers of the Courts show it to be so in every district, save Sárán and Champáran. Mr. MacDonnell, in a paragraph which I have already quoted, says the same. His testimony, it is true, refers to Bihár. Let me quote then from Bábú Parbati Rai, on special duty in Murshidábád. He says:—

{ Another circumstance brought to light in the course of the present enquiry also deserves mention in this report. It is often alleged on behalf of the zamíndár that the proposal to make occupancy-rights transferable is an innovation. But without going to discuss what the custom in other places is, I beg to state that the custom of buying and selling *jotes* is here very general, and that the zamíndárs themselves also put up such *jotes* for sale at execution of rent decree. Bábú Bepin Bebárf Mookerjéa, Munsif of Kandi, to whose kind assistance I am greatly indebted for several things in connection with the present enquiry, tells me that it is seldom that the zamíndárs object in Court to the transfer of *jotes* by raiyats. I have, in paragraph 6 of this report, spoken of raiyats having more than one *jote* in their possession. The jamawásil papers of Gopináthpur show that this custom of buying and selling *jotes* has been very general in the pargana. But though custom is thus in favour of the raiyat, a legal enactment declaring its validity will, no doubt, be productive of very great advantage, as it will prevent the litigation that occasionally crops up at present. The fear that is generally entertained that the effect of making the right of occupancy transferable will be that all such *jotes* would gradually pass into the hands of the money-lenders is, so far at least as this part of the country is concerned, quite unfounded. On the other hand, I find as a fact that all old *jotes* which have changed hands are still in the possession of cultivating raiyats.'

“I have a good deal of evidence to show that so strong is the belief in the inherent right of the actual cultivator to a possessory status in the soil, that even korfa or sub-tenants' holdings are frequently brought to sale in execution of a decree. I have by me a statement from a single Munsif in Central Bengal, showing that in the last six years no less than 40 of these holdings have been sold in execution, with a rental value varying from Rs. 38 to a few annas, and bought in for substantial sums, in many cases equal to ten, twelve, and even fifteen times the rental. Moreover, there is ample testimony to the effect that the tendency to recognise occupancy-tenures as transferable is increasing, and the real question was whether the facts, as they stand, were to be ignored or recognised. Mr. Field points out that:—

‘Alienability is in every country, sooner or later, annexed to everything that is made the subject of property, and that here, in Bengal, this tendency has spontaneously shown itself in a very marked manner in respect of these very holdings.’

“It is also clear that transferability is the only alternative to unlimited sub-letting, a practice which we cannot, in face of universal custom, forbid, but which we should be very glad to discourage. Nor can it be really

doubted, except by those who look upon human nature in Bengal as guided by quite other motives than those which influence human nature elsewhere, that the desire to acquire land can only have free play when there is a power to transfer, and that in the end the capacity for saving must thus be stimulated. But if, as I have shown, occupancy-rights are every day, and all over the country, put up for sale, surely the legal recognition of this fact gives the landlord the best security for, and the best means of recovering, his rent. The power to transfer gives a value to the right of occupancy which is always available as a means of enforcing payment to the landlord; and though it opens up undoubtedly some room for letting in hostile or objectionable tenants, we have done our best to guard against this by giving the landlord the right of pre-emption at a fair rate, to be fixed, if necessary, by the Court. And let me here point out that the right of pre-emption is not the dead loss to the landlord that has been represented. If the right of occupancy is of any value, it will not be of less value to the incomer than to the outgoer. In other words, the practical operation will be, that the landlord will recover the price he has paid in the shape of a bonus or premium from the incoming tenant whom he prefers to the private purchaser, Mr. Field, in discussing the argument in favour of transferability from facility of execution of decree, says:—

‘The strongest point of the complaints urged against the proposed rent-law procedure is concerned, not with the delay in obtaining a decree, but with the delay and difficulty in getting the decree executed once it has been obtained. The experience of the Courts entirely corroborates this. The average raiyat is too poor for process against his moveables to be productive of much result. His cattle are easily got out of the way, or, if attached, are made the subject of false claims by third parties. He seldom or never possesses immoveable property. To take him on body warrant is merely to add to costs, the chance of realizing which is thereby diminished. If the raiyat’s holding were saleable in execution, and would fetch at least sufficient to satisfy the decree and costs, the landlord’s execution difficulties would at once disappear.’

“We have, accordingly, made the occupancy-right saleable in execution of a decree, as well as transferable and heritable, but we have not made it saleable by the landlord summarily and without decree. This was proposed tentatively as a privilege which might be granted to those exceptional landlords who keep their books and accounts in such a way as to satisfy the Board of Revenue, but it became obvious on consideration that such a privilege must either be accorded to all landlords or to none; and it must be admitted that, in the present state of affairs, neither are the landlord’s accounts so accurate and trustworthy, as a rule, as to make it safe to bring the occupancy-right to sale on their *ex parte* evidence without hearing the raiyat, nor is he in such a position (as the *patni* holder generally is) as to be able to save himself from injustice, or to obtain redress for it afterwards, under the *patni* procedure. Whether the right of

occupancy thus made transferable will remain for many generations in the hands of the same class as now possess it, is a subject on which many persons are disposed to prophesy. I don't know, and, therefore, I won't prophesy; but certainly no arguments which have hitherto been brought forward have convinced me that this cause *alone* will bring about any great revolution in the position of the occupiers of the soil. In the meantime we shall, I think, with fixity of tenure, fair rents, and the power to transfer, have given to the present generation some security for enabling them to maintain their position as cultivators, to do justice to the soil and to be able to resist the pressure of one or two bad seasons; and, in doing this, I verily believe, we are really doing the zamíndár more good than if he were left the absolute master of an impoverished, hopeless and therefore thriftless, tenantry.

“I come now to another point to which very great objection is taken, namely, the overriding of contracts, or rather the provisions preventing a raiyat from contracting himself out of his status. We cannot of course prevent a raiyat making what contract he likes, nor can we prevent his adhering to it, only we say that in certain cases the Court will not give effect to such contracts.

“Mr. Ilbert dealt with the matter in his opening speech, and explained the general considerations which led the Commission, the Government of Bengal and the Government of India to decide that this provision was absolutely necessary. We do provide for moderate enhancements being arranged by private contract, because we do not wish to force all such cases into Courts; but we do not allow any force to contracts which would deprive the raiyat of his occupancy status and make him liable to arbitrary ejection or arbitrary enhancement. Mr. Ilbert read out a specimen of the kind of document by which, he said, we could not allow the provisions of our legislation to be overridden. I may mention that this was not a single or a solitary document. In the case in which this document was put in, I am informed that the zamíndár's agent urged in its behalf that 1,000 or 1,200 raiyats had given similar *kabúliyats*, and I wish to draw attention to the fact that these details overriding the law are only entered in the *kabúliyat* which remains with the zamíndár. They are not entered in the counter-part *pattá* which remains with the raiyats. Allow me to offer a few more reasons to the same effect as Mr. Ilbert's *patta*. One of the causes of the Pabná riots was the endeavour on the part of the landlords to force from the raiyats *kabúliyats* which, besides incorporating illegal *abwábs* in the rents, provided for the landlord changing arbitrarily the legal standard of measurement, and for his ejecting the raiyat in case of the latter having the misfortune to quarrel with him. Is it possible for us, where the pressure of population on the

land is so close, where no other occupation is available, where a raiyat must cultivate or starve, where there is no sort of equality in wealth, or intelligence, or position,—is it possible, I say, for us to allow our Courts to treat such documents, made in direct contravention of the law, as contracts made on equal terms between the parties? Then look at the quotation I have read already from the proceedings of the landholders' meeting held at Arrah. At present, they say, land-owners prevent the growth of occupancy-rights by granting leases for five years, or by changing lands, or by changing the assessment. And how is the assessment changed? Mr. Finucane's report has shown us. One year one anna is added to the rupee of rent as 'kharcha', an illegal *abwáb*. The next year that is incorporated in the rent: after a few years' rest another kharcha of two annas is added, and that is similarly incorporated, or in some cases even this process is not gone through. 'This so-called enhancement consisted simply in ordering the patwári to enter the amount as a demand in the village papers against each raiyat.'

"The hon'ble gentleman opposite endeavoured to show that the Government had adopted or permitted equally oppressive contracts. We have heard the Lieutenant-Governor's reply to this, and it is clear that the hon'ble gentleman mistook altogether the nature of some of these forms, and that the pattá which Government allowed to be sold for convenience sake at registration offices, was by no means so oppressive as he would have us believe. A gentleman once undertook to compile a dictionary, and he had in the course of it to explain the word 'crab'. He described it as a red fish that walks backward. Fortunately, he showed his description to a scientific friend before publishing it. His friend said it was excellent, admirable, perfect; only, unfortunately, the crab was not a fish, it was not red, and it did not walk backwards. Similarly, the Government pattá did not, as the hon'ble gentleman opposite seemed to suppose, provide either for preventing the accrual of occupancy-rights, or for ejection, or for oppressive interest. But, even if he had made out his case, I should still hold that it would be an argument rather for than against overriding of contract. As Mr. Evans pointed out yesterday, if these things are done in opposition to the well-known principles and wishes of the Government by their own officers, what will not be done by the unsupervised *ámlá* of zamíndárs? If these things are done in the green tree, what will be done in the dry?"

"I will show you what will be done by reference to another *kabúliyat*, appertaining to the estate of one of the most enlightened landholders in the country, but which positively bristles with provisions for evading or nullifying the law, and this is the point I wish to enforce—not that such contracts are oppressive, but that they are a deliberate attempt to override the law.

“ It is to this effect :—

‘ I, A. B., by profession a *jotadar*, do execute this kabúliyat in respect of a temporary

* These are abwábs, and to avoid the penalty imposed by section 11, Act VIII of 1869, they have been included in the rent.

jote jama. I held a temporary *jote* comprising 109 bighás, 19½ cottas of land, at a *talab jama* of Rs. 167-12-11,* inclusive of *Batta* and *Isswar Britti*, or charges for religious expenses. The term of the aforesaid *jote* having expired, I applied to obtain the land under a fresh settlement. According to my application, you have inducted me as a temporary† *raiyat* for a term of five years,

† To destroy any claim to be an occupancy-*raiyat*.

extending from the year 1287 to 1292, on following terms, into the aforesaid *jami jama*, as per boundaries given below, measuring 109 bighás, at a rental of Rs. 182, minus Rs. 12-5-10, kept apart as *hajut*; that is, at a rental of Rs. 170-4, added to Rs. 7-15-14, the amount of *Batta* and *Isswar Britti*, at the rate of 3 pie per rupee, according to the custom of the pargana—in all at a total rental of Rs. 178-3-17-1 cowri. I engage myself to hold the land on payment of the rent fixed, year by year, according to the *kists* specified below, and by keeping intact the borders and boundaries of the land, as they have been since before. I shall not make any plea of payment of rent without producing printed rent-receipts. Should I make any such plea, it would not be admissible. Should I fail to pay rent according to the *kists* fixed I must pay interest at the rate of five per cent. per mensem. In case I do not pay rent at the proper time, you shall be competent to resort to legal means, and realize the same with interest,

If a *raiyat* is now ejected, except under an order of Court, he has a possessory action under section 9 of the Specific Relief Act. This is to get rid of the Act.

and bring it under your *khás* or direct possession without the help of the Court; and none of the

This is to get rid of section 20, Act VIII of 1869,—allowing a tenant to relinquish.

terms herein stipulated shall be sufficient to prevent you from doing so; that I shall not be competent to relinquish the *jote* as long as the term fixed herein does not expire; that in case I do relinquish the *jote* before the term expires, I shall have to pay rent for the entire period, and then relinquish the *jote*; that whenever, within the term specified herein, you may be pleased to have the land measured, I shall cause the measurement to be made, and shall, without any objection, pay rent for the quantity of excess of land over and above the rent already fixed, according to the rate of rent for the different sorts of land found to be in excess; that in case the land be found by measurement to be less in quantity, I shall be entitled to an abatement of rent, according to the rate aforesaid; that I shall not be competent to make any objection regarding inundation, drought or any objection as to the land being *patit*, or waste, or covered with sand, or occupied by *kháls* and so forth; nor shall I be competent to claim abatement of rent within the term fixed herein; that I shall not be competent to let out the land to anybody under a *durjote*, or to transfer it in any way; that in case I do let out the land, or transfer it, you shall be at liberty to take at once *khás* possession of the land herein mentioned; that after

To destroy right of occupancy accruing: he had already held it previously.

costs and damages, by bringing a suit; and I shall pay the same without any objection. It is further stipulated that should the rent due by me fall into arrear at the end of the year, you shall be competent to eject me from the *jote jama* the expiration of the term fixed, I shall not retain any concern whatever with the land; that you shall then be competent to resettle the land with me, or to let it out to anybody as you may please; that when-

By sections 53 and 55 of the Permanent Settlement, the landlord enforcing this would be liable to pay three times the amount, and by section 11 of Act VIII of 1869 (B. C.), he is liable to pay twice the amount.

ever you should find it necessary to take any portion of the land into your *khás* possession, I shall give up that portion without any objection, and get abatement of rent; and that I shall pay separately the new cess already imposed by Government, as well as that which it may impose hereafter. On these conditions, I execute this *kabúliyat* for the temporary *jote*. Dated the 1287.'

"Can anyone say that, in the face of such endeavours as these to override the law by means of contract, the legislature has any choice but to maintain the law in spite of the so-called contracts.

"The objections with which I have been dealing hitherto apply mainly to the provisions of the Bill concerning the occupancy-tenant; but we have heard some very strong objections to the protection given to the non-occupancy, or, as the Bill calls them, ordinary, raiyats. Under existing law, raiyats not having a right of occupancy are entitled to *pattás* at such rates as may be agreed upon between them and the persons to whom the rent is payable. The term of such *pattás* is exclusively at the discretion of the landlord, and such a raiyat cannot against the will of his landlord, retain possession of land in which he has not a right of occupancy; but, if he has entered into possession otherwise than for a specific term, or, having entered for a term, has held over with the consent of his landlord, express or implied, he cannot be ejected without service upon him of a reasonable notice to quit. His rent can only be enhanced after service upon him of a notice of enhancement, served by order of the Collector. If, after such a notice has been served upon him, such raiyat elect to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent therefor. (I am taking this statement of the law from Mr. Field's Digest). The alterations which the Bill proposes to make in the law are these. Subject to the general maximum, we leave the rate of rent to be fixed by contract; we leave the raiyat subject to enhancement without a suit, but we provide that, in consequence of his refusal to accept the enhancement the landlord wishes to eject him, he shall pay him compensation for disturbance. The compensation to be made will be in proportion to the enhancement demanded, so that, if the enhancement is moderate, the raiyat will probably prefer to pay it; if it is excessive, the landlord will have to pay for ejecting him. The object is two-fold—to keep the landlord to reasonable enhancement, and to prevent his making use of his power to enhance as a means for ousting the raiyat so as to prevent his acquiring a right of occupancy. I was quite prepared for strong opposition on this point. It is in principle a return to the modified rights of occupancy which the Commission proposed to give to the three years' tenants; in other words,

it aims at giving some security of tenure under which occupancy-rights can grow up to all cultivators. It is admittedly an innovation or experiment which has never been tried in India, and at first sight is open to the charge brought against it of being an invasion of the landlord's rights. Now it is pointed out in Mr. Ilbert's speech that a high authority has computed that 90 per cent. of the raiyats of Bengal have occupancy rights. The Bihár Commission computed that between sixty and seventy per cent. were in a condition which would enable them to claim occupancy-rights under the present Bill. Still there is an important residuum, and the question at issue is—does public policy require us to protect the position of this residuum at the expense of the powers now held by landlords? The reasons which led the Government to answer this question in the affirmative may be gathered from the following extracts from their despatch No. 16 of last October to the Secretary of State. They said, with reference to the very subject—' We have first to consider the proportion of cultivators whom the scheme leaves unprotected', and, after referring to the figures quoted above, the despatch goes on—

'The proportion is at best conjectural, and we are not concerned to insist on its accuracy; but the important point to be remembered is that the number of unprotected raiyats, whatever it may be at the moment when legislation is completed, will, under your Lordship's scheme, be thereafter a constantly increasing number. Every acre of land which becomes vacant, whether by purchase or pre-emption on the part of the landlord, by death without heirs, or by abandonment of the occupant, falls out of the protected class, and instantly becomes a subject for a renewal of the evil contest. The landlord's interest is immediately concerned in preventing the settlement on such land of any existing cultivator of the estate or village, and in defeating, as regards tenants from outside, the accrual of occupancy-rights by twelve years' prescription on such land; the old series of litigation, enhancement and ejectment 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.

'In the meantime, it is abundantly manifest that the position of this unprotected residuum will be infinitely worse than that of unprotected raiyats under the existing law. At present, the landlord can effectually prevent the accrual of occupancy-rights by merely shifting his tenant from one patch of cultivation to another; under the proposed rule it will be incumbent on him to turn the tenant out of the village altogether, out of his house and homestead as well as out of his land, and we have every reason to believe that this power, which, even as a threat *in terrorem*, would be productive of the worst consequences, would in many cases be actually put in force.'

" And they added—

'fence round the twelve years' rule as we may, any rule which makes it to the interest of the landlord to prevent the growth of prescriptive rights leaves of necessity to him both the

power and the inducement to put such pressure on his raiyats as cannot fail to become intolerable.'

"They explained, therefore, to the Secretary of State that it would be in their opinion necessary, in introducing a modified twelve years' rule, to combine it with a system of compensation for disturbance to unprotected raiyats.

"There is another point to be considered. It is admitted that the definition in Act X does not override occupancy-rights which may have accrued by custom outside that Act. I have quoted from Messrs. McDonnell and Edgar, and might adduce much similar testimony as to the general existence in some parts of the country of a customary right of occupancy quite independent of any fixed limit of time. I have given the evidence supplied from one Munsifi in Central Bengal of the transferability of the rights of korfa raiyats,—evidence consisting of the fact that no less than 40 such holdings have, in the course of the last few years, been brought to sale in execution of decree, and fetched very substantial prices, as much as ten and fifteen years purchase of the rental. I have here a table supplied from another Munsif in Jessore, showing that in his Court, in the course of two months, some 35 under-tenures, many of them technically korfa tenures, and all coming under the ordinary head of non-transferable rights, had been sold.

"Now, if such under-tenures can be sold for substantial sums in execution of decree, does it not follow that the holder has in them a property worth protecting? And, if we are to carry out the accepted policy of establishing 'the occupancy-tenure on a broad and permanent basis,' of securing 'a substantial tenantry free from debt and in a position to save and bear the pressure of occasional bad seasons,' are we not justified in taking steps to protect within reasonable limits the non-occupancy-tenant from arbitrary evictions, and so to render possible the accrual of full occupancy-rights which the law aims at? As to the special method by which this should be done, there may well be differences of opinion. Whether you can, by fixing a nominal maximum of rent, practically diminish the value of the power of sub-letting is, I confess, questionable; and whether, in the case of non-occupancy-raiyats, competition will not overcome legislative restrictions on rents is no less doubtful. I admit also that compensation for disturbance is untried and may be open to objection, but while we must affirm the principle of giving this class a reasonable measure of protection, the particular method of arriving at this result is a subject for discussion in Select Committee, and it is one on which we shall be particularly glad to receive suggestions.

“ While dealing with this question of ordinary raiyats, it behoves me to say something on the subject of sub-letting. We have been asked to prohibit sub-letting, and have been told that in the extension of sub-letting lies a danger which may involve a new departure in another generation or two, as a new class of *rack-rented* raiyats grows up on the soil; but it is impossible, as has been pointed out, to ignore the universal custom of sub-letting, or to change the status of all existing occupancy-raiyats and their sub-tenants. We have done what we can to discourage this habit. In the first place, by making occupancy-rights transferable, we take away one of the great inducements to sub-letting. In the second place we put a limit on the rent which can be legally demanded from a sub-raiyat, and so leave but a margin of about ten per cent. between what the raiyat has to pay his landlord and what he can receive from his sub-raiyat. Ordinarily, therefore, it would be better worth his while to cultivate himself, or to sell, than to sub-let. In the third place, we make it part of the law that the tenant should obtain his landlord's permission before sub-letting; otherwise the sub-tenant's crop is liable to the landlord's distraint, and this right the landlord is not likely to abandon. Whether these provisions will really check the habit of sub-letting, I cannot say. I am quite sure direct prohibition would be ineffectual, and I am also quite sure that the question is one which depends on economic causes, and which legal checks can only very partially regulate; but it seems to me that, until the difference between what he receives from his under-tenant and what he pays to his superior landlord becomes so large as to enable the occupancy-raiyat altogether to divorce himself from the soil, the custom of sub-letting will not be encouraged, for the occupancy-raiyat can, in the present state of affairs, find no other means of occupation; in the meantime, therefore, the tendency of our legislation will be to keep the great bulk of the occupancy-raiyats on the soil, but more able to subsist comfortably and to resist adverse circumstances than at present: anyway, I don't think legislation can wisely go further in this direction than we are doing, and, as Mr. Ilbert said in his opening speech,

‘ sufficient for the Statesman if he can grapple with the problem of the day; for the distant future he must leave posterity to provide.’

“ And now I come to the point against which the main attack of the opposition is addressed, namely, that while we have done everything to increase the security of the raiyat, we have done nothing to carry out the two objects for which legislation was originally demanded, namely, to facilitate the recovery of his rents by the zamíndár, and to give him a sure and satisfactory method of enhancement. Many of the objections were answered in advance by Mr. Ilbert. He has shown what we have done and why we have been unable to do more. In the matter of procedure for recovery, he showed that there was no royal road

to the discovery of facts; and by shortening the code of procedure you do not shorten procedure itself; that you cannot, without danger of gross injustice, shift in these cases the burthen of proof, and that the real reason why rent suits take time is that there are generally substantial issues to be tried, and substantial injustice, especially in executing *ex parte* decrees, to be guarded against. What we have done is to give a modified power of distraint, which is really a form of attachment before judgment, and should in very many cases take the place of a suit altogether. Doubtless, as has been urged upon us, many zamíndárs would wish to be able to exercise this power of distraint directly and of their own authority, instead of through the intervention of the Court. This is what is now very generally practised in Bihár, and it has been defended by certain zamíndárs in the papers before us, as well as in this Council, as being less tedious and less expensive to the raiyat than the regular process. Doubtless a creditor might say, it would be much shorter, and perhaps less expensive to his debtor, to take the purse out of his pocket than to sue him for the debt, but neither the law nor the debtor look at the matter from this point of view. The law calls it robbery, and the debtor is likely, either to resent it by violence, or by getting the law to enforce the penalty for robbery. In other words, we cannot allow one of two disputants to be the judge in his own cause,—no, not even judge in a Court of first instance, and though his decision be open to appeal, for this is the plain meaning of giving him summary powers of distraint and leaving the raiyat to contest it by suit. In ordinary suits, where distraint through the Courts is not had recourse to, Mr. Ilbert has described the procedure, based very much on that of the Small Cause Courts, and abolishing all unnecessary delays, and disallowing appeals in petty cases, and has explained our readiness to consider in Select Committee any further simplification, should such simplification appear consistent with justice to both parties.

“But it is not merely a shortened procedure; it is a summary procedure, which is wanted,—a procedure, in fact, which will give the landlord the benefit of the presumption in his favour, and place on the raiyat the onus of proving that the presumption is erroneous.

“Now, there are only two forms of summary procedure—one through the intervention of our Courts, the other through executive authority, like the certificate or patní procedure.

“Summary procedure through the executive authorities has long been tried in India. There are numerous examples of failure. Up to 1859, a zamíndár could enforce payment of rent either by distraint or summary suit before the Collector. This was discontinued by the framers of Act X. The raiyat had

no remedy but by a regular suit, and this, the framers of the Act declared, was 'almost tantamount to refusing him any remedy at all'. The abolition of these summary powers was objected to then by the British Indian Association, much on the same grounds as those now put forward (as indeed were all the restrictions on the zamíndár's power, including that of arresting their raiyat); but these objections were deliberately overruled. The question of a summary procedure through the executive authorities was then definitely settled in the negative, after an experience dating back to 1799. Nor has summary procedure through the Court been found more satisfactory. I believe the experience of the proceedings under section 530 of the old Procedure Code fully justifies this assertion. The hon'ble gentleman opposite now asks that we should give to the zamíndárs the same summary procedure (that of the Certificate Act) which the Government use in recovering public demands. In the first place, let me point out that under this Act, in Government estates, the Collector is himself the Court, and may be trusted to decide with reasonable fairness between the manager of the estate and the raiyat, and only with his sanction, after hearing objections, can a certificate be executed. What similar security can zamíndárs offer? But I will, in answer to the hon'ble gentleman's demand for this procedure, quote no less an authority than that of Rai Kristodás Pál, Bahádúr, himself. When it was proposed to apply this procedure to the recovery of arrears of rent due on estates under the Court of Wards, speaking in the Bengal Council, he said—

'That would be opposed to right principle. Rent-suits sometimes involved questions of right and other complicated matters which were best left to the Civil Courts. It was observable that the certificate of the Collector under this Bill, in respect of this class of cases, would not be absolute but conditional, and that liberty was given to the aggrieved party to apply to the Civil Courts for redress within a year of the making of the certificate. If, then, it was considered necessary that the ultimate remedy should be sought for in the Civil Court, he did not see the necessity of providing for that class of cases the summary procedure of a certificate; it would only lead to additional expense, trouble and harassment, and he considered it much better that the procedure should be simplified, and suits for recovery of rent dealt with by the Civil Court at once, than that the certificate procedure should be first gone through as provided in this Bill, and the same thing should be gone over again in a regular way before the Civil Court.'

"I think the objection is sufficient, and I wish no better justification for our refusal, either to imperil justice by the adoption of a summary procedure without redress, or, by giving the redress of a regular suit, to open the way to 'additional expense, trouble and harassment'. I am grateful to my friend for the plume which wings my shaft. At the same time I must admit that we are bound to provide the speediest and easiest method of recovery that can be

devised, provided it is quite consistent with the security and protection of the raiyats; and, if anyone can devise a more expeditious method, which shall not jeopardize greater and more important objects, I shall be very glad indeed to receive the suggestion. And now, is it the case that we have done nothing to enable zamindárs to obtain readily a reasonable enhancement of their rents?

“In 1867, again in 1875, and still at the present day, the landlords have complained that, though Act X of 1859 gives them the power to enhance, yet, owing to defects in procedure, they cannot put that power into effective action. So far as enhancement through the Courts on the ground of increased value of produce goes, they say the law is a dead letter. We have to admit that to a great extent this is true. The application of the law requires the Courts to ascertain a series of economic facts, concerning which it is impossible for the landlord to put before them in most cases the requisite evidence. Well, we have made a real endeavour to grapple with this problem. We have provided a scheme by which tables of rates corresponding to the old pargana rates should be fixed by the Revenue authorities, and we have provided for the Civil Courts applying these tables to the individual suits brought before them. In other words, the economic questions which have paralysed their action hitherto will now be solved for them by the Revenue authorities, and all they will have to do will be to apply them, or to decide upon special pleas put forward to show why they should not be applied. But we are told that these tables of rates will be unworkable. I think in some parts of the country it will be found that the existing rates are so multifarious, and depend so little on the quality of the soil or value of nett produce, and so much on other considerations, that the preparation of those tables will be difficult, if not impossible. In other parts of the country, there will be much less difficulty in their preparation. But the scheme is admittedly experimental. I hear that Mr. Finucane finds pargana rates, never changed since the Permanent Settlement, still existing in parts of Jessore, as Mr. Westmacott found them still existing in Dinájpur. Preliminary enquiries are now being conducted by experienced officers under the instruction of His Honour the Lieutenant-Governor, and, when the Select Committee meet in November, we shall be in a better position than we are now to judge of the chances of success. If it succeeds, there cannot be a doubt that the solution of the vexed problem will afford the zamindárs a far more satisfactory method than they have ever had before, of legally obtaining a fair share of the increased produce, or increased value of the produce, of the soil, and they at least will have little cause to complain. If it fails, we provide another method on which they can fall back, and that is the regular settlement of rents by a revenue-officer, the procedure for which will be found in Chapter XI.

This procedure is not applicable, it is true, to single suits; it only provides for those cases where large numbers of tenants have to be dealt with; but it is these cases that most require to be provided for, and which most lead to disturbance. Here again I may say that we are most anxious to receive criticism and suggestions.

“I feel that, both in this matter and in that of a speedy recovery of arrears really due, the zamíndárs are entitled to ask of us whatever assistance consistent with the interests of justice it is in our power to give them, and it is a matter of regret to me that the inherent difficulties of the problem are so great as to render a thoroughly satisfactory solution of them impossible. I have alluded to various abuses to which the raiyat is liable, but I am not at all insensible to the other side of the question, and I hope that further discussion may enable us to hit on some method of improving on the proposals of the Bill in this respect. I have now said all I have to say in reply to the objections taken to the leading principles of the Bill. I have purposely passed over many objections taken to minor points, and I feel that an apology is due for having, as it is, trespassed so long on the time and attention of the Council. But there is one subject in connexion with the history of the Bill on which, though it has not been mentioned either in Mr. Ilbert’s opening speech, nor in the course of the debate, except cursorily by His Honour the Lieutenant-Governor, I have still a few words to say. It refers to Bihár. Now, though the origin of the Bill, as regards Bengal, was the demand of the zamíndárs for greater facility to collect rents and to enhance;—a demand which, as soon as it was looked into, showed also the necessity of simultaneously securing greater fixity of tenure and limitations to enhancement; in regard to Bihár the genesis of the Bill was different. There the primary object was to secure the tenant in the rights which were fast slipping from his grasp, and the facilities required by the landlords were a secondary object. If we look to the draft Bills forwarded by the Bihár Committee at Bankipore, this difference is very apparent, and I may be asked, what has become of the suggestions of the Bihár Committee? Well, their work was referred to the Rent Commission, which remorselessly eliminated many of their suggestions. They refused to deal with the filing of zamíndári accounts, to exclude from evidence the loose sheets that now take the place of village-records; they refused to make the interchange of pattás and kabúliyats compulsory, though they partly provided for this by making a decree take the place of a pattá; they refused to insist on counterfoil receipt-books; in other respects, they conceived that the measures proposed for Bengal would suffice for Bihár, except in regard to bhaoli rents, for which they made specific provision. The Government of Bengal, acting on Mr. Reynolds’ suggestions,

made specific provision for measuring and recording *zarât*, and preventing the growth of occupancy-rights therein, and also for preventing *raiya* land being further absorbed into *zarât*. It followed the North-Western Provinces rules as regards appraisement and division of the crop, and allowed commutation of grain into cash rents at the request of the *raiya*. It also provided a rule, which the Government of India have tentatively eliminated, for restricting *thikadars* from enhancing, a restriction which can easily be evaded, and finally it vested possession of the crop in the *raiya*, so as to make the common restraint and interference with it on the part of the landlord criminal trespass. They also proposed to have a cadastral survey and record-of-rights undertaken experimentally in the Patna Division, and this subject, as we have heard, is now under the Lieutenant-Governor's consideration.

“It will be seen, therefore, that while some of the special sections intended for Bihâr have been made general, some of the general sections have been so altered as to be made applicable to Bihâr. Thus the provision for measuring and recording the *zamindars*' private lands has been made permissive for the Lieutenant-Governor to introduce into those districts where it appears needful; the maximum limit of produce rents in staple crops has equally been made of general application. On the other hand, the general provisions about making receipts full and complete in themselves has been accepted as sufficient to meet the requirements of Bihâr. So also has the principle of allowing distress only through the Court. This, and the provision for vesting the possession of the crop in *bhaoli* land in the tenant (which is merely a distinct statement of the existing law, I believe), will do much to remove the special evils of the illegal distress on crops, which, I am afraid, in spite of what was said yesterday, is still very common in Bihâr. I must not detain you longer on this subject.

“What has now to be done is this. The Bill is to be referred to a Select Committee at once, but we do not propose that the Committee should meet till the Council re-assembles in November. In the mean time, there will be ample time for discussion, and we hope, before that time comes, to receive the matured opinion of the Government of Bengal, and its most experienced officers, and of the various associations and individuals interested in the subject. We cannot have too much light. You may have heard of a comparison in which, in the present state of medicine, nature and the disease are likened to two men fighting, and the doctor to a blind man who strikes in with a stick, but whether he helps nature or helps the disease is a matter of accident. Of course such a comparison is most unjust, but I have often thought that, if not applicable to medicine, it was not wholly inapplicable to such legislation as introduced the

twelve years' rule of Act X. At least, we must endeavour to avoid that error; we must get as much light and as much criticism on the Bill as we can. I hope that during the Simla sessions much of this criticism will be digested and considered by the Government, and that, when the Select Committee meet in November, much of the ground will have been cleared, and we shall be able to throw overboard at once any provisions which may be decisively and on good grounds condemned as useless and unworkable.

His Excellency THE PRESIDENT said:—"The full discussion which this question has received, and the able speeches which have been made by those hon'ble members who have addressed the Council, leave me but little to say. And yet I should not like to allow this debate to close without making some observations on the subject, which has engaged the attention of the Council for the last two days. I need say nothing in regard to the history of this question down to the present time. That history has been very fully laid before the Council by my hon'ble and learned friend Mr. Ilbert, by Major Baring and other hon'ble members. And they have shown that the direct intervention of the Government of India has only been called forth at the last stage of these proceedings, after every point connected with the matter has been examined, considered and threshed out by one of the most complete enquiries that any question, I believe, has ever undergone in this or in any other country. As far as the present Government is concerned, they took no official steps in the matter until they received the letter of Sir Ashley Eden in June, 1881. And, indeed, for myself, all I had done in regard to it up to that time was to commence a study of the voluminous literature already accumulated on the subject. When that letter of June, 1881, was received, containing the clearly expressed and matured views of the Government of Bengal, it then became our duty to take up the question, carefully to consider all the information which was supplied to us and to determine the course which we should take. Now it seems to me that it cannot by any possibility be denied that, after the long discussions which have taken place on this subject, extending over many years, over the tenures of office of successive Viceroys and Lieutenant-Governors of Bengal, the time has fully come when it is absolutely necessary in the interest of all parties that a settlement should be arrived at. That some legislation on this subject is required has long been admitted by the zamíndárs, and it was not denied yesterday by my hon'ble friend Mr. Kristodás Pál, in his able speech. Legislation on this subject is necessary. But I strongly hold that you cannot legislate on one part of a question of this kind alone. Various attempts to do so have been made, but I am of opinion that the Select Committee on Sir Ashley Eden's Bill of 1878 were perfectly right when they

came to the conclusion that they were unable to deal with one part of the question, and that no satisfactory solution could be found unless it was taken up as a whole. That decision was approved by the Government of Lord Lytton, and the Rent Commission was issued, and I can only add my testimony to the ability, the zeal, the industry and the intelligence with which the members of that Commission discharged their duty. As has been truly said, we have in this case to deal with very different states of things in different parts of Bengal. In some parts of the Province the raiyats are strong and the landlords are weak; in other parts of the Province there is an opposite state of things, inasmuch as the raiyats are weak and the zamíndárs are strong. And that very diversity of circumstance of itself seems to show that if you are to treat on this subject, you must deal with it for Bengal as a whole. You must look to the interests of both zamíndárs and raiyats; you must consider what is the position of the landholders, and what is the position of the tenantry. You are bound to consider broadly and generally the interests of both parties to this great controversy. But then the preliminary objection is often taken that, on a wide view of this question, the Government and the legislature have no right to interfere between the zamíndárs and the raiyats in Bengal. Now, I was much struck by the line which was adopted by my hon'ble friend Mr. Kristodás Pál in regard to this branch of the question. He did not urge directly that the Government (and by the Government I mean both the Executive Government and the legislature—the Government in its largest sense) is not entitled, in consequence of the Permanent Settlement, to deal with the question at all. He approached very nearly at times, in his speech, to that assertion, but I observed that he never actually made it, and I was not surprised that one so skilful as he is, and so practised a debater, should have steered clear of that assertion. He knows the question well, and he must feel the force of the arguments which can be, and which have, in the course of this disoussion, been ably urged to show that the claim which has been set up by and on behalf of the zamíndárs, to the effect that the legislature and the Government are debarred by the agreement of 1793 from interfering on behalf of the cultivators of the soil, is not tenable. The clause of the Permanent Settlement which bears on this subject has been read to this Council more than once in the course of this discussion, but, nevertheless, I must read it again, because it is of the greatest importance that in a matter in which there is even an insinuation that a question of good faith is involved, there should be no mistake whatever. These are the words which have already been quoted in this Council, and which it is essential that this Council, in dealing with this question, should bear in mind—

'It being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor General in Council will,

whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil, and no zamíndár, independent taluqdár or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.'

“Now, as it seems to me, nothing can be clearer or more precise than that language. In those days, in many public documents, clearness and precision of language was frequently wanting; but I do not think that the most able draftsman in the world could easily have devised language which is more perfect and more absolutely clear than that which is contained in this passage. And it appears to me that that passage dispels at once all idea that the Permanent Settlement prevents the Government from coming to the assistance of the tenants. I hold, on the contrary, that it shows that the Government, in 1793, gave to the raiyats and all the cultivators of Bengal a distinct and binding assurance that they should look to them for protection and for the promotion of their welfare. It appears to me that under these words the Government gave a distinct pledge that they would protect the raiyats and promote their welfare. My hon'ble friend Mr. Kristodás Pál said, in the course of his speech yesterday, that he regarded the Permanent Settlement as the charter of the landlords and tenants in Bengal. I am willing to accept that statement; but if it is so, it is a charter given by the Government to the landholders on the one hand, and to the tenants on the other. Now let us for a moment look at the mode in which the engagements of that so-called charter have been fulfilled. From the moment when it was promulgated, the zamíndárs and other landholders of Bengal, as a class, obtained substantial benefits, which have subsequently been growing in value and importance from year to year; while, on the other hand, the cultivator of the soil received nothing but an assurance which, for long years of gradual depression, through what His Honour the Lieutenant-Governor of Bengal called to-day the culpable negligence of the Government, has been permitted to be wholly barren. Act X of 1859 was an honest attempt to give effect to that assurance. It was an attempt wholly unjustifiable, if the contention that the Government is precluded from interfering between landlord and tenant is a sound contention. But it is obviously clear that the Government and the legislature who passed Act X of 1859 did not for one moment admit any contention of the kind. That Act has undoubtedly done good, and I am not in the least inclined to decry it; still less am I inclined to think lightly of the purpose and intention of those who framed and passed it. But that Act has failed to fulfil all the objects for which it was introduced, because its authors did not foresee the mode in which their intentions might be set aside and rendered nugatory. I have heard it stated that the late Mr. O'Connell is reported to have said that

he could drive a coach-and-six through any Act of Parliament. Whether he could perform that feat or not I cannot say; but I will say this, that a coach-and-six has been driven, at all events, through the intentions of the Act of 1859, and that measures have been devised for evading what I cannot doubt to have been the object with which that Act was passed.

“But it has been suggested that we have no right to touch this question; because the zamindárs have been called proprietors and owners of the soil, it has been contended that it follows necessarily that they have a full and absolute right in the property, and that no one else has any interest in the soil at all. On the meaning of the words ‘proprietors and owners’, this question very largely depends. My hon’ble friend Mr. Kristodás Pál, and still more Rájá Siva Parsád, if I followed him, appeared to contend that no man could be called a proprietor who had not the most absolute and complete right to do in every respect whatever he pleased with the land. That certainly is not the notion which we entertain of an owner or proprietor of land in England. A great deal has been said about the zamindárs having been made proprietors after the English fashion. If that is so then I must point out that the vast majority of land in England is held by people who are owners in only a limited sense, who cannot sell or mortgage the land without the sanction of somebody else, and who very often cannot sell or mortgage at all. And it is quite a mistake to suppose that, because a man who has a limited interest in land is called a proprietor and owner, therefore he becomes an absolute proprietor and owner, and is given an absolute fee-simple right to the land to do what he likes with it. So far as I am able to judge by all the evidence which I have seen on this complicated and much contested question of land-tenures in India, I am led irresistably to the conclusion that there never has been in India an absolute owner of the soil in whom every possible kind of right of property is vested. It appears to me indisputable that the raiyats and cultivators of the soil have always had, or at least a great proportion of them have always had, rights in the soil more or less perfectly secured to them according to the circumstances of the time and the position of the parties, that rights of this description have been at all times recognised, and that they have never been abandoned by those who believed that they possessed them. And it must be remembered that, if it be true that ninety per cent. of the tenants in Bengal are occupancy-tenants now, or, to take the lower estimate which I have seen put forward upon good authority, that seventy per cent. only of them are now occupancy tenants, it is perfectly clear, at least as regards nine-tenths or seven-tenths of the landlords of Bengal, that they are not absolute owners in the sense in which the words have been used by the opponents of the Bill in the course of this discussion. And, as I have spoken of the position of the zamindárs, I

should like, in passing, to say that no man can recognise more fully than I do the truth of what was stated by the Mahárájá of Darbhanga yesterday, whose presence in Council, I am sure, we all welcome, when he said, in modest terms, that the landholders of Bengal were not all bad landlords; I have not the slightest intention of asserting that they are, and if you want any proof to the contrary, you will find it in the facts brought forward by the Lieutenant-Governor of Bengal in regard to the estates of the Mahárájá of Dumraon.

“It is not a question of the personal character of individual zamíndárs, but it is a question of what are the rights of two parties—both having some rights in the land—the stronger of these two parties, the zamíndárs, in many instances, resisting the rights of the other, who, on account of their weakness, are entitled to receive protection from the Government. Now the Hon’ble Kristodás Pál, in speaking on the Bill, described it as a measure which involved the redistribution of property. I confess it seems to me that, looking at the past history of this matter, looking at the gradual lessening of the rights of the raiyats since the Permanent Settlement, looking at the extent to which their position has, from a great variety of circumstances, been weakened since that date, and at the manner in which they have lost rights, which, to my mind, it is clear that they originally possessed, it would be much more true to say that this Bill is a Bill for the restoration, rather than for the redistribution, of property. But it does not go so far; we do not propose to restore to any portion of the cultivators of the soil the position in which they would now stand, if the system which was in force at the time of the Permanent Settlement had been unaltered down to the present time. What this Bill does is to leave the landlord, broadly speaking, all the advantages which he has acquired during these ninety years. It leaves him the rent which he now receives. All it says to him is ‘Your power of enhancement and eviction shall be, to a limited degree, brought back in the future to the position in which it stood ninety years ago’. To my mind, then, so far as regards any question of right, we have to-day a most plain right—a right which was asserted and exercised in 1859—to deal with this question, if we consider it necessary, for the purpose of protecting the interests and promoting the welfare of the cultivators of the soil. And we propose to take steps for that purpose which will fall very far short of restoring the cultivators of the soil to the position in which they originally stood. To attain this end, so far as can now be done, is the principle and the main object of the Bill which we are now considering. I will now pass, therefore, from the point which is really the only point under discussion at this stage, namely the principle of the Bill, and I will consider, as briefly as I can, some of its leading provisions more in detail.

“And, first, with regard to the question of occupancy raiyats. All that this Bill will really do, will be to render more effectual what was the true object and intention of Act X of 1859. As I have said, I do not believe that the framers of that Bill anticipated the mode in which the proposal which they then made would be evaded, and I feel no doubt whatever that, if they were here to-day to speak, they would accept, upon this point at all events, the legislation which we are now proposing as the most effectual means of carrying out their original intention. I was very much struck yesterday by a reference which was made by my hon'ble friend Mr. Evans to a letter, which I think he said he had seen in a newspaper, from a Bengal zamindár, in which the writer said that he recognised that the great body of the raiyats had a moral right of occupancy in their holdings. The law cannot deal with a purely moral right; but the moment you get so far as to say that a man has a moral right to an occupancy tenure, you are very near the day when the legislature will say ‘We will convert that moral right into a legal one’; and that is all we propose to do here now. It is admitted, upon all hands, that Act X of 1859 was intended to preserve all customary rights, and the twelve years’ rule was introduced for the purpose of giving rights over and above those which existed under the customary rules. In fact, the twelve years’ rule was not intended, whatever may have been its practical effect, to exclude from the right of occupancy any *khudkásht* raiyats, or, as they were called ‘resident’ raiyats, but, on the contrary, to bring within the benefits of that right certain other tenants, not resident raiyats, who, under the original definition of the Bill, would have to be excluded. Unfortunately, as I have said before, this Act has been so worked, that what was meant to give additional security has had the contrary effect, and has deprived many resident raiyats of what would have otherwise been their clear rights. Now, for my own part I confess that, in considering this question, I cannot altogether divest myself of the fear that, so long as you have a fixed limit of time at the expiration of which the raiyat will obtain a right of occupancy, there will be more or less danger of a continuance of the proceedings which have been resorted to under Act X of 1859. My own view on this subject has been very ably stated by Mr. Justice Cunningham in his Minute on the Rent Bill. Mr. Cunningham says :—

‘But this happy state of things becomes impossible when the legislature enacts that, at the end of a stated period, the tenant shall change his status, and the landlord lose a considerable portion of his rights. The two parties are throughout necessarily at arms length, and, as soon as the period approaches, the landlord naturally does something to prevent the accrual of the prescriptive right, and is always on the look-out to prevent the growth of occupancy rights, and to destroy them where they now accrued.’

“That was the reason, the desire to avoid that source of differences and possibilities of contention, which led me, in common with my colleagues, to submit to the Secretary of State the proposal which is contained in our despatch of March last. Lord Hartington did not approve of our proposal on that point, and preferred that the Bill should be framed in the manner in which it has been drawn up and is now before the Council. I certainly do not doubt that the Bill in this shape will have a very beneficial effect. I am not at all sure that it may not, in the first instance, go nearly as far as the proposal which we made; and all I have to say on the subject is, that it will be the duty of the Government very carefully to watch the proceedings taken under this Bill, if it becomes law, in order to see that the process of shifting raiyats from village to village, from field to field, does not spring up under this measure; and to stop what will be any clear and distinct evasion of the intention of this law.

“Now, passing from the subject of occupancy-rights, I have a few words to say on those provisions of the Bill which render void any contracts inconsistent with the general scheme of the measure. When you have to deal with a matter in which the practice of contracting out of the law (legally contracting, I admit) has been very largely resorted to, so as to show that those who have the power have not the inclination to conform to the obvious intentions of the legislature, it becomes a very serious question, at all times and in all countries, to what extent the legislature should allow their intentions to be overridden by an arrangement between two parties who stand towards each other in such very different relations in point of strength and position as the raiyat and the zamindár. I will give you an instance drawn from my own experience. Some years ago, an Act of Parliament was passed in England, on the subject of giving compensation for improvements to English tenants. It was wholly a permissive Act; it showed clearly the mind of the legislature, but it was left to the parties, or really to one of the parties concerned,—the landlord,—to decide whether he would be bound by the Bill or not. The majority of English landlords, the majority even of those who supported the Bill, proceeded at once to render it inoperative, and it had very little practical effect; so little that I was one of the very few people who did act under it. And what was very much like some of the proceedings complained of in some Government departments here, the Government themselves, under their own Bill, gave notice to all their tenants that they would have nothing whatever to say to the Bill. What has been the consequence? why, at the present moment Parliament is about to take up this question again, and to pass a Bill which will make it compulsory upon both parties to enter upon these arrangements, and will prevent them from contracting themselves out of them. The

general principle of making the Bill compulsory on both parties is pretty well agreed upon on both sides of the House of Commons. The case here is very similar. We have parties contracting out of the provisions of the law, and if that law is to have any effect at all the only process by which it can be made effectual is to say to these parties, 'You shall not be permitted to contract yourselves out of the law'. Surely it is high time to do so when we find men contracting themselves out of this and many other laws which impose cesses upon landlords, and which forbid the imposition of illegal cesses upon tenants, such as *abwabs* and other forms of illegal taxation. Upon this point I can only say that we are acting upon principles generally recognized in cases where the legislature finds itself in the position of having no alternative except to make the provisions of the law imperative upon the two contracting parties; for it is useless to pass this or any other measure unless it is determined that its provisions shall be enforced, and that the parties shall not have the power of escaping from them.

"Something has been said about the conduct of Government officials in Court of Wards" estates and in other estates. His Honour the Lieutenant-Governor has told you to-day of the orders which have been recently issued on that subject, and I can only say that these orders are entirely approved of by the Government of India, and that we have taken steps of a similar kind in regard to the other parts of India.

"Now, with respect to the question of transferability. The evidence appears to me, I confess, to be overwhelming, that in the greater part of Bengal the practice of transfer exists under a custom which the Courts have recognised. The Government of Bengal in one of the papers—I think it is the letter of Sir Ashley Eden—says 'that the weight of opinion received is in favour of recognising in the law what is an almost universal custom of the province,' that is the custom of transfer. If it is an almost universal custom in the Province it is only right that it should be recognised, and it appears to me that it is in the interests of the zamindárs that it should be recognised in the mode in which we propose to recognise it; because where this custom exists now the landlord can put in no claim for pre-emption. If we are going to reduce the right of anybody in regard to transfers, we are going, practically, to limit the right of the tenant, and not of the landlord, by giving the latter a power to come in and say: 'I claim to buy what you want to transfer,' and at a price to be settled by a Court instead of at the highest price which the tenant would otherwise obtain. There is a great deal to be said against giving the landlord this power, on the ground that the Court might adjudicate a price very much below the price which the tenant could get under the existing custom.

“The Hon’ble Kristodás Pál seems to think that the result of these provisions will be to force both parties into Court; but they may agree out of Court if they like. Would my hon’ble friend prefer that the landlord should be obliged to give whatever any other person offered the tenant for the holding? That is an amendment which may be considered in Committee, but it would not, in my judgment, be in favour of the landlord. It appears to me, I must say, that it would not be fair to the landlord to proceed in that way, because it would be very easy for the tenant to have a collusive sale and to get some friend to come forward and pretend that he was willing to buy at a very high price his occupancy-tenure, and thus to make it almost impossible for the landlord to exercise his right of pre-emption; and besides this, I am told that it happens in many parts of the country, that neighbours who are not on good terms with a zamíndár are often ready to pay a fancy price in order to annoy the landlord. This, I think, ought to be prevented, even at some risk of diminishing the rights which exist in many parts of the country under the custom of the present day, and we ought, therefore, to give the landlord the right of pre-emption at a rate to be fixed by the Court. If it is true that the system of transfer, as the Bengal Government has stated, is an almost universal custom of the Province, this provision is rather in favour of the zamíndár than otherwise, and I observe that the Maharájá of Darbhanga was inclined to take that view.

“Passing from that point, I come to the question of enhancement. Now, the position of the law with regard to enhancements is this. The Hon’ble Kristodás Pál has told us that enhancements are now practically at an end, and it is, I believe, generally admitted that, under the law as it stands at present, it is extremely difficult for a landlord to get even a just and reasonable enhancement. Notwithstanding that absolute right of property which we hear so much about, the landlord cannot now enhance, except under certain conditions laid down in the Courts. The practical effect of our proposal would be, I believe, to make just and reasonable enhancements more easy and not more difficult to obtain than at present; and I know very well that many persons who feel very strongly on the subject take objection to the Bill as now framed, because they think that it will have the effect of rendering it practically easier to enhance than at present. At the same time we do take, and deliberately intend to take, ample provision against unfair and unjust enhancement, against rack-renting and against depriving the tenant of his fair share of the produce. That we deliberately intend to do; but we are ready to render it easier than at present for the landlord to secure such enhancement as the law declares to be right. I won’t detain the Council now with any

remarks upon the subject of the tables of rates. The Hon'ble Kristodás Pál seemed to deprecate that part of the Bill. It will, no doubt, receive the careful attention of the Select Committee, and by the time the Select Committee meets we shall have a great deal of practical evidence upon it, and it will then be for the Select Committee to consider how far the principle can be applied. I think the principle would be useful, but it is not essential to the system of the Bill. It may be applied to one part of the country and not to another. I said just now that we did not intend to permit the rents of these occupancy tenants to be unduly enhanced, and that is why we have fixed a maximum. The question of the amount of that maximum is undoubtedly an important one, requiring the consideration of the Select Committee. The difference between twenty and twenty-five per cent. is not very great; and the Lieutenant-Governor has before him evidence which shows that twenty per cent. is as far as we ought to go.

I come now to what the Bill calls the ordinary raiyat. We have, thought it right to give a man in that position a certain amount of security, a very much less amount of security than is given to the occupancy tenant, but still some degree of security, and we propose to give it in two ways: first, by fixing a maximum similar to, but higher than, that fixed for occupancy tenants; and, secondly, by providing compensation for him in certain ways. I must say that I have found it by no means easy to get a clear idea of what is the position of these tenants at present. Mr. Field, in his Digest, that very able work for which we owe him so many thanks, and of the accuracy of which we have so many proofs,—lays it down, in the 51st article —

'The rent of a raiyat not having a right of occupancy can be enhanced only after service upon him of a notice of enhancement in the manner provided by article 45. If after such a notice has been served upon him, such raiyat elect to remain in possession of the land he cannot be compelled to pay more than a reasonable rent therefor.'

"Well, reading that, you would suppose that the intention was that this tenant should have the right to sit on the land at a reasonable rent; but on the other hand the landlord has power to give him notice to quit, and if he does the tenant has to go; so, while it would appear that the law recognises, to a certain extent, the right of the tenant-at-will to sit on the land at a reasonable rent, it gives him no practical means of securing that right. I am not inclined to put this man in a worse position than he is in now, or than the law intends him to be in, and it appears to me, therefore, that it is quite impossible for us to overlook his position and leave him altogether under the operation of a law which,

as far as I can understand, is very vague and uncertain. The tenant in this position is regarded and spoken of as a tenant-at-will, and I believe the Courts regard him in that light; but at the same time I am, I think, right in saying that the idea of a tenant-at-will is a purely English idea, and that, according to indigenous Indian ideas, no person can strictly be described as a tenant-at-will. Now, with regard to compensation, we propose to give him compensation of two kinds—compensation for improvements and compensation for disturbance. As to compensation for improvements I have little to say; because if a tenant makes *bond fide* improvements which add to the letting value of the land, and, therefore, enables the landlord to obtain more money for that land, then I say here, as I have always held at home in regard to my own tenants, that it is only common honesty that that man should be compensated for those improvements. It is, of course, necessary that the improvement should be a *bond fide* substantial improvement, and not anything of a purely temporary character, or which forms part of the ordinary processes of good husbandry. I am told that there are banks made between one field and another, and *kacha* wells which are made one year and renewed the next; but these are not permanent improvements, and it will be for the Select Committee to decide for what improvements compensation should be paid. All that I say is, that when a man leaves my land he is entitled to be paid for anything he has done from which, when he leaves, I shall reap benefit. As regards compensation for disturbance the main objection urged against it is that it is unknown in India. I do not deny that that is a *prima facie* objection to the system, and if those who do not like it will produce before the Select Committee any better proposal that gives fair and reasonable protection against arbitrary evictions, all that I can say is that we shall be perfectly willing to consider it, and that if it is better than our plan, and more in accordance with Indian customs, we shall accept it. But I must say that the argument that it is a system unknown in India does not lie altogether in the mouth of those who have been arguing in the course of this discussion in favour of the theory that the land-owners of Bengal are land-owners after the English fashion, and that the tenants in Bengal are tenants-at-will according to the English meaning of the term. You cannot introduce English arguments into one part of this controversy, and then object to their importation into another part; if any other plan can be suggested more in accordance with the habits of the people than that proposed it will be fully considered. But I am most desirous that something should be done for this class of men which will render real the security which the law appears at present to contemplate. The Hon'ble Kristodás Pál appeared to think, if I did not misunderstand him, that the class of persons to whom I am now alluding were in the same position as the *paikásht* raiyats. It seems

to me that the position of the two is very different. What I understand by a *paikásht* raiyat is a raiyat who had less security and, therefore, paid less rent. Now, the position of these tenants is that they have less security and pay more rent. That has come about through the operation of those economic laws to which the Hon'ble Mr. Hunter alluded yesterday. When the *paikásht* raiyat paid less rent the land was looking for tenants, now the tenants are looking for land, and that is why, instead of paying less rent, they have to pay more. But that only brings them more and more into the category of cottier tenants, and any one who has studied the land question in any part of the world knows that a system of cottier tenants holding at competition rents is the worst land system that can be conceived. The Select Committee should bear in mind how desirable it is that we should not permit, under this Bill, a future up-growth of tenants of this description; that is one of the points which the Select Committee should keep carefully before them. These men may be few in number now, but, as Sir Stuart Bayley said, there are reasons why under this Bill they may increase, and, if they increase largely, the result will be that this Bill will not prove a settlement, but that thirty or forty years hence we shall have to go further still. I do not think I need trouble the Council with any further remarks on the details of this Bill. All the matters which are really matters of detail are matters for the Select Committee. The Government invites the assistance of the Council, of the Select Committee, of the parties interested, of their representative associations, and of the public, in regard to this measure. They will on their part give their fullest and best consideration to any suggestions which may be made. We are about to give eight months for the consideration of this important subject, which is ample time, considering how long the matter has been under consideration. I have no doubt at all that the Bill is capable of improvement in many respects, and our only wish is that it should be made, during its passage through this Council, as good as possible for the purpose for which it is intended. I hope that all those who are interested in the matter, and who have studied it, will aid the Government and this Council by giving them their opinions during the time which will elapse before we resume the consideration of the Bill. I have only further to say that the desire of the Government in introducing this measure is to bring to a close a long continued controversy, to carry on and to complete the work of 1859, and to redeem, as far as it is still open to them, the assurance given to the cultivators of the soil in 1793. All the changes which have taken place in the agricultural condition of Bengal—the great increase in the area of cultivation, the growth of the population, the substitution of English for Native ideas on the subject of landed property, the advancing prosperity of the country—have tended to raise the

rents of the landlord, and many of them to weaken the security and reduce the status of the raiyat. All these advantages gained during the last ninety years will remain to the zamíndárs; broadly speaking we do not touch them, but, starting from what we now find, we have endeavoured to make a settlement which, while it will not deprive the landlords of any of these accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement, and which we believe to be urgently needed, in the words of that settlement, for the protection and welfare of the taluqdárs, raiyats and other cultivators of the soil, whose interests we then undertook to guard, and have, to our shame, too long neglected."

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA ;
 The 13th March, 1883. }

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 pro-
visions of the Act of Parliament 24 & 25 Vic., cap 67.*

The Council met at Government House, Simla, on Thursday, the 19th
April, 1883.

P R E S E N T :

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

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

Major the Hon'ble E. Baring, R.A., C.S.L., 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 J. W. Quinton.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING moved for leave to introduce a Bill to amend the law relating to certificates granted under Act XXVII of 1860 (*an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*). He said :—

“ Article 12, Schedule I, of the Court-fees Act, VII of 1870, provides, among other matters, for the levy of a fee of two per cent. on the amount or value of the property in respect of which a certificate is granted under Act XXVII of 1860. The following note is appended to the article :—

‘ The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realized by him under such certificate.

‘ If the monies so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess. In default of filing such statement within the time allowed, the Court may cancel the certificate.’

“ In the course of the discussions in the Legislative Council which preceded the passing of the Probate and Administration Act, V of 1881, a proposal

was made by Mr. Pitt-Kennedy that Act XXVII of 1860 and the Court-fees Act should be amended so as to require, from any one obtaining a certificate under the former Act for the recovery of any portion of the estate of a deceased person, payment of a court-fee at the rate of two per cent. on the entire value of the estate. A circular was thereupon addressed to Local Governments calling for opinions on this proposal. The replies show that the weight of authority is altogether against its adoption; but many of them call attention to the fact, already more than once brought to the notice of the Government of India, that the requirements of the note in the Court-fees Act, to which I have referred, are, as a rule, neglected or evaded; that persons taking out certificates do not file the statements required by it; that the Courts have no proper means of compelling them to do so; and that large amounts of debts are thus collected under certificates obtained for trifling sums. Various suggestions have been made for enforcing compliance with the provisions of the note, but there are objections to any device for securing the fee which involves the imposition on the person obtaining the certificate of a duty to be performed after he has obtained the certificate. The great mass of the people who take out certificates are so indolent or careless or unintelligent, that there is little hope of getting them to comply with the provisions of such a law; and the consequence is that, if it is not allowed to remain a dead-letter, as the present law has been, public officers will be constantly compelled to inflict penalties on large numbers of persons, many of whom have been guilty of no deliberate wrong. The simple plan is that already adopted without any warrant of law by some of the officers consulted, namely, to require each applicant for a certificate to file with his application a schedule of the debts in respect of which the certificate is required, and to amend Act XXVII of 1860 so as to make the certificate good only for the debts entered in the schedule, at the same time allowing the certificate-holder, if he afterwards finds that he needs a certificate for other debts, to obtain an extension of the certificate on paying the additional duty and (if the Court requires him to do so) giving additional security. The only objection that has been taken to this arrangement is that taken by the Calcutta High Court in their Registrar's letter No. 54, dated 10th January, 1880. They fear that 'improper use' might be made of the schedule 'by fraudulent debtors whose debts were not in the knowledge of the applicant at the time (he filed the schedule), or in some way prejudice might arise.' Now, there is little doubt that a fraudulent debtor would take the point referred to, and that he would thereby put the certificate-holder to the trouble of explaining his omission to enter the debt in his original schedule; but there would be no great hardship in this, and there would, on the other hand, be a certain compensating advantage, inasmuch as (as observed in one of the replies to the circular) the fear of this would stimulate applicants for certificates to be careful in compiling their schedules.

Assuming that the law is to be amended in the manner proposed, a further question arises as to what debts the applicant for a certificate should be bound to include in his application. Should he be bound to include—

- (a) all debts known to him to be outstanding, including those which could be realized equally well without a certificate; or
- (b) only those debts which he chooses to include, because he believes he cannot realize them without a certificate?

“The former, it is believed, would be more in accordance with the views of those who framed the existing law; but it appears to the Government that it would be sufficient to adopt the second mode of valuation, and allow the applicant to take out a certificate in respect of such debts only as he thinks fit. No doubt, a larger revenue might be obtained by insisting on the other mode of valuation; but it is apprehended, having regard to the class of people who take out these certificates, that any system requiring the applicant to give a complete list of debts would, if it was to be thoroughly enforced, necessitate proceedings of an inquisitorial nature for which no sufficient machinery exists, and which it would not be worth while to undertake for the sake of the additional revenue to be obtained. The rule which it is now proposed to lay down, while it dispenses with all proceedings of an inquisitorial or penal nature, may reasonably be expected to lead to some slight increase of the revenue under this head, inasmuch as the certificate being expressly limited in its operation to the debts specified in it, the necessity of including in it all debts except those due from persons standing in some peculiarly friendly or confidential relation will be brought home to the applicants, and debtors will probably become alive to the risk they run in paying a debt which is omitted from it. The additional revenue realised will not, as I have already observed, be as large as if the alternative mode of valuation were adopted, but this is a result which, for the reason I have already stated, the Government is prepared to accept. The present Bill has been prepared for the purpose of carrying out these views. The effect of it, if it becomes law, will be that every applicant for a certificate under Act XXVII of 1860 will be required to state in his application the debts in respect of which he desires the certificate. It will be in his option to include what debts he pleases. He will pay duty only in respect of the debts which he elects to include, and the operation of the certificate will be limited to those debts. If he subsequently desires to include other debts, he can have the certificate extended to them on paying the additional duty. The note appended to article 12 of the schedule to the Court-fees Act will not apply to him. For the rest, the amendments made by the Bill in Act XXVII of 1860 and in the Probate and Administration Act, 1881, are of unimportant nature, and merely such as are necessitated by the above alterations in the substance of the law.”

The Motion was put and agreed to.

Major the Hon'ble E. Baring also introduced the Bill.

410 *LITTLE COCOS AND PREPARIS ISLANDS LAWS.*

CIVIL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the motions relative to the Bill to amend the Code of Civil Procedure, 1882.

Leave was granted.

BURMA LABOUR LAW, 1876, REPEAL BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to repeal the British Burma Labour Law, 1876, be taken into consideration. He said that, when he had the honour to introduce this Bill, he explained that the law was practically a dead-letter, and no operations had ever been effected under it, but that it was found to interfere with the free flow of labour from Madras to British Burma. The Chief Commissioner of British Burma had asked the Madras Government that the law should be repealed, and the latter had readily acceded to the proposal. The Bill was one of the shortest, consisting of but one section, and it was not thought necessary to refer it for the consideration of a Select Committee.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill be passed.

The Motion was put and agreed to.

LITTLE COCOS AND PREPARIS ISLANDS LAWS BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the law in force in the Little Cocos Island and Preparis Island be taken into consideration. He said that the Bill had been published and circulated. All the replies to it had been received, and they contained nothing to show that any amendment was required in the Bill as it had been introduced.

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.

The Council adjourned to Thursday, the 3rd May, 1883.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 19th April, 1883. }

*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 Government House, Simla, on Thursday, the 3rd
May, 1883:

PRESENT :

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

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

Major the Hon'ble E. Baring, R.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING moved that the Bill to amend the law relating to certificates granted under Act XXVII of 1860 (*An Act for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons*) be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir Steuart Bayley, the Hon'ble Mr. Hope and the Mover.

The Motion was put and agreed to.

Major the Hon'ble E. BARING 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.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Hon'ble Mr. Gibbon be added to the Select Committee on the Bill to amend and consolidate certain

BENGAL TENANCY.

nactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 10th May, 1883.

D. FITZPATRICK,

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

SIMLA; }
The 3rd May, 1883. }

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, Simla, on Thursday, the 10th May, 1883.

P R E S E N T :

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

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

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

Major the Hon'ble E. Baring, B.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

**NORTH-WESTERN PROVINCES AND OUDH LOCAL BOARDS
BILL.**

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to provide for the constitution of Local Boards in the North-Western Provinces and Oudh. He said :—

“ My Lord,—I have the honour to move for leave to introduce a Bill to provide for the constitution of local bodies in each district of the North-Western Provinces and Oudh, to administer the expenditure of that portion of the rates levied on land which is applicable to local purposes in that district, and of the income accruing from certain other sources of revenue which may from time to time be made applicable to like purposes.

“ The object of the Bill is to give effect to the views of the Government of the North-Western Provinces and Oudh on the subject of local self-government as enunciated in the Resolution of that Government, dated Lucknow, 5th December, 1882, and published, together with the letter of the Home Department conveying the general approval of the Government of India of Sir Alfred Lyall's proposals, in the Local and Imperial Gazettes during the same month.

“The law at present in force in the North-Western Provinces and Oudh does not admit of these proposals being fully carried out. The levy of rates in the united Provinces is authorised by Acts III and IV of 1878. Those Acts prescribe rigidly the proportions in which the rates levied under them are to be allotted by the Local Government to each district, and direct the appointment of district committees for the purpose of assisting in determining how the allotments shall be applied, and in the supervision and control of the expenditure of such allotments; but they leave the appointment of the district committees and the definition of their functions and authority altogether in the hands of the Local Government; they allow of the number of members of each committee being so small as six, and of half even of this small number being Government officers; and they enable the Local Government to divert to general provincial objects all balances of the annual allotments remaining unexpended at the close of each year.

“The duty, therefore, devolves on me of asking from the Council leave to introduce Bills which will remove these obstacles to giving effect to the Resolution interposed by the existing law, and substitute for it enactments under which the proposals of the Local Government can be brought into operation.

“With a few exceptions, on which I need not dwell, as there will be ample opportunity for discussing them in Committee, the Bill embodies and throws into legislative form the recommendations of the Resolution.

“Those proposals have been the subject of long and careful deliberation with the Government of the North-Western Provinces and Oudh. During the rainy season of last year, under instructions from His Honour the Lieutenant-Governor and Chief Commissioner, District and Divisional Officers put themselves in communication with the leading non-official gentlemen of their respective charges, including the members of municipal and district committees. Meetings were held at tahsils by Collectors or their Assistants, and at head-quarter stations by Commissioners. The points on which the Government wished for information were fully discussed at these meetings and elsewhere, and the outcome of the meetings and discussions was a mass of reports filling more than 300 closely printed pages. In August, the Lieutenant-Governor convened a large committee at Naini Tal, presided over by the Senior Member of the Board of Revenue, and having on it as members three Commissioners of Divisions, four District Officers, the heads of the Police and Educational Departments, two officers of the Secretariat, one of whom—Mr. Woodburn—had been a Deputy Commissioner of long experience and great efficiency in Oudh, and four distinguished Native gentlemen, one of them—the Hon’ble Rájá Sivá Prasád, a Member of this Council.

“To this Committee were referred for consideration and report the Resolutions of the Government of India on the subject of local self-government and the orders of the Local Government on the subject of those Resolutions, the reports of Divisional and District Officers to which I have above alluded, and a draft Bill embodying such provisions of Acts III and IV of 1878, and Act XV of 1873, as seemed *prima facie* applicable to the new arrangements.

“The report of this Committee is dated the 30th September, and its labours are thus characterised by the Local Government :—

‘To this Committee Sir Alfred Lyall is much indebted for clear and well-reasoned conclusions upon all the principal matters referred for deliberation, especially upon the methods adopted in the present circumstances of the country for carrying out the policy of local self-government as detailed by His Excellency the Governor General in Council.’

“Then followed the Resolution of the 5th December recorded by the Local Government, accepting, with certain modifications, most of the recommendations of the Committee. Bills were drafted to effect the necessary legislative changes, which, when finally approved of, were forwarded to the Government of India; but the Council towards the close of the Calcutta session was so much occupied with more pressing business, that there was no time available for the consideration of those measures; and I am only now in a position to introduce the Bills as revised by the Legislative Department.

“The North-Western Provinces and Oudh Local Boards Bill, as its preamble already quoted sets forth, provides for the constitution of local bodies, in supersession of the existing district committees, to administer the expenditure of that portion of the rates levied on land which is applicable to local purposes in that district, and of the income accruing from certain other sources of revenue which may, from time to time, be made applicable to the purposes.

“The first, and perhaps most important, point dealt with is the constitution of these boards.

“Power is given by section 3 to the Local Government to divide, for the purposes of the Act, each district into sub-districts, which will generally correspond with tahsils; and section 4 establishes for each sub-district a local board having authority over that sub-district, and for each district a district board having authority over the entire district (cantonnments and municipalities excepted); while sections 23 and 24 define the relations of local boards to district boards, and the mode in which control by the former is to be exercised by the latter. The arguments in favour of this are stated by the Local Government in the following passage which I extract from the Resolution of December, 1882 :—

“But for the Provinces generally, the Lieutenant-Governor quite agrees with the arguments in favour of making the area of each subordinate board’s jurisdiction coterminous with

a tahsil; and this plan has accordingly been adopted. On the one hand, the formation of representative boards for the chief subordinate divisions of each district will ensure better knowledge of, and attention to, local wants, more regular attendance at board meetings, closer supervision over the departments under local management, and prompter and more effective execution of local works, than is possible with a single district board meeting only at headquarters. On the other hand, to make separate and independent units of local administration within each district would tend to break up piecemeal the organisation of the district; and while increasing the necessity for, would throw serious difficulty in the way of, the constant exercise of central direction and control. For it must be admitted that there is little or no prospect of obtaining for sub-divisional boards throughout the Provinces, or even in different parts of many districts, an equal standard, or anything like a level, of general intelligence and working capacity. To set up all these boards as separate administrative bodies would be to accept the risk of great and confusing variety in the results of their administration—a risk that would be greatest in the remote and backward tracts, where intelligence and energy are often most required, and where these qualities are of course likely to be available on the spot. The business of settling matters of finance and adjusting public interests between the several sub-divisional boards concerned in them would cause much correspondence, and would lead to the multiplication of petty offices, with the probable consequence of wasting much money and time on establishments, and in the preparation, submission and scrutiny of returns and reports. The plan of making a central district board an aggregate of the sub-divisional boards is, on the contrary, in many ways favourable to the adjustment of the mutual relations between the various subordinate boards and between them and the central board; while it appears to be the best arrangement for maintaining a consistent and systematic administration of local affairs throughout the district. Moreover, upon no other system could the minor bodies generally rely upon securing the membership of the leading men within their jurisdiction; while lastly, the plan has the great advantage of reducing to a minimum the necessity for official superintendence and interference. If the sub-divisional boards were independent, the expedient of placing them in different classes for the purpose of graduating their powers according to the circumstances and conditions of different parts of the Provinces and of districts would in the beginning probably be unavoidable. But all such intermediate classifications are apt to affect the simplicity of the broad groundwork and fundamental principle of self-government; and the Lieutenant-Governor infinitely prefers that the district board, which will be by far the best judge of the claims and capabilities of each section of its own body, should delegate the proper degree of power and allot the requisite amount of funds to each interior circle. It will be for the district board, as composed of members representing all parts of the district, to act, after full consultation, upon the system thus sketched out, and to draw up a scheme explaining the arrangements made for distributing the work of local administration to its various subordinate boards, and adjusting their mutual relations.

“I may add that the tahsil is in the North-Western Provinces the smallest unit of revenue-administration; that its area is rarely altered; that it is well known to all residents within it; and that it corresponds generally with the boundaries of the topographical division of the country known as parganas.

“The constitution of local bodies being thus provided for, the next step was to determine the method of appointing the members of these boards. Sections

5 and 6 lay down the following broad rules:—At least three-fourths of the members of each local board must be persons residing or owning landed property, or carrying on trade or business, in the sub-district, and must be *chosen by election*. The remaining fourth may be appointed directly by the Local Government.

“As to the mode of election, Sir Alfred Lyall writes in paragraphs 7 and 8 of the Resolution:—

“Whether, and to what extent or proportion, the membership of the boards should be determined by election was specially referred for inquiry and opinion to all the districts of the Provinces; the point was discussed in every district with the result described in the district and divisional reports; and, as is shown in the Committee’s report, it was closely debated by the Provincial Committee. The large towns are much alike everywhere; they are always centres of comparative wealth and intelligence; they form constituencies easily represented, and their administration is always open to public observation and criticism. But the ordinary Indian districts possess none of these characteristics, and, as far as can be judged from these papers, the balance of Native opinion preponderates decidedly against the unrestricted introduction into them of the elective system. Such a step certainly appears inadvisable at the present time, when the state of society varies so widely in different parts of the country, when the whole principle of self-government is novel and imperfectly understood, and when the practice of general election is not only unknown outside the towns, but is apparently not in accord with the feelings and ideas of those classes of the community that have the largest interest in local self-government, and to whom we must look for its success. It is manifest that local self-government—meaning a system of administration by the gratuitous exertions of persons best acquainted with the characteristics of the neighbourhoods in which they are interested, and possessed of means, leisure and public spirit enabling and impelling them to devote themselves to that administration—cannot be initiated and developed into real independence except by the co-operation of these classes, represented by men who can lead and will be trusted by the community at large. This is how all systems of local representation have begun in all times and countries; so that it would be remarkable if in such a country as India the best way of beginning were found to be by popular suffrage. That the services of such men could be secured by open election, that they themselves would seek election or would generally allow their names to be submitted for the purpose, seems from all the information hitherto collected to be questionable. If, therefore, we find that the views and prepossessions, as far as they have been elicited, of persons qualified to form a judgment on the best mode of initiating local self-government in the extensive districts of these Provinces are largely in favour of leaving at the outset the constitution of the local boards more or less in the hands of the Government, there seems to be no sufficient reason for endeavouring, almost on the spur of the moment, to invent any such elective machinery as would necessarily raise numerous and various questions of franchise and voting rights, and all the practical difficulties inseparable from the attempt to adjust an arbitrary system to the diverse circumstances of the country. In short, the solid and universally recognised fact that local self-government depends absolutely for its success upon the character and ability of those to whom it is entrusted has led the Lieutenant-Governor and Chief Commissioner to the conviction that, in inaugurating the policy in the districts, a system of careful and consultative nomination by Government of the

electoral body is preferable to election by untried and unfamiliar methods. Sir Alfred Lyall believes that this conclusion is supported by the judgment, and conforms to the present wishes of a large majority of the people.

‘ Having regard, then, to the extreme importance of placing in competent hands the duties and responsibilities of district administration in the beginning of what is avowedly an experiment, and to maintain the continuity of existing arrangements which imply (in such matters as, for example, education and sanitation) a standard of civilisation in advance of the average intelligence and culture of Native society, the Lieutenant-Governor and Chief Commissioner has decided to adopt in principle the recommendation formulated in the 9th paragraph of the Provincial Committee’s report. The Committee proposed that the Government should nominate for each tahsil an electoral body which should elect a certain number of its members to form the tahsil or sub-divisional board. They advised also that a minimum qualification (on the basis of land-revenue or license-tax assessment) should be fixed, and that details might be left to be settled by local officers. But the differences in the distribution of the population, of wealth and of property in land between and within different districts are so large and manifold, that, after much examination of the question, it has been found impracticable to fix any comprehensive qualification for election purposes, much less to devise methods of canvassing and election that would be everywhere applicable or universally acceptable. The only comprehensive plan that can be laid down at the first introduction of the system is to determine, with reference to the area, revenue and tenures, population, wealth, and to other conditions and special features of each sub-division, how many persons, not being salaried officers of the Government, would fairly represent its inhabitants and interests. The District Officer must then be empowered to prepare in each district the measures that may be most convenient and appropriate to its circumstances and peculiarities for ascertaining how many suitable persons are available in its sub-divisions and how they can best be chosen. The proceedings taken will be reported to the Government, and the lists of electors that are drawn up will be duly placed on record. As soon as the lists are complete, the electors will be asked to return from among their own body, by such method as may seem appropriate or necessary, the members of the sub-divisional board, who will hold office for a term of three years.’

“ A section will be found in the Bill enabling the Local Government to introduce this system ; and any abuse of the power conferred in the direction of limiting the number of electors is guarded against by the proviso that the persons entitled to vote at the election of a member of a local board shall not be less than twenty-five. In addition to the elected members, at least one-fourth may be directly appointed by Government. This principle, my Lord, has been already accepted by the Council in the case of the Central Provinces, and the reasons for it were put forth with great eloquence and force in the debate on the Local Self-Government Bill for those Provinces on the 12th of January last, by the Hon’ble Sayyad Ahmad Khán, a Native gentleman whose ripe experience, broad views, sympathy with his countrymen and disinterested and successful efforts for their enlightenment must always attach the highest weight to his

opinions. I shall read to the Council merely the concluding words of the hon'ble member's speech on the subject:—

‘ In a country like India, where caste-distinctions still flourish, where there is no fusion of the various races, where religious distinctions are still violent, where education in its modern sense has not made an equal or proportional progress among all sections of the population, I am convinced that the introduction of the principle of election, pure and simple, for representation of various interests on the local boards and the district councils, would be attended with evils of greater significance than purely economic considerations. So long as differences of race and creed and the distinctions of caste form an important element in the socio-political life of India, and influence her inhabitants in matters connected with the administration and welfare of the country at large, the system of election, pure and simple, cannot be adopted. The larger community would totally override the interests of the smaller community, and the ignorant public would hold Government responsible for introducing measures which might make the differences of race and creed more violent than ever.’

“Section 6 of the Bill provides that ordinarily the district board shall consist of *all* persons who for the time being are members of the local boards of the sub-districts comprised in that district. This provision is in accordance with the views of the Local Government and of the Provincial Committee, who consider that under any other system leading Native gentlemen would not consent to take office, and that any distinction drawn, or supposed to be drawn, in point of position and dignity between membership of the local board, on the one hand, and the district board on the other, would certainly occasion much unpleasantness, besides inducing an element of friction which is manifestly undesirable in the public interests. Power has, however, been reserved to the Local Government to direct that local boards shall elect delegates to represent them on the district board—a power to be exercised in cases when the district board constituted in the ordinary way would be too numerous a body for the efficient transaction of business.

“I need not detain the Council with the details of the arrangement made in sections 7 to 12 respecting the term of office, the resignation and removal of members of the boards, the filling of casual vacancies and such matters, which will doubtless be fully discussed in Committee, but pass on at once to the provisions for the appointment of chairmen of the local and district boards.

“It is quite clear that, in a board composed mainly of non-official members new to the work, much of its efficiency will depend on the choice of a chairman, whose functions will be to hold the balance among parties and to guide discussions, and with whom will practically rest the initiation and control of ordinary business. As regards local boards, the Bill is in accordance with the views of the Local Government, which allows them to elect one of their members to be chairman for one year. A majority of the Provincial Committee considered

that it would be sufficient for boards to elect a chairman at each meeting, but His Honour the Lieutenant-Governor was of opinion that some element of permanency in the office of president of the local boards would be necessary at first for the proper transaction of business, and in order to preserve continuity of administration and uniformity of procedure. Fresh elections of chairmen at each meeting of the board would open a door to much change and contention, since any decided difference of opinion on matters before the board might lead to a contest at each meeting over the election of a chairman.

“The appointment of a chairman to a *district* board is, however, a matter of much greater importance, and has everywhere been warmly debated. The views of Sir Alfred Lyall have been expressed on it at some length, and I give them in his own words. They have been substantially thrown into legal form in the 14th section of the Bill :—

‘Upon the third point of importance in the constitution of the district and sub-divisional boards, namely, the appointment of their chairman, the Lieutenant-Governor and Chief Commissioner observes that the question of the chairmanship of the district board was the subject of prolonged discussion by the Provincial Committee. Their finding coincides in principle with the opinions and prepossessions generally elicited by the district inquiries, and recorded in the district and divisional reports. Of the four Native members of the Provincial Committee, three strenuously insisted upon the necessity for maintaining by law the chief District Officer as chairman of the district board. The fourth—a gentleman of large property and influence in his own district—held a different opinion; though it may be added that, while he is said to be exceedingly well fitted for the chairmanship, he had nevertheless declined the office in his own district on the grounds of indifferent health, want of leisure and residence at a distance from head-quarters; and the district and divisional reports, which, in the Lieutenant-Governor’s opinion, evince on the part of the writers a most satisfactory disposition to interpret the genuine feeling and wishes of the people, indicate clearly that the main current of Native opinion runs decidedly toward maintaining the position of the chief District Officer at the head of local affairs, until some experience in the transaction of public business and the management of committees has been gained by leading members of the Native community. It is, beyond doubt, expedient that the district board should be exempt from official pressure and unnecessary interference; but the Lieutenant-Governor is confident that in these Provinces all District Officers are thoroughly prepared to give every facility and aid to the policy of the Supreme Government, and to promote whatever measures may be adopted for its introduction. There is accordingly, in Sir Alfred Lyall’s opinion, no reason why due weight should not attach to the able and impartial reports of the officers best qualified to inform and advise their Government when they declare that the Native community, so far as it has been consulted, has expressed itself very widely in favour of retaining for the present the District Officer as chairman of the district board. It seems that the District Officer is preferred and trusted in the existing complexion of local affairs and feelings for sound and practical reasons. There can be no question that the experience and business habits of an official chairman will at first be of great assistance to the district boards; and there must also be borne in mind the strong probability that the boards will for a time need much direction and advice, possibly

even admonition and control ; especially where distinctions of creed or caste, or other differences, still keep alive the germs of antagonism among sections of the Native community.

* * * * *

‘But * * * the middle course recommended by the Committee in the 12th paragraph of their report, which course the Lieutenant-Governor and Chief Commissioner has decided, with a slight amendment, to adopt, will further test the wishes of the country, and will allow time for opinion to form and show itself among the district boards themselves. The Committee recommend that the District Officer shall be *ex-officio* chairman of the district board, except when the board, on application made to the Government by a majority of the members, receives permission to elect a non-official chairman from their own body. The Lieutenant-Governor and Chief Commissioner agrees to the principle, with this modification, that, as soon as all the members of the district Boards shall have been chosen, or at some time before the end of the present official year, they shall be invited to assemble for the purpose of deciding whether they wish to proceed to the election of a non-official chairman, or whether they will leave their chairman’s appointment in the hands of the Local Government.

* * * * *

“This concludes all the remarks which it seems to me necessary at present to offer on the constitution of the district and local boards. Section 25 of the Bill provides for the appointment of joint committees of two or more district boards for any purposes in which they may be jointly interested—a provision necessary to secure the due consideration of projects which affect large tracts of country.

“The duties to be performed by district boards will be found enumerated in section 22 of the Bill. These principally consist of the management, construction, repair and maintenance of public roads, wells, tanks, ferries, cattle-pounds, schools, hospitals, dispensaries and other public institutions of a like nature. The district boards will delegate to the local boards authority to deal with all or any of these matters within their respective jurisdictions, and thereby, it is hoped, secure the application to such duties of that local knowledge and local interest which should prove the best guarantee for their efficient fulfilment, controlled by the wider experience of the larger body. I may mention here that section 60 of the Bill amends the Northern India Ferries Act of 1878 by inserting a new section enabling the Lieutenant-Governor and Chief Commissioner to direct that any ferry shall be managed by the district board, and that its proceeds, in whole or in part, shall be paid into the district fund.

“For the performance of these duties, boards are authorised to appoint their own servants, under certain restrictions deemed necessary to guard against extravagance and inefficiency ; and by section 35 of the Act they are placed in possession of funds to meet the charges which such duties involve.

“Immediately on their constitution they will receive the balances of all allotments made to the district which remain unexpended on that date; and in future such allotments, the amounts of which I would remind the Council are prescribed by law, will be made over to them, and with the proceeds of the other sources of revenue enumerated in section 35 will constitute a district fund at the disposal of the district committee. Under the present system, there is practically no district fund, for all balances unexpended at the close of the year are swept into the general Provincial Exchequer, and the districts are left with empty treasuries until they receive fresh allotments. This will be no longer possible, and the district committees will be able to carry on their administration from year to year with an accurate knowledge of their financial condition. Their revenues will not at first be large, and an important part of them will consist of assignments made from the general provincial funds; but it will doubtless be in the power of the boards to augment them to some extent by closer supervision of the management of the other sources of income enumerated; and, as they prove their fitness to administer the funds at their disposal, the Local Government will not be backward in increasing its assignments.

“The next point of importance in the Bill is that of control, and on this, I am happy to say, there is no necessity for me to dwell. The principle has been adopted by the Council in the Central Provinces Local Self-government Bill, and the reasons for insisting on it were urged by my hon'ble friends Messrs. Ilbert and Crosthwaite with unanswerable force in the debate on that measure. Their speeches are fresh in the ears of the Council.

“In this Bill the powers of control reserved to the Local Government are almost identical with those conferred upon the Chief Commissioner by the Central Provinces Act, with the exception that, in case of any single resolution, order or act of the committee being in excess of the powers conferred upon it by law, we enable the Commissioner of the Division and the Local Government to deal with such in the same manner as with proceedings likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public or to any class or body of persons; *i.e.*, the Commissioner may in such a case suspend action, and, if he does so, must forward the order, with a statement of his reasons for making it, to the Local Government, which may thereupon rescind the order, or direct that it continue in force with or without modification, permanently or for such period, as it thinks fit. I am aware that, under the general law of the land, an injunction might be obtained by any person interested to restrain such an excess of powers; and it is no doubt, true that section 42 of the Bill enables the Local Government, with the previous approval of the Governor General in Council, to supersede a board if it exceed its powers; but recourse to a Court of law is not a remedy likely to command

itself to an ignorant and apathetic population, and supersession is a penalty to which the Local Government would naturally wish to resort only as an extreme measure, and one the frequent application of which it would be reluctant to put in force.

“The last point with which I need trouble the Council refers to the provisions of section 50, which enable the Local Government to except a district or any part thereof from all or any of the provisions of this Bill to which it considers that they are unsuited. The North-Western Provinces and Oudh extend over an area of 100,111 square miles, nearly equal to, and contain a population of 4,400,000, far in excess of, that of the United Kingdom. They comprise 49 districts, with a mean density of population per square mile, varying from 894 in Banáras to 62 in Garhwal, inhabited by heterogeneous races characterised by differences of customs and religions and habits of thought, and stages of civilization ranging from the learned and accomplished Pandits of Banáras and Maulvis of Lucknow to the boors of Bundelkhund, the wild tribes of the Khadir and the barbarous Tharus of the Taráí.

“It is impossible to assume that for such various races any one form of self-government will be equally suited or that intelligent non-official agency can be found in every district of these broad Provinces; and for exceptional cases of this nature sections 50, 51 and 52 are meant to provide. They do not even in such cases deprive the residents of all voice in the management of their local affairs, and they require that even here district committees must be appointed; but, following the present law, they leave the nomination of members of such committees altogether in the hands of Government, subject to the restriction that one-half shall be owners or occupiers of land or residents in the district; and they do not require, as elsewhere, the establishment of local boards. A similar power unaccompanied by the restriction I have pointed out is given to the Chief Commissioner by the Central Provinces Act.”

The Motion was put and agreed to.

The Hon'ble MR. QUINTON introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and 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.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES
BILL.

The Hon'ble MR. QUINTON also moved for leave to introduce a Bill to make better provision for the Organization and Administration of Municipalities in the North-Western Provinces and Oudh. He said :—

“ My Lord, I have the honour to move for leave to introduce a Bill to make better provision for the Organisation and Administration of Municipalities in North-Western Provinces and Oudh.

“ Municipalities in these Provinces are at present constituted, and guided in the performance of their duties, by the provisions of Act XV of 1873. That enactment confers upon the Local Government very full powers as to the appointment of ordinary and *ex officio* members. It leaves to the Government to determine absolutely in the case of every municipality in the united Provinces whether the members shall be chosen by election or nominated by Government; and it further enables the Government to appoint as *ex officio* members one-third of the whole committee. The manner of election, where elections are allowed, is under the Act regulated solely by the Local Government, without any obligation of consulting the persons most concerned, and casual vacancies among the members are filled up by the same authority, or are not filled up at all, at its pleasure.

“ Further, the Local Government may appoint the president or vice-president of every committee (section 10), and may unconditionally cancel, suspend or limit any of the proceedings, bye-laws or rules of the committees, and abolish (section 29) any tax imposed by them. Section 34 of Act XV of 1873 imposes on the municipality the duty of providing for the maintenance of a police-establishment *without any limitation*, the effect of which has been to throw on municipalities a larger portion of the cost of police maintained within municipal boundaries for the preservation of the peace and the prevention and detection of crime.

“ The Resolution of the Government of the North-Western Provinces and Oudh, to which I have referred in my remarks on the Local Boards Bill, proposes an extension of local self-government in municipalities incompatible with these provisions of the present law, and this Bill has been drawn up to give effect to those proposals by substituting for Act XV of 1873 an enactment which will bestow upon the residents of areas in which it is in force a much larger measure of control over municipal administration than they now possess.

“ The provisions of the Bill are the result of the same consultative and deliberative measures on the part of the Local Government as those which I

have already described in my remarks on the Local Boards Bill. They are based on the inquiries of District and Divisional Officers, considered and weighed by the Provincial Committee, whose conclusions have been accepted with certain modifications by the Local Government.

“ I proceed to notice some of the more important points of the Bill, premising that the substantive provisions of Act XV of 1873 have been rarely departed from unless when it was necessary for the purpose of giving effect to the proposals of the Resolution of the 5th December, 1882, though opportunity has been taken to make the arrangement of the sections clearer, and to remedy what appeared to be defects in their wording.

“ The first chapter, which is of a preliminary character and deals with the application of the Act to fresh places and to those in which Act XV of 1873 is already in force, need not detain us ; but Chapter II, on the organisation of municipal boards, is of more importance. Municipal and local boards are to consist of members partly elected and partly nominated ; and I need not repeat what I have already said when asking leave to introduce the Local Boards Bill as to the reasons for preferring this system to the more logically symmetrical one of election, pure and simple.

“ The principal residents of the areas into which the Act is to be introduced are to be convened in public meeting by the Magistrate or the Deputy Commissioner, for the purpose of preparing and submitting within a definite time proposals for determining the system of representation and election to be established in the municipality. The points for their consideration are enumerated in section 9 ; and it is only after it has weighed the proposals of the residents on those points that the Local Government can exercise the power conferred upon it of making rules to regulate elections.

“ The provisions for the term of office of members of the board, for their resignation and removal, for filling casual vacancies among them, for the incorporation of the boards and such matters are analogous to those of the Local Boards Bill, and call for no remarks from me on this occasion.

“ The appointment of chairman is a subject which here also has given rise to considerable discussion. It must be borne in mind that, under the system of appointment of members introduced by this Act, the boards will no longer contain the strong *ex officio* element which has hitherto formed part of municipal committees, and that in the absence of this the appointment of an efficient chairman becomes a matter of the first importance. The Provincial Committee considered that it would be a mistake to insist on the universal chairmanship of the district officer, who has, they state, hitherto been always

chairman of the board; but they went on to say "there is a strong feeling among those interested that in municipalities of the more important kind, where large funds are raised and spent, where the responsibilities are therefore onerous, and where there are considerable cantonment settlements, such as is the case in most of the larger municipalities in these Provinces, it is very necessary to have a thoroughly reliable, president, vigilant, capable and unwearied in watching the great interests at stake, and that, so far as present experience goes, such a president can only be found in the person of the district officer. It was in this view that the Native members proposed that the district officer should be *ex officio* chairman of all municipal boards at the head-quarters of districts, leaving it to outlying municipalities to elect their own official or non-official chairmen as they pleased." The majority of the Committee, which included all the Native members, finally recommended that, except in certain cases to be specified by Government, in which the district officer should be *ex officio* chairman, every municipality should be permitted to elect its own chairman, who might be official or non-official, as the electors choose. This recommendation was accepted by the Lieutenant-Governor, and has been embodied in section 18 of the Bill, which allows of the election of any person as chairman, subject to the approval of the Local Government, except in municipalities exempted from the operation of this section by notification in the official Gazette.

"The rules for the appointment of vice-chairmen and for filling up casual vacancies in the offices of chairman and vice-chairman, for the appointment of joint committees, for the conduct of business, for the record of the board's proceedings, and the communication of those proceedings to the Magistrate of the district, are similar to those of the Local Boards Bill or to the present Municipal Act.

"Sections 33 and 34 give to municipal boards full powers as to the appointment of officers and servants, except the secretary, whose appointment, if an outsider, is subject to the sanction of the Commissioner, and, if a Government servant, to that of Government. With boards consisting mainly of non-official members and presided over by a non-official chairman, the efficiency of their administration will depend very much on their possessing a capable secretary, and it is to provide an additional guarantee for this that the sanction of the Commissioner is required to the appointment. If the board wish for the services of a Government officer, they must, of course, obtain the sanction of Government to his being so employed.

"Chapter III.—Taxation and municipal fund—is substantially the same as the corresponding sections of Act XV of 1873. The only addition made to the

taxes leviable with the sanction of the local boards is a tax on boats moored within municipal limits, which seems to have been omitted by an oversight. The sections prescribing the procedure to be adopted in imposing taxes have been re-drafted and made, it is hoped, clearer.

“ Chapter IV enumerates the powers and duties of municipal boards, and the opportunity has been taken of re-casting the provisions of Act XV on the subject, so as to exhibit the duties of the boards in their order of obligation.

“ The primary charge on the municipal fund is a police-establishment. The law on this subject is very vague. Section 34 of Act XV of 1873 runs as follows :—

‘ Every committee shall provide in the first place from its funds, for the maintenance of the police-establishment in the municipality.

‘ The municipal police shall be appointed under such Act of the Governor General in Council as may be applicable to the town, and their number shall be fixed by the committee, in consultation with the Inspector-General of Police, subject to the final decision of the Local Government.’

“ The effect of this section has been to throw upon municipalities the charges for police used not only for municipal purposes, but for the prevention and detection of crime. The conclusions of the Local Government on the subject are given in the 17th paragraph of the Resolution of the 5th of December, which runs as follows :—

‘ 17. The first of the questions to be considered is the extent to which municipal funds may fairly be relieved of police-charges, and the method of adjusting the charges for which they are fairly liable. The question was discussed by the Provincial Committee, and the unanimous conclusion of the Committee is stated in the 27th paragraph of their report :—

“ The preservation of peace and the prosecution and detection of crime are duties for which municipal revenues can hardly be said to be fairly liable, as these duties seem to devolve more equitably on the central Government of the country than on the scattered municipal towns. But the cost of watch and ward, including under this term such additional duties of a miscellaneous kind (*e. g.*, the enforcement of sanitary rules and the regulation of intra-municipal traffic) as clearly appertain to municipal police, appears to be the one of all others that can with most fairness and propriety be debited to municipal funds, and paid for by the people whose interests and property are the immediate objects of the guardianship of the *chaukidart* force.”

‘ The conclusion is supported by the analogy of small towns under Act XX of 1856 and of rural villages, where the watchmen are paid, not from the general revenues of the country, but from funds raised locally,—in the former by a house-tax levied for the purpose under the Act, in the latter by the local cess levied from landholders along with the land-revenue under Act III of 1878. The

principle stated by the Committee appears incontrovertible. For since the inhabitants of small towns and landholders in villages, in accordance with the long-established custom and law of the country, are required to pay for the services of the watchmen who remain on watch at night, who report crime, and who are empowered to challenge and arrest thieves and persons carrying suspicious property within their beats, there is no reason why the inhabitants of the larger towns (in many of which Act XX of 1856 was formerly in force) should, merely through the transformation of the town into a municipality, be altogether exempted from the charge. It is true that many municipalities have, in addition to the legitimate cost for watch and ward, been required to share the cost of the Provincial police employed within their limits; but this arrangement, which is manifestly unfair, will be cancelled; and it now remains only to determine how the legitimate charge for watch and ward is to be computed and adjusted. In a few municipalities, the town watchmen as a distinct body have been abolished, their places being taken by regular police, who form one force, and are paid on the same scale, with the district police stationed within the municipality; while in the majority of the municipalities the town watchmen form a separate body, wear a distinctive uniform, and, not being liable for service outside their own town, are paid, like the watchmen, in small towns and villages, at lower rates than the regular police. The Lieutenant-Governor and Chief Commissioner prefers the latter system, because it marks off a separate body of men for municipal service; but he directs that the question be considered by municipal boards in consultation with the Magistrate of the district and the Inspector General of Police, and that each board be left to decide which system it will adopt.'

"These conclusions have been embodied in sections 44-48 of the Bill.

"The sections of Act XV of 1873 on nuisances have been re-cast so as to throw together all the provisions respecting the jurisdiction of the board, and to bring them into harmony with the Penal Code and the new Code of Criminal Procedure.

"The control sections in Chapter V are similar to those in the Local Boards Bill, and I need not weary the Council by repeating the reasons for their adoption. They fall short in some respects of the powers given by Act XV of 1873 to the Local Government to cancel, suspend or limit any of the acts, proceedings, bye-laws or rules of any committee, but provide otherwise for the occurrence of default, excess or abuse of powers, as, *e.g.*, by the supersession of the board in certain extreme cases—a penalty to which existing municipalities are not legally liable.

"Ample powers are given to the Local Government under section 60 to frame forms and to make rules on matters connected with their business, to which the boards will be bound to adhere.

"Chapter VI contains provisions on miscellaneous matters taken generally from the existing Act.

"Chapter VII empowers the Local Government to exempt municipalities from the operation of the provisions of the Act respecting election. The rea-

sons for this latter provision will be found in those diversities of race, habits, modes of thought and civilization which are to be found in the wide territories and vast populations under the sway of His Honour the Lieutenant-Governor and Chief Commissioner on which I have touched in my observations on the Local Boards Bill.

“Section 68 finally enables the Local Government to withdraw any local area, with the previous sanction of the Governor General in Council, from the operation of this Act or of Act XV of 1873. Experience has shown that the present Municipal Act has sometimes been put in force in small towns where there were no materials for local self-government, no intelligent non-official agency, and where municipal administration, with the taxation that necessarily follows in its train, was unpopular and uncalled for. It is not to be expected that such cases will not occasionally occur again, and changes of circumstances in the progress of years may, in respect of certain towns, bring about the same result. It is expedient to provide at once a remedy which may be legally applied when such conditions manifest themselves. The section has been framed with this object; but, as the withdrawal of a privilege once conferred is open to a more invidious construction than the withholding of that privilege in the first instance, the exercise of the power by the Local Government is made subject to the previous sanction of the Governor General in Council. By this limitation it is intended to secure for the proposal full consideration from more than one point of view.”

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 *Gazette of India*, and 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.

The Council adjourned to Thursday, the 17th May, 1883.

SIMLA;
The 14th May, 1883. }

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, Simla, on Thursday, the 17th
May, 1883.

PRESENT :

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

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

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

Major the Hon'ble E. Baring, B.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

NORTH-WESTERN PROVINCES AND OUDH LOCAL BOARDS
BILL.

The Hon'ble MR. QUINTON moved that the Bill to provide for the constitution of Local Boards in the North-Western Provinces and Oudh be referred to a Select Committee consisting of Major the Hon'ble E. Baring, the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES
BILL.

2. The Hon'ble MR. QUINTON also moved that the Bill to make better provision for the Organization and Administration of Municipalities in the North-Western Provinces and Oudh be referred to a Select Committee consisting of Major the Hon'ble E. Baring, the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th May, 1883.

SIMLA ;
The 17th May, 1883. }

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, Simla, on Wednesday, the 30th May
1883

P R E S E N T :

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

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

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

Major the Hon'ble E. Baring, R.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

NEW MEMBER.

The Hon'ble D. G. BARKLEY took his seat as an Additional Member.

PANJAB LOCAL SELF-GOVERNMENT BILL.

The Hon'ble Mr. BARKLEY moved for leave to introduce a Bill to make better provision for Local Self-government in the Panjáb. He said :—

“ My LORD, this Bill is one of a series of measures for the development of local self-government, the first suggestion of which is to be found in the Resolution of the Financial Department, No. 3353, dated 30th September, 1881, on the subject of the further decentralization of finance.

“ One of these, relating to the Central Provinces, has already become law, and others, relating to the North-Western Provinces, are now under the consideration of this Council. The present Bill is intended to provide for the better constitution of district committees and for the establishment of local boards in the Panjáb. The subject of municipalities and municipal taxation is reserved for separate treatment.

“ It may be well to premise that this Bill is not the first attempt to associate the people of the Panjáb, outside of municipal towns, in the management of their

own affairs. Before 1871 each district had its road and ferry fund committee, but these committees consisted entirely of officials, European and Native, and had in most cases very limited funds at their disposal. In 1871, financial reasons made it necessary for the Supreme Government, while partially decentralizing finance, to make assignments to Local Governments, falling short of the estimated expenditure of the departments, the charges of which were transferred to them; and one of the consequences of this was the withdrawal of the ferry fund income from local committees, while certain charges previously borne provincially were transferred to them. Further taxation for local purposes thus became necessary, and this was provided for by the Panjáb Local Rates Act, No. XX of 1871, which authorized the imposition of a local rate not exceeding six pies in the rupee of the annual value of land in the Panjáb, the annual value being, for the purposes of the Act, assumed to be double the land-revenue. The tax thus authorized, therefore, fell at the rate of one anna in the rupee, or $6\frac{1}{4}$ per cent. on the land-revenue; and this was in addition to cesses already imposed in connection with the settlement of the land-revenue to provide for roads, schools and district-post, which usually amounted to $2\frac{1}{2}$ per cent. more. To control the funds so raised, the Act enabled the Lieutenant-Governor to appoint committees in each district, and this power was exercised by appointing committees, consisting both of official and non-official members, the former being generally appointed *ex-officio*, by the name of their office, and the latter by nomination, for a term of two years at a time. In this way a considerable number of the more intelligent and influential inhabitants of districts have, for the last twelve years, been associated with the leading officials in the expenditure of the district funds, and have learnt to take some part in devising and carrying out measures for the general welfare. In some districts more progress has been made in this direction than in others, and indeed in some districts the poverty of the district funds or other local circumstances did not admit of much being done.

“This Bill must, therefore, be regarded, not as the first step towards the introduction of local self-government in the Panjáb, but as intended to facilitate further progress in a direction in which we have for some time been moving. It has been framed to give effect to the proposals for the extension of local self-government explained in the Resolution of the Panjáb Government, No. 1777, dated 7th September, 1882, by conferring upon district committees greater administrative and financial independence, by constituting local boards for areas smaller than districts, by improving the methods of appointing members of local bodies, and by providing for the transfer of additional services to local management and control.

“The Panjáb Local Rates Act, No. V. of 1878, by which the corresponding Act of 1871 was repealed, increased the amount of the local rate from six pies to

eight pies per rupee of annual value, the additional two pies, being one-fourth of the rate, being credited to the Local Government for the purpose of providing additional funds to be expended for the prevention or relief of famine, while the remaining three-fourths were left to be expended by district committees for the benefit of the district in which the rate was levied. In addition to the funds thus supplied, other cesses, known as road, school and district-post cesses, are levied by a percentage on the land-revenue, under authority of arrangements made at the time of the settlement of the land-revenue in each district. The road and school cesses are usually levied at the rate of one per cent. each upon the land-revenue, and the district-post cess at the rate of $\frac{1}{4}$ per cent. ; but in several districts, and in parts in some other districts, the last of these cesses is not levied at all. The proceeds of the road and school cesses, in addition to three-fourths of the local rate, have hitherto been at the disposal of district committees.

“ It has been considered advisable to amalgamate these cesses with the local rate, and to substitute the authority of the legislature for the settlement-arrangements under which they have hitherto been collected. It is, therefore, proposed to repeal Act V of 1878 so far as it affects all districts or portions of districts for which committees or boards may be constituted under the proposed Act ; and the opportunity has also been taken to provide legal authority for the local rate now levied on the rates imposed under various names in respect of the improvement of land due to canal irrigation, when such improvement has been excluded from account in assessing the land-revenue. Amongst these rates are the owner's rate under the Northern India Canals Acts, the water-advantage rate on the Bari Doab canal, and the proportion of the fluctuating revenue on lands irrigated from canals in the Montgomery district which is credited to canal-revenues. This has been done by amending the definition of annual value in section 2, and a definition of land-revenue has also been added to that section to authorize the levy of the local rate on the dues paid for grazing on Government lands which yield no land-revenue in any other form. These dues form a large item in the revenue realized from some of the districts of the Southern Panjáb, and the amount of the local rate and cesses has hitherto been deducted before the income was credited to Government. The provisions of the Bill now submitted are explained in some detail in the accompanying Statement of Objects and Reasons, and it will, therefore, probably be most convenient that I should not travel over the same ground, but should confine my remarks to some of the more prominent features of the Bill.

“ One of its most marked features is the extent to which, while laying down the general principles which should regulate the constitution and functions of district committees and local boards, it leaves details to be provided for by rules to be from time to time framed by the Local Government. This is rendered

necessary by the varying circumstances and requirements of different parts of the province. The constitution of society fundamentally differs in different localities. In some, as amongst the Bilúches of the Deraját frontier, tribal chiefs possess great authority. In others, as amongst the Patháns, while a tribal organization prevails, the tribes are greatly divided into factions at feud amongst themselves, but for certain purposes recognize the authority of tribal councils. In the greater part of the province, the agricultural classes are associated into village communities which have been compared to small republics ; but in the Southern Panjáb and the Hill Districts, the village is often an artificial aggregate of small hamlets or scattered wells, with no natural bond of union. Again, no uniform system which could be devised would be suited at the same time to peaceful and populous districts, in all parts of which some men are likely to be found sufficiently educated and intelligent to take an active interest in promoting public improvements, and to less favourably situated districts, where the population is scattered and sometimes turbulent, and where few such men are likely to be found away from the large towns. To give districts of the latter class such measure of self-government as they are capable of, without unduly fettering the committees and local boards of more advanced districts, considerable latitude must be left to the Local Government to frame such rules as may appear most suitable, having regard to local conditions and requirements. Most progress is likely to be achieved under a system sufficiently flexible to admit of being thus adapted to varying circumstances.

“ While we have long had district committees, the local boards proposed to be constituted by the Bill are new bodies, and the Bill provides that these boards should be ordinarily subordinate to the district committee in matters of finance and taxation, matters of common interests, and matters affecting the joint or conflicting interests of two or more boards in the district. In other respects, notifications, to be issued by the Local Government under section 11 will regulate the duties to be entrusted to the committee and the several boards, and the boards will not be under the control of the committee in respect of the matters thus specially made over to them. They may, however, be employed by the committee as its agents in the management of matters placed by such notification under the control of the committee (section 44). When, again, a first class board is considered fitted for greater financial independence, this may be conferred on it by a notification by the Local Government under clause (7) of section 37 ; and, while such a notification remains in force, the funds at the disposal of the board to which it relates will be treated as a separate district fund, to be accounted for, not to the district committee, but to Government (section 40).

“ To admit of the road, school and district-post cesses being amalgamated with the local rate, it has been found necessary to increase the maximum limit

of the local rate from eight pies to one anna per rupee (section 13). The local rate and cesses now amount in most districts to $10\frac{2}{3}$ pices per rupee on the assumed annual value, which is equivalent to $10\frac{5}{8}$ per cent. on the land-revenue. The proposed maximum rate equals $12\frac{1}{3}$ per cent. on the land-revenue which is $1\frac{2}{3}$ per cent. in excess of the total of the present local rate and cesses, but no general increase of local taxation is contemplated. One anna has been adopted as the maximum, partly for the sake of simplicity, and partly because in some districts, where the land-revenue is small and lightly assessed, it may be found advantageous to have the power somewhat to increase the rate in order to provide funds for purposes clearly for the benefit of the neighbourhood. In other places some reduction of the rate may be desirable, and section 14 enables committees specially empowered for the purpose, and, in the absence of such committees, the Local Government, either to increase or to reduce the rate, so long as it neither exceeds one anna per rupee of the annual value, nor falls below so many pies per rupee as the Local Government may from time to time direct.

“The result may be explained by the following example. A village assessed at Rs. 600 land-revenue at present pays Rs. 65 on account of local rate and cesses. If the local rate were increased to one anna per rupee of annual value, it would pay Rs. 75, while if it were reduced to ten pies per rupee, it would pay Rs. 62-8 or if it were reduced to eight pies per rupee, it would pay Rs. 50. Under section 26, again, four-fifths of the rate would be credited to the district committee, and the remaining one-fifth, for reasons, explained in the Statement of Objects and Reasons, to the Local Government. Leaving out of account charges for collection, the district committee would, in the case supposed, receive Rs. 52 at the present rate, Rs. 60 if the rate were increased to one anna per rupee, Rs. 50 if it were reduced to ten pies per rupee, and Rs. 40 if it were reduced to eight pies per rupee. The amount to be credited to the Local Government would similarly fluctuate as the rate was increased or diminished; and to this extent it would apparently be for the interest of the Local Government to keep the rates high. But that Government must apply the funds thus raised to similar purposes, though not necessarily in the same district, to those to which the district committee or local boards would be at liberty to apply them; and there would be no obstacle to its allotting the increased income due to the increase of the rate to the district which had found it necessary to increase its taxation. If the rate were decreased, the Local Government would simply have smaller funds available for expenditure in the province generally, or in particular districts, for the purposes contemplated by the Act, and it would be obliged to regulate its expenditure accordingly.

“The only other point which need be noted in connection with the subject of taxation is the new power, proposed to be given by section 18 to committees which have been empowered to determine the incidence of the local rate to impos-

other taxes, either for the purpose of supplementing the income from the local rate, or to enable the committee to reduce the local rate. It is thought that it may be desirable to have the power of taxing classes which at present bear no share of the local burdens, while they are largely benefited by improved communications and by expenditure from district funds for the support of educational and other institutions. But care has been taken to prevent taxation of an arbitrary, oppressive or injurious character, by providing that this power shall be exercised, subject to any general rules or special orders which the Governor General in Council may make on this behalf, and only by committees which have been entrusted with the power of determining the incidence of the local rate, for the proposals already specified, that the taxes imposed must be approved by the Local Government; and that the same procedure as to notice of the proposed tax, and disposal of any objections which may be preferred against it, shall be followed as is prescribed in the case of taxes imposed by municipalities.

“ It is necessary to state that none of these powers to impose increased taxation are intended to enable Government to devolve new charges upon local bodies. It is not desirable that the extension of local self-government should be associated a second time with increased taxation; and the danger of the fixed charges of committees and boards being from time to time increased without any corresponding increase of their resources, by their being called upon to undertake new services, has been guarded against by the proviso to section 11, which requires the Local Government, when the control of any new service is transferred to committees or boards, to provide them with such funds or sources of income as both the Local Government and the committee or board may consider sufficient to maintain such service in its existing state of efficiency. If increased taxation should be resorted to in any district, it will therefore be either for the purpose of reducing the burdens on land, or of enabling committees and boards to make better provision than before for objects of a local character already under their management.

“ Passing on to the subject of finance, it may be well to explain that the one-fifth of the rates and taxes to be credited to the Local Government under section 26 is intended to correspond as nearly as may be with the one-fourth of the local rate at present set apart for famine expenditure under Act V of 1878. As the local rate now falls at $8\frac{1}{2}$ per cent. on the land-revenue, the sum now set apart for this purpose is $2\frac{1}{2}$ per cent. If the new local rate should be assessed so as exactly to correspond with the present local rate and cesses, it would fall at $10\frac{1}{2}$ per cent. on the land-revenue, and the one-fifth deducted for Government would be $2\frac{1}{5}$ per cent. Taking the example already given, a village paying Rs. 600 as land-revenue, and Rs. 65 for local rate and cesses, pays Rs. 50 as local rate, of which Rs. 12-8 is set apart for famine-expenditure. The deduction of one-fifth of the new local rate would amount to Rs. 13. But

if the new local rate were reduced to 10 per cent., the Government share would be two per cent., and in that case such a village would pay Rs. 60, of which the Government share would be Rs. 12. If it were still further reduced owing to the substitution of other taxes under section 18, the Government share would diminish in the same proportion, but, under section 26, the Local Government would get a similar share in the new taxes, the proceeds of which had enabled the reduction to be made. It should be borne in mind that the proportion thus to be credited to the Local Government will correspond very closely with a tax at present raised, not for local purposes, but for the relief and prevention of famine throughout the country at large.

“Section 33, clause (d), has been inserted to give power to charge the district funds with their proportion of the cost of service rendered to local bodies by provincial establishments. A contribution of 20 per cent. from district funds is at present credited to provincial funds in payment for such services. But this arrangement has its disadvantages, and the Local Government has expressed a hope that, when the duties to be made over to committees and boards are determined, it will be found possible to surrender this contribution, as one of the steps which will have to be taken under section 11 to furnish committees and boards with the necessary funds. In the meantime, it is necessary to take power to charge these services to the local bodies.

“Financial control has been given to committees over boards in the same district, both because the committee is the most suitable body to consider the wants of all parts of the district, and to distribute the funds accordingly, and because to keep proper accounts in English in one central office in each district will be easier and less expensive, than it would be if each local board had to maintain a distinct establishment for the purpose. A portion of the establishment of the committee for other purposes, such as educational inspection and public works, must also be available for the service of the boards. The members of the committee will probably either be the same as the members of the boards in the district, or representatives chosen by them.

“It is, however, proposed that the boards shall have their own funds, consisting mainly of allotments made to them either by Government or by the district committee, and that balances of such funds unspent at the close of the financial year shall remain at their disposal (sections 30 and 31). They will thus be able to complete works for which funds have been allotted when it has been found impossible to work up to the allotment during the year.

“The only other subject which appears to require notice is the power of control over the proceedings of committees and boards which has been reserved to the Local Government and its officers. Sections 49 and 50 give the necessary powers of interference when the proceedings of committees or boards are not in

conformity with the Act or with the rules made under it; and the following sections provide for the prevention of acts likely to cause inconvenience to the public, and the execution of works, and the performance of acts necessary for the public safety or welfare, and for cases in which committees or boards have failed in their duty. Sections 55 to 57 provide for cases in which committees or boards have persistently failed to discharge their duties, or have exceeded or abused their powers, or in which other reasons affecting the public interests exist for superseding them. When a committee is superseded, it is provided that a new committee shall be provided by the Local Government as soon as conveniently may be, and, when a board is superseded, power is given to the Local Government, either to transfer its functions to the committee or other boards in the district, or to constitute a new board in its place. As local boards are now about to be constituted for the first time, it is desirable to have the power of re-adjusting the limits of their jurisdiction, should it not be found advisable to reconstitute a board for the same local area as that which was administered by a board which had neglected its duties or abused its authority. It is certain that committees and boards will require a good deal of guidance from district and divisional officers, especially until they become accustomed to the discharge of their new duties and thoroughly acquainted with the extent and limits of their powers. The sections relating to the subject of control have been framed with a view to the necessary guidance being supplied, as far as possible, from without; but should any committee at the outset require a degree of help from the district officer, which could not be given, without risk of undue friction and delay of business, in the form of external control and advice, there will be nothing to prevent the Local Government from appointing the Deputy Commissioner *ex-officio* chairman, under section 8, on the understanding that he should aim at preparing the committee by degrees to work without him.

“In conclusion, it should not be supposed that the organization of the new local bodies provided for by this Bill will give any immediate relief to district officers or their establishments. The working of these bodies will, for years to come, demand constant vigilance and attention from the district officer, whose duty it will be to assist them by his counsel and advice, to encourage them to an intelligent discharge of their duties, and to give such explanations as may be necessary to enable them to understand the extent and limits of their powers; and at the same time to guard against abuses or neglect of duty on their part, and in any case in which the intervention of superior authority may appear necessary, to report the circumstances with a view to obtain the necessary orders. He will also have to approve the annual estimates of expenditure, and, when he disapproves, to explain the nature of his objection; he may have to decide disputes between the different local bodies in his district;

and he will be the ordinary channel of communication between them and the Commissioner or other superior authorities."

The Motion was put and agreed to.

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

The Hon'ble MR. BARKLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Punjab Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

BOMBAY PORT-DUES REDUCTION BILL.

Major the Hon'ble E. BARING moved for leave to introduce a Bill to give power to reduce port-dues in the port of Bombay. He said that the Bill was of the simplest description, and he would only detain the Council a very short time in explaining its provisions. At present, port-dues were levied at the port of Bombay at the rate of two annas a ton, but the Chairman of the Bombay Port Trust had represented that the financial situation of the Trust was such as to allow of a reduction. Such a measure was exceedingly desirable and fully in harmony with the general policy of the Government which was to remove all obstacles to trade wherever it was possible to do so. There would be found in the Statement of Objects and Reasons a memorandum by the Chairman setting forth the actual financial position of the Trust, but it would not be necessary for him to refer to it in detail. The present proposal was to reduce the rate levied from two annas to $1\frac{1}{2}$ annas per ton, and the general result of this measure would be to relieve the shipping of Bombay to the extent of about half a lakh a year. The Bombay Government desired the reduction, but the law as it at present stood allowed of no lower rate than two annas a ton; hence the object of the proposal was to carry the wishes of the Port Trust and of the Bombay Government into effect, which could be done by removing the words "not less than two annas a ton" from Schedule I of the Indian Ports Act as it now stood.

The Motion was put and agreed to.

Major the Hon'ble E. BARING also introduced the Bill.

Major the Hon'ble E. BARING also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

*CENTRAL PROVINCES TENANCY.**CENTRAL PROVINCES TENANCY BILL.*

The Hon'ble MR. ILBERT moved that the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces be referred back to the Select Committee. He said that his object in making this Motion was to give the Committee the opportunity of considering one or two suggestions which had been received since the presentation of the last Report. He did not anticipate, however, that the amendments which they would make would in any way alter the main provisions of the Bill or delay its passing into law.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 6th June 1883.

SIMLA ;
The 1st June 1883. }

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, Simla, on Wednesday, the 6th June, 1883.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
Major the Hon'ble E. Baring, R.A., 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 W. W. Hunter, LL.D., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D G. Barkley.

PANJĀB LOCAL SELF-GOVERNMENT BILL.

The Hon'ble Mr. BARKLEY moved that the Bill to make better provision for Local Self-Government in the Panjab be referred to a Select Committee consisting of Major the Hon'ble E. Baring, the Hon'ble Mr. Ilbert, the Hon'ble Sir S. C. Bayley, the Hon'ble Mr. Hunter, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. ILBERT presented the fourth Report of the Select Committee on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces.

The Council adjourned to Wednesday, the 20th June, 1883.

D. FITZPATRICK,

SIMLA; }
The 6th June, 1883. }

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, Simla, on Wednesday, the 20th June, 1883.

P R E S E N T :

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

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

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

Major the Hon'ble E. Baring, B.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. LEBERT moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces be taken into consideration. He said :—

“ It appears to be my fate just at present to act as foster-father to Rent Bills. The calamity which called away Sir Steuart Bayley to Haidarabad in February last placed me in temporary charge of the Bengal Tenancy Bill; the accident which called away my friend Mr. Charles Crosthwaite to British Burma has now placed me in charge of the Central Provinces Tenancy Bill. I am anxious to define the precise relationship in which I stand to this measure, because it is important to bear in mind that it is essentially a local Bill, framed by officers of local experience with special reference to local circumstances and local requirements. It was originally drawn by Mr. Jones, now Chief Commissioner of the Central Provinces, under instructions which were given to him as long ago as 1873. It was introduced into the Council in 1880 by my friend Mr. Charles Grant, who, before he became Secretary in the Foreign Department, had a long connexion with the Central Provinces as District Officer

and Judicial Commissioner, acted at one time as Chief Commissioner and is well known as the Editor of the Central Provinces Gazetteer. After its introduction it was referred by the late Chief Commissioner for the consideration of a local committee, consisting of Messrs. Crosthwaite, Neill and Chisholm, who materially altered it, and in its altered form it was placed in the charge of Mr. Crosthwaite, then an Additional Member of this Council. Of the Bill in its present form, Mr. Crosthwaite has more claims than anyone else to be considered the author, and it substantially embodies the views and opinions of the late Chief Commissioner, and of the local committee appointed by him.

“Mr. Crosthwaite was kind enough to prepare for me, before he left for Burma, a careful note of what he had intended to say on the present occasion, and in the explanations which I now have to offer I shall draw freely on that note.

“The subject-matter of the Bill is difficult and complicated, and I am afraid that I shall not be able to make intelligible to the Council the modifications which we propose to make in the system of land-tenure in the Central Provinces without giving some account of the system which we found when we took over those provinces and of the system which we established after taking them over.

“The territories which now make up the Central Provinces were acquired by the British Government at different times and from different quarters, and, after they had passed under British rule, they remained for some time under different administrations. The Sagar and Nerbada territories were ceded partly by the Peshwa in 1817 and partly by the Nagpur Rájá in 1818; the Nagpur Province was ceded as a whole in 1853, small portions of it having been under British rule since 1817; all these territories were combined under the name of the Central Provinces, and placed under a Chief Commissioner in 1861; Sambalpur was added to them in 1862, and Nimár in 1864. The Sagar and Nerbada territories had been for some time attached to the North-Western Provinces, and Sambalpur and Nimár had been directly or indirectly under British administration for many years before they were made part of the Central Provinces.

“It might be expected that the land and revenue systems of territories with such different histories and antecedents would present great and radical divergencies. As a matter of fact, however, this is not the case. ‘The study of the subject to which I have in the course of my present work been compelled,’ says the present Chief Commissioner in a note which he wrote on this Bill in 1860, ‘has convinced me that, in order to a right understanding of the tenures of the different parts of the Province, we must begin by recognizing their original

similarity. Diversity, at the present day, there no doubt is, but it is a diversity which has arisen, not from original and inherent difference, but from the fact that in quite recent times—and in the Central Provinces everything is youthful and recent—divers influences have impressed themselves upon systems which were in all essential respects the same. The position which I would lay down is this, that, speaking broadly, identical revenue-systems prevailed in all the districts of which these Provinces are composed at the time when they severally came under our rule or influence, and that all the differences which they now present are due, first, to the diverse trainings and prepossessions of the officers through whom we administered them; secondly, to difference in the revenue-systems which those officers looked to as models; and, thirdly, to the length of time during which the two preceding conditions have been operating; in short, I would affirm *that such differences as exist are of our own creation.*

“The explanation of this substantial identity underlying superficial differences is simple. The Mahratta harrow had passed over the whole of these territories and had gone a long way towards reducing them, for revenue-purposes, to one dead-level of uniformity.

“What then was the Mahratta revenue-system? Its fundamental principles may, according to Mr. Jones, be summed up in the following four propositions:—

“I.—Settlements are annual or for very short terms.

“II.—Cultivators pay revenue, not rent, and competition rents are therefore unknown.

“III.—Headmen of villages, or the persons or bodies whom we should regard as possessing rights approximating to proprietary rights, are, in respect of raiyats' lands, office-holders and managers.

“IV.—No rights are allowed to grow up by prescription or otherwise, the effect of which would be to limit the power of the Government to raise a maximum revenue from the land.

“The essence of the system appears to have consisted in constant revisions of the revenue assessments, with the view of maintaining them at the highest possible level, and thus preventing the growth of middlemen with rights and interests intermediate between the Government and the cultivator.

“Property in land was not recognized, but every cultivator was entitled to hold his land as long as he paid the share of the Government revenue apportioned to it. The Central Government fixed annually the sum which each pargana or revenue sub-division was to pay. The apportionment of the revenue

on the several villages was made by the pargana officers in consultation with the headmen or patéls of villages, who assembled at the pargana head-quarters for this purpose. When the assessment of each village had been settled, the patéls returned each to his own village, and the share to be paid by each cultivator was made known to him.

“The manner in which the detailed assessments were made is interesting and curious, and arose, no doubt, out of the habit of the Mahratta Government of not fixing its revenue until late on in the agricultural year. The usual practice of the Nágpur Government was to announce its assessments about the month of August, when the character of the rains and the probable quality of the harvest were known. Here, however, as elsewhere in India, the agricultural year begins about June, and that is the time when the annual settlements between the Government agent and the raiyats would generally be made. But, as the amount which each raiyat would have to pay depended entirely on the amount of the Government assessment, which in June was an unknown quantity, an ingenious method of meeting the difficulty was devised. The patél and the cultivators, acting as a body bound together by the tie of one common responsibility for the payment of the revenue assessed on their village, divided the cultivated lands into two classes. In one class they ranked the very inferior soils, which could not bear more than a very small rent; and these they assessed at a fixed money rent with respect to the quality of the soil and the ruling prices of produce. In the second class they placed the better soils which after paying the cost of cultivation, left a considerable margin of profit, sufficient to bear the possible fluctuations in the Government demand. Fields of this class were not assessed at any fixed rate, but the joint liability for the Government revenue on the whole village being taken, say, at a hundred shares, each of these fields was rated as equal to so many shares of the whole. Thus, each individual cultivator knew that he would have to pay a fixed unalterable sum for his bad lands, and that on account of his good lands he was liable to pay a certain fraction of the Government revenue, whatever that might be. This classification and valuation of fields was made annually, with a view to meeting the changes in the condition not only of the fields but of the raiyats themselves. Impartiality in the distribution of the revenue was secured by the rule of joint responsibility. If the revenue imposed on any individual could not be recovered from him, the deficiency was not remitted, but was made good by the imposition of an additional rate on all the others. Thus, there was given not only a great incitement to fair and just dealing, but a considerable stimulus to mutual help and co-operation.

“This system is described by Sir R. Jenkins, who was Resident at Nágpur in 1827, as existing in his time, and the sketch of it which I have given,

and which is taken mainly from his well-known report on the territories of Nágpur, appears to show clearly that under the old constitution of the country there was no such thing as a landlord or tenant in our sense of the word, that rent was unknown, and that such things as revenue-rates or rent-rates had no existence at all.

“ However, even during the period of Native rule, influences were at work which tended to subvert the ancient order of things. During the decline of the Bhonsla power, the State imposed revenues higher than the people could easily pay, and resorted to the abuse of farming the villages to the patéls or village-headmen, and leaving them to collect what they could from the people. This abuse tended to place the patél in a position of greater supremacy, and to give him powers which were capable of developing into proprietary rights. Here, as elsewhere, the transition from a collector of revenue to a farmer of revenue, and from a farmer of revenue to a receiver of rents, was easy and natural.

“ This, then, was, roughly speaking, the state of things which we found in existence when we took over the several territories which make up the Central Provinces. What modifications did we introduce into it? To answer this question, I shall quote again from Mr. Jones' note :—

“ The history of our dealings with the different parts of the Province as we successively acquired them is, in almost every case, the same. We first made one or more severe settlements for short terms, then tried experiments in farming, interfering a good deal in a patriarchal way between patéls and cultivators, sometimes resorting to khám management, and finally made up our minds to long settlements at reduced jamas. These long settlements—I do not here refer to their effect on the prosperity of the agricultural classes—were the great turning-point in the revenue-history of the Province, and to them every change by which the Native revenue-system was modified, and at last superseded, may be traced.

“ The chief immediate effect of the long settlements was to sever the mutual inter-dependence of the amount of cultivator's payments and the Government demand. The patél became the málguzár, and was no longer restricted, either by theory or in practice, from demanding rents disproportionate to the jama which he had to pay out of them. Cultivators began to pay rent instead of revenue, and the question arose whether málguzárs could not enhance during the currency of a settlement, irrespective of increase of cultivation; in other words, whether Government had not delegated to them the right, which it would (had the long settlement not been made) have itself exercised, of from time to time raising its revenue by enhancing the payments of cultivators. In the case of the earlier settlements, there can be no doubt that the intention of the officers who made them was that the rents paid at the time of settlement should not be enhanced during the settlement; but in the case of the later settlements the point is not so clear, except where, for instance, in Nimár, the training and prepossessions of local officers led to an unhesitating acceptance of the alternative most favourable to the cultivator. This much, however, is quite clear, that, whether málguzárs were regarded by the officers of the day as having a right to raise rent during the currency of a

settlement or not, they did not themselves feel confident of having this right, and never exercised it. They could not all at once shake themselves free of the idea that cultivators could not be asked to pay more than the Government revenue. The position, therefore, at the close of the period preceding the regular settlement was this, that cultivators paid rent and that there was no restriction in the amount of rent which new cultivators might pay, but that rent fixed at the commencement of a settlement remained in practice unaltered to its close.

'The acquisition by *málguzárs* of the right to demand rent as distinguished from revenue, and of the theoretical power of raising rent during the currency of a settlement, brought in its train other fundamental changes by which the other roots of the Native revenue-system were torn up, for,—

'first, *málguzárs*, having always been accustomed to eject in the interest of the Government tenants who would not pay the *quotum* of revenue demanded from them, began now, by an easy transition, to think themselves entitled to eject in their own interest tenants who refused to pay the *rent* demanded of them; and,

'secondly, the resulting tendency to an increased exercise of the power of ejection being strongly opposed by the sentiment of the people, a limitation was placed upon it by the introduction of a novel distinction between old and new cultivators, and the recognition of a specific right of occupancy in the latter.

'The change from the Native system of revenue administration was thus completed. Not one of the principles enumerated in paragraph 4' (these are the four principles which I have already mentioned) 'remained intact.' Short annual settlements had given way to settlements for long terms; cultivators' payments had become rents; the power of fixing them having been resigned by the State in favour of *málguzárs*; the latter had acquired rights which made their position approximate more to that of proprietors than of mere office-holders; and, lastly, one class of tenants, the occupancy-class, had been allowed to participate in the full rent of their lands, or, in other words, to acquire rights which conflicted with the right of the State to realize a maximum revenue from the land.

'But although the Native revenue-system had thus been uprooted in theory, it had not, at the time when regular settlements began, lost its hold on the people, even in those parts of the province where it had been longest exposed to hostile influences. The tenant would not believe that the State had handed him over to the *málguzárs*; would not understand that his rent was to be disproportionate to the Government-demand; wanted it lowered when the Government-demand was lowered, and looked upon the settlement *parchas* as leases from Government. His views on the subject of ejection were not announced with great distinctness, because, at the period I am speaking of, he did not understand the new motive which the *málguzárs* had for ejecting him. Ejections with the object of increasing a rent-roll had not then been much resorted to, and District-officers were apt to use their influence in protecting tenants when necessary.'

"Under these circumstances, and at a time when most of the current settlements for the Central Provinces were in course of being made, Act X of 1859 was extended to those provinces. The exact date of its extension is the 2nd March, 1864. This famous Act, with the main provisions of which the members of this Council have only too good reason to be acquainted, was, as we are all

aware, framed with a view to the special circumstances of Bengal, and it was applied to the Central Provinces, not because it was held to be suited to their circumstances and conditions, but because a law of some kind was wanted, more to regulate matters of procedure than to settle questions of right, and Act X of 1859 was the only law ready to hand. It was, in fact, avowedly introduced as a mere temporary makeshift, and it was never intended to remain in permanent operation.

‘ First of all,’

write Mr. Jones in the note from which I have already quoted at such length, ‘ I would correct an impression, which I believe is prevalent among Revenue-officers in the Central Provinces, that, when Act X was introduced, the applicability of those parts of it which contain substantive law was considered, and that the relations between landlord and tenant which the Act lays down or assumes were then, after discussion, held to be suitable to the circumstances of the Province. Nothing can be further from the truth. In the correspondence which preceded the introduction of the Act, those parts of it which contain substantive law are only casually referred to, and attention was directed, almost exclusively, to the sections which confer jurisdiction and supply a procedure. The fact is, that the substantive provisions of the Act, coinciding, as they did, with the views which had gained acceptance among the officers by whom the greater part of the Province was administered before its formation, with theories held in the North-Western Provinces, and with the English ideas then prevalent, were not deemed to require discussion at all, and the Act was introduced with the sole object of rounding off the corners of the system of procedure previously applicable to civil and revenue suits. In the Sagar and Narbada territories there had been a special code of procedure for revenue-suits, and in the Nágpur Province, Act X suits had been dealt with as summary suits under Regulation VIII of 1831. Act X simply abolished these procedures, and no one has any right to suppose that the assumptions regarding the relations of landlords and tenants which underlie its provisions received any new support or confirmation at the time, and by the fact, of its introduction.’

“ The provisional character of the law thus introduced, and the necessity of modifying it for the purpose of making it even temporarily applicable to the circumstances to which it was applied, are fully recognized in the circular instructions which were issued to Settlement-officers shortly after its introduction. The most important of these circulars is one which was issued on the 27th of March, 1865, and which is, I believe, well known among Revenue-officers as Circular G. I refer to it because it appears to be the basis of the distinction, which is recognized and confirmed by the Bill, between absolute occupancy-tenants and other occupancy-tenants who have up to this time been, for reasons which I shall explain, commonly known as conditional occupancy-tenants.

“ The first class, that of absolute occupancy-tenants, was created at the time of settlement, and comprises, as I understand, all the old substantial resident cultivators who then existed. They were termed absolute occupancy-

tenants because their rights were recognized on grounds other than those mentioned in Act X, and were not conditional on the retention of that Act as part of the law of the Provinces. The tenants entered in this class were men whose rights in the soil were admitted without reservation by all parties. Into this class were swept all those who had long connection with the village, who had dug wells, planted groves, or otherwise improved their lands. The form in which their rights should be declared was considered by the Government in 1868, and it was then decided—

- (a) that their rents should be fixed for the term of settlement, now and hereafter;
- (b) that their tenure should descend as land;
- (c) that they might sub-let or mortgage, and might sell subject to a right of pre-emption at five years' rent or the payment of one year's rent as a fine to the *málguzár*.

“These conditions were accordingly embodied in the village-administration papers, and were in this manner made binding as between the *málguzár* and the tenant.

“The other class of occupancy-tenants are those who owe their rights to the twelve years' rule embodied in Act X of 1859. With respect to this class, the officers of the Settlement Department were instructed by Circular G 'to make it clear to all parties that any record of occupancy-right based solely upon possession for 12 years is made subject to any future alteration of the law.' It is in consequence of this saving clause that tenants belonging to this class are often spoken of as conditional occupancy-tenants. They hold from father to son; and are, under the law as it stands, liable to enhancement of rent only on the grounds specified in section 17 of Act X of 1859, that is to say, on the ground either that the rents are below the rates prevailing in the neighbourhood; that there has been an increase in the value of the produce or of the productive power of the holding; or that there has been an increase in the area of the holding.

“The circumstances of Chánda, Nimár and Sambalpur were found to require special and exceptional treatment, and in those three districts the settlement which was effected was, in point of fact, a *raiyatwári* settlement. The rights of tenants in Chánda and Nimár are at present determined under a resolution of the Government of India, dated the 21st of June, 1865. Under this resolution, all tenants who held land (other than *sír* land) on that date, and all tenants who might take up land after that date without a written lease, became occu-

pancy-tenants, and were declared to hold on a tenure which was described as "the customary tenure," and the main incidents of which are as follows:—

"i.—It is heritable, both lineally and collaterally.

"ii.—The right is transferable to a co-sharer by inheritance or to an heir-expectant.

"iii.—If the rent was fixed by a Settlement-officer before the date of the resolution, it is to remain fixed during the term of settlement. Otherwise the landlord can apply *once*, and once only, during the term of settlement to enhance the rent up to the maximum rate recorded for the class of soil held by the tenant.

"iv.—The tenant has the right to improve.

"v.—The power of sub-letting is restricted.

"All the land in Nimár and, practically, all the land in Chánda appears from recent returns to be held by tenants who are described either as absolute or as conditional occupancy-tenants.

"In the case of Sambalpur, the Government of India intervened before proprietary rights were conferred or recognized as existing in any person between the State and the cultivator, and decided that the village headman or *gaontia* was to be the proprietor only of his *sír* or *bhógra* land, and was to have the right of collecting the revenue and managing the village; that the persons (if any) holding *sír* land under him were to be his tenants-at-will; that during the term of settlement he was to have the privilege of creating raiyats on waste land, and that the revenue thence derived was to be his during that term, but that he was not to charge them more than the village-rates as fixed at the time of settlement. All other raiyats are Government raiyats, paying revenue and not rent, and not liable to eviction except for non-payment of revenue.

"I have dwelt on these particulars, at the risk of being tedious, because they explain the special references in the Bill to Chánda, Nimár and Sambalpur, and show that what might otherwise appear to be arbitrary differences of treatment are due to the desire to make no greater alteration than is necessary in the existing state of things.

"The broad result is that, subject to the special peculiarities which I have noticed, the tenantry of the Central Provinces may at present be divided into three classes, namely:—

"i.—Absolute occupancy-tenants.

"ii.—Occupancy or conditional occupancy-tenants.

“iii.—Ordinary tenants not protected by any special provision of the law or entry on the village-papers.

“I understand that about 37 per cent. of the total number of tenants have occupancy-rights, and it appears from some returns which have been recently laid before the Select Committee that about 7-12ths of the total acreage under cultivation is held either by absolute or by conditional occupancy-tenants.*

“These, then, are the circumstances with which we have to deal. We found a body of cultivators paying revenue to the State through their village-headmen. Under, and for the purpose of, the revenue-system which we introduced, we converted the headmen into proprietors or landlords, the cultivators into their tenants, and the payments made by the cultivators into rent. We took a man who had no motive but to make a fair apportionment of the State demand and who, even after he became a contractor for, or a farmer of, that demand, did not conceive that he could reap a legitimate profit by enhancing the rents of the raiyat; we took this man and made him proprietor of the soil. We made the Government raiyats his tenants, and we gave him a legal power to raise his rents and at the same time a motive for exercising that power. Instead of using our utmost endeavours to squeeze out of him every penny which we could succeed in extracting by fair means or foul from the cultivator of the soil, we reduced his revenue-assessments to such a level as left him a substantial margin of profit; and we secured him in the enjoyment of this margin for a long term of years. Thus, whereas, in the earlier settlements of Hoshangábád we took 85 per cent. from the málguzár, leaving him only 15 per cent. for expenses of collection, we reduced the amount thus taken to 66 per cent. in 1838, when a twenty years' settlement was made, and we further reduced it to 50 per cent. in 1864, which was the date of the last settlement. We saw, indeed, that the changes which we had introduced would tend to benefit the new proprietary class unduly at the expense of the cultivators, and we endeavoured to give the latter some kind of protection, partly by means of a law which, having been framed for a widely different set of conditions, was applied as a temporary makeshift to the Central Provinces, but mainly by means of stipulations and declarations inserted in the settlement-records. But we always recognized the imperfect, provisional and transitory nature of the arrangements thus made.

* See Paper No. 80 to the Bill.

	Acres.
Area of absolute occupancy-tenants' holdings	3,232,173
Do. conditional do. do. do.	3,861,304
Total area held by absolute or conditional occupancy-tenants	7,093,477
Area held by other tenants	5,336,014
Total	12,429,491

“Under these circumstances, there will be little dispute either as to the necessity for legislation, or as to the main principles on which legislation should proceed.

“The necessity for legislation was recognized as long ago as 1873, when Mr. Jones, now Chief Commissioner, was entrusted with the duty of framing a suitable law for regulating the relation of landlord and tenant in the Central Provinces.

“And as to the principles of legislation, it is clear that we must not allow what was intended to be a boon to the immediate revenue-payers to be a curse to those from whom the revenue is ultimately derived. In giving the proprietary right to one class, the Government neither intended nor had a right to injure the status of another and much larger class; and if it is found that the change which we have introduced has injured that status, we are not only justified in devising, but bound to devise, measures for remedying that evil. Our object then should be to protect the tenant, so far as it is practicable to protect him, by legislation, and the only question is what form that protection should take. For the purpose of explaining the proposals made by the Bill with this object, I will remind you of the several classes of tenants with whom we have to deal, and will show how the Bill proposes to deal with each.

“There are, as I have said, in the existing state of things, three main classes of tenants—absolute occupancy-tenants, conditional occupancy-tenants, and a third class who are usually described as tenants-at-will, and who are in fact given no special protection by the law. The Bill recognizes these three classes, and adds to them a fourth, that of sub-tenants, whom, however, it treats very curtly.

“The absolute occupancy-tenant is left by the Bill very much as he stands under the existing record-of-rights. His rent is fixed for the term of settlement, and cannot be altered during that time, except on the ground of an improvement made by the landlord or of a material increase, diminution or deterioration of his holding. He cannot be ejected. His rights are heritable, and are transferable subject to certain restrictions which I will mention. In the first draft of the Bill it was proposed to deprive absolute occupancy-tenants of the power of transfer, on the ground that, by leading them into debt, it was proving their destruction. There is, no doubt, much to be said for this view, but I think that the more powerful arguments are against it. The rights conferred on these tenants at settlement were made part and parcel of the settlement-contract in order to remove them, if possible, from the field of legislation. Their holdings have in not a few instances changed hands, and the purchasers have acted on the understanding that they had bought a marketable commodity.

It may be that the improvident have lost their lands, but those who remain are presumably the more prudent and thrifty of their class, and are not likely to appreciate an interference which will undoubtedly lessen the value of their property. Moreover, I am myself somewhat sceptical about the possibility of preventing the transfer of rights of this kind when they once have been placed on a secure legal basis.

“Accordingly, the Bill allows the absolute occupancy-tenant to transfer his rights, but his power of transfer is not altogether unfettered.

“Under the settlement-rules, the tenant of this class had an unlimited power of mortgage; but, if he sold his tenure, the landlord had a right either to claim a fine or to buy the tenure at a fixed price. We found it very difficult to express the exact conditions laid down by the settlement; and we have altered them in two directions. On the one hand, in the interest of the landlord, we have treated a mortgage above a certain value as equivalent to a sale; on the other, in the interest of the tenants, we have abolished the fixed price at which the landlord might under the settlement-rules claim to buy, and have left the price to be equitably determined in each case by a Revenue-officer.

“Some objections have been raised on behalf of the landlords to this change. But I think a consideration of the section (38) will show that what we have done is, on the whole, the fairest way of dealing with the matter. As the right of pre-emption has hitherto stood, it would always be evaded by a mortgage. And as the price fixed at settlement—five times the annual rent—was left farther and farther behind the real value of the land, the landlord's right would have been generally defeated in this way.

“Next come the twelve years' men, those who have acquired occupancy-rights under the operation of the twelve years' rule in Act X, but whose rights were, under Circular G, expressly made subject to any alteration in the law. The persons belonging to this class are in the Bill called simply occupancy-tenants, and the class is so defined as to include all persons who have, up to the present date, acquired the rights to which I have referred.

“With respect to this class it was generally admitted that their rents ought to be fixed by superior authority and not left to competition; and the most important questions with respect to them were two—for what period should their rents be fixed, and by what standard?

“First, as to the period for which the rents should be fixed.

“In answering this question regard must be had to the special circumstances of the Central Provinces. There are parts of the country, such as the North-

Western Provinces, in which the weight of argument appears to be strongly in favour of fixing the rents of occupancy-tenants for the full term of settlement; but the circumstances of those regions differ widely from the circumstances of the Central Provinces. In the North-Western Provinces the country has long been opened up; rents have attained a high general level; population is dense; competition for land is keen; the revenue is probably as high in most districts as it ought to be.

“To the Central Provinces none of these statements apply. The country is in its infancy; population is sparse; rents are low; the effects of introducing roads and railways are only just beginning to be felt. If in a country such as this rents were fixed for the period of settlement, the result would be that there would be a very large beneficial interest given to the cultivator, sub-letting would be encouraged, and, when the time comes for revising the assessment, great hardship would probably be caused to the tenant by the necessity of ordering a sudden and serious increase in his rent.

“This being so, the late Chief Commissioner and the local Committee to whom he referred the Bill for consideration came to the conclusion—a conclusion which the Select Committee have adopted—that it would be wise to provide for some enhancement of rent during the term of settlement, and the Bill has made such provision accordingly, but under conditions which guard against the rent being increased (except for landlord’s improvements or increase in area) more than once in ten years.

“Next, as to the standard by which these rents should be fixed. The Bill as first introduced provided for the determination of these rents primarily on the basis of the settlement-rates and other customary rates paid by tenants of the same class. But it was found that, mainly in consequence of the non-existence of anything that could properly be called customary rates, there would be a difficulty in applying this standard; and accordingly the Bill in its present form simply directs (by section 42) the Settlement-officer to fix the rent of the holding of every occupancy-tenant at each settlement of the area in which the holding is comprised, and empowers the Chief Commissioner (section 82) to make rules for the officer’s guidance in fixing rents. Our desire is that the rents should be fixed at such a rate as will leave the tenant a reasonable margin of profit without trenching too widely on the share either of his immediate landlord or of the State; but we doubt whether this principle can be satisfactorily embodied in any hard-and-fast legislative enactment, and accordingly we have thought it safer to leave the point to be dealt with by executive instructions.

“I have said that provision is made for raising the rent of these tenants during the term of settlement. It may be so raised by order of a Revenue-officer

on the application of the landlord; and the Bill as submitted to the Council last December directed that such an order might be made if the rent of the occupancy-tenant was less than three-fourths of the rate usually paid by ordinary (that is to say, non-occupancy) tenants of holdings situate in the same or adjoining tabils for lands of similar quality with like advantages, and that, if the order was made, the rents were to be raised to three-fourths of those rates. This direction, has, however, been objected to from two points of view,—first, as tending to raise the rent of occupancy-tenants to an excessive rate, and, secondly, as tending to unduly hamper officers in fixing rents at the term of settlement. I think that sufficient answers may be found to both of these objections; but on the other hand, it was not easy to see why, if the discretion of officers in fixing rent at settlement was left uncontrolled by any hard-and-fast legislative direction, it should not be left to the same extent uncontrolled during the term of settlement. We have accordingly omitted from the present draft of section 46 any reference to the standard supplied by the rents of ordinary tenants, and have left such directions as may be required for the guidance of officers in acting under the section to be supplied by rules made under section 82.

“With respect to the devolution of an occupancy-tenant’s rights on death we have not modified the original proposals of the Bill. His rights are to descend as if they were land, except that they are not to go to a collateral relative unless he was at the tenant’s death a co-sharer in the holding. This is the rule of inheritance which under the North Western Provinces Rent Act applies to tenants holding at fixed rates. An exception has been made in the case of the three districts of Chánda, Nimár and Sambalpur. In these districts, where, as I have said, the settlement is virtually raiyatwári, the rights of an occupancy-tenant are expressly declared by the settlement-record to be heritable collaterally as well as lineally; and accordingly we have left them so. But in the other districts, where no fixed rule of inheritance appears to have been established by usage or prescribed by authority, we have thought it desirable, whilst recognizing the heritable character of the right, not to saddle it more than necessary with the complicated rules of Hindu succession.

“We have restricted the power of an occupancy-tenant to transfer his holding to cases where the transfer is made to a person who would be an heir, or is a co-sharer, or is made with the landlord’s consent; and we have provided that his right shall not be sold in execution of a decree. And, after various attempts to deal with the difficult question of sub-letting, we have come to the conclusion that it is impacticable to do more than impose on sub-letting the same restrictions as are imposed on transfer in the ordinary sense of the word; that is to say, a tenant may not sub-let without his landlord’s consent, unless his sub-tenant is a co-sharer or an expectant heir.

"I now come to the most difficult class of all,—the class who are described in the Bill as ordinary tenants. The position of this class under the existing law is this. They have no rights conferred on them by the law or by the terms of the settlement-record, except that, if they remain long enough on their land, they rise, under the operation of the twelve years' rule in Act X, to the status of occupancy-tenants.

"The Bill as first introduced maintained the twelve years' rule and allowed the growth of occupancy-rights. Recognising, however, the tendency of that rule to induce landlords to shift and harass their tenants, the authors of the Bill provided a machinery to protect the tenant during the term of growth of his rights. This arrangement, which I need not explain in detail, introduced in point of fact a new class of tenant, likewise deriving his rights from lapse of time or prescription and liable to lose them under certain conditions. These proposals met with much criticism and opposition from many sides, and the late Chief Commissioner and the local committee, after giving the proposals long and careful consideration, came to the conclusion that they ought to be abandoned.

"This being so, the proverbial three courses appeared to be open to us: We might either leave things alone, maintaining the existing twelve years' rule, and allowing the present race of tenants-at-will to struggle by means of it into the position of occupancy-tenants or, we might give a right of occupancy to all cultivators of every class, or, thirdly, we might do away with the twelve-years' rule and devise some other means for protecting all tenants who have not acquired occupancy-rights.

"Before explaining the course which the local committee ultimately recommended, and which the Select Committee decided to adopt, let me remind you briefly of the facts with which we have to deal. The most important are these:—

"(1) The twelve years' rule was never introduced into the Central Provinces otherwise than provisionally and tentatively; it has never become in these Provinces part of the established law of the land.

"Up to a recent time in all parts of the Provinces, and up to the present time in many, perhaps most, parts of them, the competition has been for tenants, not for land, and landlords have been indifferent to the growth of occupancy-rights.

"This state of things is now altering, and appears likely to alter with increasing rapidity. The number of notices to quit issued in the districts of the Narbada Valley, which is the part of the Provinces

most affected by recent improvements of communication, has become very significant, and manifests a growing inclination on the part of landlords to prevent the growth of occupancy-rights and to make enhancements.

"Now, the objections to the twelve years' rule are obvious. It gives the tenant during the currency of the twelve years the most insecure of all titles—a title by sufferance: it supplies the landlord with a powerful additional motive to evict. Where it has been deliberately and permanently engrafted into the law of the land, and has for a considerable time constituted part of that law, the balance of argument may be in favour of retaining it, with such modifications and supplementary provisions as may be necessary for preventing landlords from reducing it to a nullity. But, as I have shown, in the Central Provinces this is not the case. The rule was introduced there merely as a stop-gap, not as a permanent settlement of the question. It may, indeed, be said that it has nevertheless worked well so far, that the growth of rights under it is steady, and that in most parts of the provinces it has not produced friction between landlord and tenant or led to the increase of evictions. There is much truth in this, but, on the other hand, we cannot shut our eyes to the economic changes which are going on, and which must inevitably at no distant future produce the effects which they have produced in other Provinces. Prevention is better than cure, and the very fact that the present relations between landlord and tenant are comparatively harmonious supplies a powerful argument in favour of intervening now to devise, if we possibly can, some measures for the protection of the tenant which may be free from the defect shown by experience to be inherent in the twelve-years' rule.

"On the whole, then, having regard to the obvious imperfections of the twelve-years' rule, and to its recent and provisional introduction, we decided to abandon it, except so far as rights had already grown up under it, and to stop the further growth of occupancy-rights by lapse of time.

"Should we then fix the rents of all classes of tenants for a term, and thus give them all occupancy-rights? This is evidently the most thorough-going remedy against rack-renting, but it involves official interference of a very strenuous and prolonged character, and the local committee were of opinion that, other considerations apart, the time had not come for imposing so heavy a burden on an already overtaken administration. Whatever may be the case in the older Provinces, uniform rates of rent are not, I understand, to be found in the Central Provinces;* and, in the absence of such guides, the task of fixing the

* "The most rudimentary idea of rent-rates does not exist here, and the greatest anomalies in practice are found. Nothing could be more common than to find two contiguous fields allowed by the holders to be exactly equal in quality and productiveness, yet one paying double the rate of rent paid by the other."—(Hoebaugab Settlement Report, p. 201.)

rent of every tenant for a term of years would be one of extreme magnitude. It would practically amount to a regular settlement. When we consider that the Province passed through the ordeal of settlement barely 15 years ago, that a settlement is one of the most costly luxuries in which the State can indulge, and that no increase of revenue can be looked for, we shall readily agree with the local committee that the universal ascertainment and settling of rents is a measure not at present desirable.

“There remained the adoption of some new method of protection, and the method which the local committee eventually made up their mind to recommend was the method of compensation against disturbance. This is the proposal which is embodied in the Bill. The tenant's rent may be enhanced by agreement. If he agrees to the enhancement demanded by the landlord, no further enhancement may be made for seven years. In other words, he gets a seven years' lease at the enhanced rent. If he refuses to agree to the enhancement, the landlord may evict him, but must pay him as compensation a multiple of the sum demanded as enhancement. After much discussion we have fixed the multiple at seven times the yearly increase of rent demanded. The tenant cannot be ejected except for non-payment of rent, or on certain other grounds which are specified in the Bill.

“The great argument in favour of this proposal is that it compels the parties by the pressure of self-interest to decide what is a fair rent. If the tenant refuses a fair demand for an increase, he will be liable to lose his holding for an insufficient recompense. If the landlord makes an unfair demand, he may have to buy out the tenant at a cost which he can never recover. The scheme may indeed be objected to on the ground that, although based on a precedent derived from Ireland, there is no precedent for it in the Indian Statute-book, and that it constitutes a new departure in Indian legislation. The same objection might have been urged—was, if I am not mistaken, urged—against the principle of compensation for improvements which has, now for many years, been embodied in the law of landlord and tenant for the Punjab, Oudh and the North-Western Provinces, and will, I hope, before long form part of the law of landlord and tenant for Bengal. But those who denounce this and similar proposals as new-fangled and exotic should remember that in India settled laws and, to a great extent, property in land are exotics, and that in the Central Provinces they are exotics of very recent importation. We have, by the measures which we have introduced, created entirely new rights and entirely new relations. The general effect of these measures is, we believe, beneficial to the country, but they have produced, or are likely to produce, certain results which we did not intend, which are likely to be pernicious, and against which we are bound to guard. The rights themselves being novel

it is not a matter for surprise that the safeguards which are necessary to prevent an abuse of those rights should be novel also; and in the Central Provinces more than in most parts of the country we have something resembling a *tabula rasa* to work upon. There are comparatively few traces of existing customary rights on which to found our law. The whole position is novel, and demands novel treatment.

“The mere novelty, then, of the proposals constitutes no substantial objection to their adoption. Far more serious are the arguments that they will prove in practice an insufficient protection against rack-renting. We have not overlooked these arguments, and we admit their force in the case of countries where there is a keen struggle for land, and where population is redundant and has no outlet. But it seems a fair reply to say that at the present time these conditions do not exist in the Central Provinces. Compensation for disturbance constitutes a check on capricious eviction. Whether that check will be sufficient, whether it is likely to be surmounted or got round, is a question which turns mainly on the habits and nature of landlord and tenant, and on the amount of demand for land. These are points about which I am not competent to give an opinion; and all that I can say is that, in the belief of those who are most competent from local experience to form a judgment on these points, the proposals embodied in the Bill will work well, and will give an effectual protection to the cultivator for some time to come. If the Bill does this, if for some considerable time to come it is found sufficient to protect the tenant against capricious eviction, and to secure him in possession of his holding as long as he pays a fair rent, it will have done all that we can reasonably hope to accomplish.

“Except in respect of the procedure for enhancement of rent, there is practically no difference between the position of the occupancy-tenant and that of the so-called ordinary tenant under the Bill. The rights of the ordinary tenant are heritable and transferable, under the same restrictions as those which apply to the occupancy-tenant; he is protected from ejection except in execution of a decree which can only be obtained on specified grounds, and he cannot contract himself out of this protection.

“Under these circumstances, it is doubtful whether he would gain much by being made in name an occupancy-tenant. However, the Bill provides him with a means of acquiring that status, if he desires to do so. It gives him the right of purchasing the status of occupancy-tenant by the payment of a fixed sum equal to 2½ years' rent. This proposal is in accordance with the views of the Famine Commissioners, and may, I think, be fairly regarded as a proper and necessary consequence of the abolition of the twelve-years' rule. It will enable the prudent and thrifty to raise their status.

"This provision has indeed been considered by the landlords as an injury and infringement of their rights. But we fail to see that it can do any substantial injury to that class. We have provided that, before a tenant can claim to complete the purchase of an occupancy-right, his rent may be raised to the full average ordinary standard. Thus, a landlord will get Rs. 250 for every Rs. 100 of rent, and that sum, if invested, will suffice to protect him from the small future loss which the tenant's right of holding at a beneficial rate may hereafter cause him.

"The provisions with respect to transfer and sub-letting by an ordinary tenant are, as I have said, substantially the same as in the case of an occupancy-tenant.

"The mention of sub-letting naturally leads me to the fourth class of tenants dealt with by the Bill—the class of sub-tenants. The chapter on sub-tenants is very short—almost as short as the famous chapter on snakes in Iceland—and there are doubtless many persons who would wish that its brevity were due to the same cause. I cannot say that sub-tenants do not exist in the Central Provinces, but I believe I am right in saying that they are comparatively scarce. I am informed that only 22,000 persons have returned themselves as belonging to this class. We have in other parts of the Bill, whilst admitting the expediency of discouraging the practice of sub-letting, admitted the impossibility of preventing the practice when it has once grown up. And when we came to consider what rights should be attached to their status, the conclusion to which we ultimately came was that, at all events in the present condition of the Central Provinces, the need for giving them legal protection was not such as to outweigh the disadvantages arising from the creation of successive strata of privileged classes one superimposed above another. In the Bill which was presented with our third report we had inserted a proviso, the object of which was to protect the sub-tenants of certain absolute occupancy-tenants from excessive enhancement of rents. But, on further consideration, we have come to the conclusion that the protection thus proposed to be given can be safely dispensed with; and accordingly we have omitted the proviso.

"Such of the other provisions of the Bill as it is necessary to refer to relate not to any particular class of tenants, but to tenants in general. Of this kind are the provisions relating to the right to make, and be compensated for improvements, and the provisions as to distraint.

"The Bill gives the first right to make improvements, in some cases to the landlord, in others to the tenant, but provides that neither party shall be able to prevent the other from making an improvement which he himself is unable or unwilling to make. We have enabled the landlord to obtain an immediate

increase of rent for any improvement made by him or at his expense, and at the same time we have made him liable to pay compensation to an ejected tenant for any improvements made by the latter.

“In dealing with the procedure for recovery of rent, we have gone as far as we think safe towards abolishing distraint. What we have retained is, in fact, not distraint. It merely amounts to a recognition that the rent is a first charge on the produce of the land, and, as it embodies, it is believed, the customary procedure of the country, we hope it will work well. The greater security we have given to the tenants will make them much more eager to retain their holdings, and will render the recovery of rent more easy. I believe the experience of the Court of Wards estates goes to show that it is not the occupancy-tenant, but the man who has no rights, who is usually in arrears. Distraint in the form laid down by Act X of 1859 has been almost unknown in the Provinces. But it is believed that, in accordance with old custom, landlords have usually prevented an unsafe tenant from removing his produce until he paid his rent; and the provisions in the Bill are devised for the purpose of legalising, while guarding against the abuse of, this practice. In the last draft of the Bill we have, by an addition to section 17, made a slight extension in the lien given to the landlord over his tenant's crops when stored.

“In minor matters, we have provided for the protection and equitable treatment of the tenants. For example, section 8 provides for the case where there are several landlords; section 9 for the deposit of rent in a Government treasury; section 16 for the commutation of rent payable in kind; sections 25 to 28 for the avoidance of disputes when rents are paid in kind or by estimate of the crop; section 73 gives the Court power to suspend or remit arrears of rent in cases of drought or calamity; section 74 gives the Court equitable power in dealing with cases of forfeiture of the holding for the breach of a lease, etc.; and section 75 provides for the rights of an ejected tenant in respect of crops on the ground or of land prepared for sowing. All these are measures of help and protection to the tenant, which ought to better his condition. They may restrain or prevent the abuse of power by bad landlords, but no honest and just landlord can fairly object to them.

“The objection brought against the Bill generally by the landlords is that it is a one-sided measure. Any law of this kind must in a certain sense be one-sided. It is avowedly an attempt to strengthen the hands of the tenant against the landlord, and to prevent the abuse of power. Every such law starts with postulating that the parties are not on equal terms. The objection of one-sidedness must therefore be met by an admission. The Bill is necessarily one-sided, but it is not unfair. The question is, does the Bill deny to the landlord anything that is justly his, or does it unduly control the actions of a

good landlord? This question must, I think, be answered in the negative. No good landlord would desire to evict his tenants or harass them by continual changes of land; no good landlord would ask more than a fair rent; no good landlord would desire to confiscate his tenant's improvements, or to force him to pay rent when a calamity had destroyed his produce.

"But a truer description of the Bill is, in my opinion, that it is not one-sided, but compensatory,—compensatory for the additional rights which we have given to the proprietors or landlords by our revenue-system, and for the additional powers of enforcing those rights which we have given them by our law Courts. Without such supplementary legislation as this, our system of administration would have been justly exposed to the charge of being not only one-sided, but unfair. For, just consider who these 'proprietors' were, and what we have made them. Take, for instance, the case, to which I have already referred, of the Hoshanagábád málguzár. Forty-five years ago he was a middleman receiving a commission of 15 per cent. out of the rents which he collected for the State. He now gets half the rents, and what we propose to do is to prevent him from arbitrarily increasing that half.

"In the matter of jurisdiction, we have endeavoured to make the Bill as simple as possible. There are two classes of cases which will arise under the law: one which partakes of an executive character; the other which is of a judicial nature. In the former, we give the executive Revenue-officers jurisdiction; in the latter, we give jurisdiction to the Civil Courts. But, in order to secure in the judges that acquaintance with agricultural and revenue affairs which is necessary for the efficient treatment of this class of cases, it has been provided that a judge of a Civil Court of original jurisdiction shall not, unless he is also a Revenue-officer or Settlement-officer, hear suits under the Act. As the Courts of the Provinces are at present constituted, almost every civil judge of original jurisdiction is also a Revenue-officer. This, however, is a state of things which may not always exist.

"These, then, are the proposals to which we ask this Council to give the force of law. They are, as I said at the opening of my speech, the product of local experience, and framed with special reference to local conditions and local requirements. It so happens that the gentleman to whom just ten years ago the task of framing this law was entrusted has now become Chief Commissioner of the Provinces to which it is to apply. The Bill has been submitted to him for his consideration since he assumed his present office; and, as its provisions differ in some important respects from the provisions of the draft which he originally prepared, it is a matter of no small satisfaction to be informed by him, as we have been informed, that the Bill in its present form appears to him to be an excellent Bill; and that, when he finds that, although its purport

has been made known to the people, there has been no serious agitation against it, and that it has been accepted by the late Chief Commissioner, not to mention the distinguished, experienced and careful officers who gave it its final shape, he feels that he may safely assent to its being proceeded with and undertake to work it. He doubtless recognizes that, though the machinery which it adopts is in some respects different from that which he originally suggested and would possibly still prefer, yet the principles on which it is based are identical, and believes that it is likely to attain the same end though by a somewhat different road.

"I hope that a similar view will be taken of the Bill by those who, accepting as sound the general principles on which it proposes to proceed, judge it in the light of experience derived from other parts of India. For instance, there are obvious differences between the provisions which we have embodied in the present Bill and the provisions which we have embodied in the Bill which is now pending for the regulation of the relations of landlord and tenant in Bengal. There are also differences between the law which we propose for the Central Provinces and the law of landlord and tenant as it stands now in the Panjáb and in the North-West.

"We have not overlooked these differences, but it appears to us that they are not greater than are warranted by what I may venture to call the radical differences between the circumstances of the Central Provinces and the circumstances of, say, Bengal—differences arising out of their past history, their recent treatment and their present economic condition. In the sketch which I have given of the institutions which we found in existence when we took over these Provinces and of the institutions which we introduced into them, I have endeavoured to illustrate some of these differences, and I will not elaborate them further now. But what I would impress on the Council is this, that whilst we have declined to admit that provisions which may be suitable or necessary for Bengal are therefore suitable or necessary for the Central Provinces, so we desire to guard against committing ourselves or any one else to the view that provisions which, on authority of great weight, we have accepted and adopted as suitable and sufficient for the Central Provinces, are therefore suitable or sufficient for Bengal, for the Panjáb, for the North-Western Provinces, or, in short, for any other part of India, except that to which we propose to apply them."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that to section 55 of the Bill the following be added, namely:—

"or that the holding consists entirely of sir-land."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 56, after the words "an ordinary tenant," the following be inserted, namely :—"whose holding does not consist entirely of sir-land and."

The motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that to section 62 the following be added, namely :—

"(5) Nothing in this section shall apply to a holding consisting entirely of sir-land."

The motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that in section 11, after the words "not exceeding," where they first occur, the words "five hundred rupees or when" be omitted; and that the words "exceeds five hundred rupees, not exceeding double that amount or value," at the end of the section, be omitted. He said :—

"My Lord, as I have given notice of some amendments to the Bill, it is, I think, due to the Council to state that I have never been employed in the Central Provinces, and have had no special opportunity of becoming acquainted with the tenures prevailing in that part of the country. If I had reason to suppose that any other Member of this Council was in a better position in this respect, I should have hesitated to propose any amendments until I had first consulted him. But, while I must admit that I may have been led into error in some points by want of knowledge of the country to be legislated for, I do not think that the risk of this is enough to excuse me from giving my best consideration to any Bill that the Council is asked to pass into law; and it is after a careful examination of the Bill and of the papers circulated with it, that I have come to the conclusion that legislation on the subject is necessary, but that some of the provisions of the Bill are open to objection, while on other points I have been led by a perusal of the papers to accept provisions in regard to the propriety of which I was in the first instance doubtful.

"I have not been consciously influenced by any theory as to what the relations of landlord and tenant ought to be. I have rather endeavoured to ascertain what relations have hitherto existed between these classes in the Central Provinces, and how far the proposals of the Bill to define and improve these relations are consistent with the equitable claims of both parties. The note of the present Chief Commissioner of the Central Provinces, Mr. Jones, on the original draft of the Bill, of which he was the author, supplies much information as to the position of tenants in the Central Provinces, both anterior to British rule

and during the period of transition which preceded the formation of regular settlements and the extension of Act X of 1859 to those Provinces, and further information on the same subject is to be found in some of the opinions collected with reference to Bill No. I, which are to be found in Paper No. 11, especially those given by Colonel Lucie Smith, Commissioner of Chhattisgarh.

“The period of the introduction of regular settlements is of special importance, as it was then that steps were first taken to ascertain the persons to whom proprietary rights belonged, the previous policy of the British authorities in the Sagar and Narbada territories, which had long been under British rule, having been to withhold ‘any recognition of positive rights of ownership.’ The instructions of the Lieutenant-Governor of the North-Western Provinces for the settlement of those territories, issued in November, 1853, are to be found in Appendix XX to Sir William Muir’s edition of the ‘Directions for Settlement Officers.’ In paragraph 12 of these instructions it was directed that the settlement should be ‘concluded on the basis of apparent, or approximate, proprietary right, in so far as such right can with any certainty or confidence be traced, and that the leading object in so doing’ should ‘be to recognise fixed rights, or claims and interests, in whatever form they may already have grown up.’ But ‘the subject being one of much admitted obscurity and doubt,’ paragraph 13 provided that, ‘in order to avoid any future contest or litigation with respect to the rights declared in the settlement-proceedings,’ the proprietary title should be formally conferred in every case as ‘the creation or free gift of the Government.’ Paragraph 16 again refers to cases in which village-communities might be found to have preserved rights having ‘the character of a proprietary interest in the soil of an entire village’; while the 14th, 15th, and 17th paragraphs relate to cases in which it was a matter of discretion whether the former *málguzár*, or the cultivators, should be recognised as proprietors. In such cases, provision was made for cultivators who had been in possession since 1840 being declared proprietors of their holdings, while the person who had hitherto engaged for the revenue, rather from a hereditary tenure of service than from any exclusive right of ownership or occupancy over the whole village-lands, might be recognized, subject to the rights thus conferred upon the cultivators, as the proprietor of the village. In all cases, a careful ascertainment and record of all subordinate tenures and interests was prescribed by paragraph 18.

“It is clear from these instructions that the Lieutenant-Governor did not regard the Sagar and Narbada territories as a *tabula rasa*, throughout which no trace of proprietary rights existed, so that it was open to the Government to confer them at pleasure. On the contrary, he carefully provided for the recognition of all existing rights, whether proprietary or subordinate, while he

also proposed to confer a proprietary title in cases where proprietary rights were either non-existent or the indications of them were so weak that there was serious difficulty in determining to what persons they belonged:

“When the Nágpur Province, which was annexed in 1854, came under regular settlement, the principle laid down in these instructions appears to have been followed, and there also it is probable that, while in many cases proprietary rights had been extinguished, in others they were easily discoverable. Mr. Jones refers to the existence of village-communities, ‘though’ he says, ‘they are as a rule less highly organized than in the North-Western Provinces,’ and he guards against its being supposed that his remarks as to the original uniformity of tenures in the Central Provinces refer to anything else than ‘the relative position of cultivator and málguzár.’ They must not, he says, ‘be understood as applicable to the rights of málguzár as against the State, or to the constitution of proprietary bodies and their rights, *inter se*.’ When he refers to ‘the creation of proprietary right,’ he evidently alludes to the cases where such right was conferred upon the *patéls*, through whom the revenue was paid, though they had no real claim to it.

“I have considered it necessary to make these remarks, as in some of the papers submitted to the Council it has been assumed that proprietary rights in the Central Provinces are entirely the creation of the British Government. In a letter by Mr. Lindsay Neill, dated 27th June, 1882, it is not, indeed, assumed, but it is argued at some length, that this is the case. The Lieutenant-Governor in 1853 is likely to have been better informed as to the existence at that time of proprietary rights than local officials 29 years after, more especially as the form of a grant which was adopted was calculated to give rise to the impression that such rights were being conferred for the first time. I do not, however, think that it is a question of much importance whether any proprietary rights existed in the Sagar and Narbada territories thirty years ago, or in the Nágpur Province 20 years ago. The recognition of such rights as already existed would give them new strength, and, when these rights were conferred for the first time by the British Government, no one, I am sure, would now propose to take them away. But still it is worthy of notice that, even when new rights were granted, care was enjoined to ascertain and record all existing rights; and so far as this was attended to, the grants made cannot have curtailed or endangered any rights belonging to others. The fact, which, I think, Mr. Jones, has clearly proved, that rent as distinguished from revenue is, in the Central Provinces, a creation of our rule, is much more material than the origin of proprietary rights, as this fact, combined with the demand for cultivators, goes far to explain the favoured position which even ordinary tenants appear as a rule to have hitherto enjoyed in those provinces.

“ It is also clear, both from Mr. Jones’ note and from the other papers which have been circulated, that the extension of Act X of 1859 to the Central Provinces has in some parts of the country acted prejudicially to the tenants without rights of occupancy, while in others the general recognition of their claims not to be disturbed in their holdings, so long as they are willing to pay a fair rent, and probably also the amount of land available for cultivation, have hitherto preserved them from injury. On this ground, as well as because Act X of 1859 was originally passed for a country very differently circumstanced from the Central Provinces, and has been shown to be in many respects unsuited to those Provinces, I admit the necessity for legislation.

“ And, as regards the measure now before the Council, I may at once say that many of its provisions have my hearty approval. Some of the points on which it appears to me open to objection have been put right by the amendments moved by my hon’ble friend the mover of the Bill, though these do not remove the objections to which the explanation attached to the definition of *sir-land* in section 3 appear to me to be open. As, however, that explanation has been accepted by this Council when it passed Act XVIII of 1881, I have not seen my way to propose to strike it out. But there appears to be considerable danger that, when a proprietor, who may be aged or infirm, a minor or a female, or otherwise unable to arrange for the cultivation of his *sir-land*, is obliged to let it out to tenants, the lapse of six years will, under this explanation, extinguish his *sir-rights*, and he will be unable to get the land back when he becomes able to manage it. I have not overlooked the provision that land is not unoccupied by the proprietor when it is leased with an express reservation of his *sir-rights*; but, unless education has made greater progress in the Central Provinces than anywhere else in India, it will be long before the great majority of the proprietors know that any such express reservation is necessary, and in many cases there will be no written lease at all. In some of the papers which have been circulated I have noticed references to the ignorance of the Gonds and other classes who enjoy proprietary rights. I also observe that we have no information as to the extent to which land is held by cultivating proprietors in the Central Provinces, though we have very recently been furnished with information as to the area of land occupied by tenants of the different classes recognized in the Bill. But the persons who were recognized at settlement as proprietors of their own holdings would be, as a rule, cultivating proprietors, though they may occasionally have tenants; and I gather that there must be a good deal of land occupied by cultivating proprietors from statements like that made in the memorial of the zamindars of the Damoh District (Paper No. 10), that ‘in these Provinces the *málguzárs* are cultivators themselves, their *sir-land* generally forming the principal source of

their income,' and from the persistence with which the proprietors have urged that sufficient provision has not been made against the growth of tenant-rights over their *sir-land*. The explanation attached to the definition of *sir-land* is expressly objected to in Papers No. 14, No. 16 and No. 25, in the last of which it is pointed out that no such restriction is to be found in the North-Western Provinces Rent Act; and, where so much protection is given to ordinary tenants as is provided by Chapter VI of this Bill, it becomes extremely important that the amount of *sir-land* available for occupation by cultivating proprietors should not be reduced in consequence of its being occasionally let to tenants.

"While I have carefully studied the papers submitted to the Council, I am obliged to admit that we are legislating on very imperfect information. There has been no general criticism by local officials of any of the Bills subsequent to Bill No. I, though the Bill framed by the Pachmarhi Committee, on which Bill No. II was based, departed very widely from that Bill, and Bill No. III introduced some important provisions which did not appear in any of the earlier Bills. One of these provisions has been amended at the instance of the late Chief Commissioner, and some other amendments have been made, apparently in consequence of representations by landowners; but we have very little guarantee that the provisions of the Bill, as it now stands, are suited to the circumstances of the Central Provinces; and if the passing of some of the amendments now proposed should lead to the Bill being recommitted, I hope the opportunity will be taken to obtain the opinions of local officers on the suitability of those provisions to the country and for the people for whom it is proposed to enact them.

"I now come to the amendment to section 11.

"The words which I propose to strike out were first introduced into the section by Bill No. III. The effect of this amendment would be that, in case of exaction, the penalty which the tenant might recover would not exceed double the amount illegally levied. This is what was proposed by Bill No. III, which was founded upon the Bill drafted by the Pachmarhi Committee, and it corresponds with the provisions of section 48 of the North-Western Provinces Rent Act, XII of 1881.

"It is only in cases when the amount illegally exacted is very small that there could be any doubt whether double the amount would fully compensate the tenant; and small exactions are most likely to be attempted when the landlord believes that he is entitled to the money. Mistakes on a question of this nature may easily occur when the landlord is a cultivating proprietor no better informed than his tenants. The landlord may, for instance, think himself entitled to a small cess, which has been usually levied in the neighbourhood, but which is not, strictly speaking, part of the rent of the land, while, if the

cess were unusual, it is almost certain that the tenants, protected as they will be under this Bill, would refuse to pay it. If a tenant finds that he has paid a rupee which was not due, he would probably be sufficiently compensated by a payment of two rupees, in addition to his expenses in recovering this sum, and no Court would award him Rs. 500; while, if he were persuaded to sue for that amount, he would render himself liable to heavy costs. If the act of the landlord amounts to extortion, he would, of course, be criminally, as well as civilly, liable.

“No reason was given in the Further Report of the Select Committee for providing a penalty not exceeding Rs. 500, nor does it appear from any of the papers that cases of exaction have been common in the Central Provinces. In one of the papers, a petition from the *málguzárs* of Raipur (No. 28), it is alleged that ‘the judicial records will prove that the *málguzárs* do not realize more than their just dues,’ and the petitioners protest against being singled out as a special class of offenders and ‘threatened with punishment for offences which they do not commit.’

“I propose the omission of the words adding this penalty, as I do not think that they will benefit the tenants, who may be tempted by them to sue for unduly large sums, while they are calculated to irritate the landlords.”

The Hon'ble MR. QUINTON said :—“My Lord, the object of this amendment is to limit the discretion of the Court by restricting the penalty, which it has power to impose in cases of illegal exaction of rent, to double the amount so exacted in excess of the rent payable. Cases are conceivable where such a penalty would be quite inadequate. In Act X of 1859, the corresponding provision was similar to that now proposed by my hon'ble friend, but the North-West Act of 1873, section 49, fixed the sum awardable to the tenant as compensation in such cases at a sum of Rs. 200 in addition to double the amount exacted, no doubt, because the earlier provisions were found inadequate.

“The present Bill adopts the principle of naming a sum which the amount awarded is not to exceed, leaving it to the Court to decide what compensation or penalty is proper in each case. As a fact, the discretion may be in some cases more restricted than that given by the North-West Act; and, as exaction of rent is an offence which it is highly expedient to discourage, as any improper exercise of the discretion can be checked by the Appellate Courts, and as no evil consequences have been shown to result from this principle, already adopted by the legislature, I must express my opinion that there are not sufficient grounds for discarding it, and vote against the amendment.”

The Hon'ble SIR STEUART BAYLEY, said :—“My Lord, I also must oppose this amendment. My hon'ble friend would return to the penalty of twice the

amount extorted. This was the old penalty in Act X of 1859, and how has it worked? Hardly ever have I known it worked! Yet it cannot be said that the extortion of illegal additions to the rent is unknown. The Members of this Council who heard the Hon'ble Major Baring's speech on the Bengal Tenancy Bill will recollect the interminable list of illegal cesses quoted by him from the correspondence of 1874 as taken in the 24-Parganas. The same correspondence showed how universal the complaint was, and left on me the impression that a cultivator might well have to pay a rupee extorted illegally for every two rupees he paid as legal rent; and the reason why such extortion is not suppressed by a mild penalty such as twice the amount extorted is obvious. The penalty could only be enforced after a special suit by the raiyat, with due formality and full proof in each case. This was not to be expected, and, as a matter of fact, the penalty was a useless threat. It is obviously worth the landlord's while to risk such a penalty, which would, if enforced, be nothing to him, though the extortion might be a great deal to the raiyat. No; if it is worth having a penalty at all, it should be substantial. Nor will such a penalty, as urged, be cumulative. The extortion may be general, but, unless each raiyat brings a suit, the penalty will not be cumulative; and in such cases each raiyat does not bring a suit. One raiyat will have to bell the cat, and, the penalty once enforced, the others might hope to get the advantage of it.

"The amount of penalty, it should be observed, is discretionary with the Court. We only fix the maximum. The Court may be trusted not to levy a penalty disproportionate to the offence. I must oppose the amendment."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that in section 29, sub-section (2), after the words "an ordinary tenant," the words "whose holding does not consist entirely of sir-land" be inserted. He said:—

"My Lord, I have already pointed out that the protection of the proprietor's cultivating rights in his sir-land is the necessary complement of the provisions of the Bill in favour of tenants. If, then, he finds it convenient to let that land for a time, his tenant should not be allowed to insist on his making improvements, nor to make them himself unless with the landlord's consent. The North-Western Provinces Rent Act, XII of 1881, section 44, allows no tenants other than tenants at fixed rates or occupancy-tenants to claim compensation for improvements made without the consent of the landlord; and, under that Act, as under section 41 of the present Bill, occupancy-rights cannot be acquired in sir-land. The amendment proposed also seems in harmony with clause 4 of section 30, which, in providing for improvements made by tenants before this Act comes into force, excepts sir-land."

The Hon'ble MR. QUINTON said :—“ My Lord, there are few things in this country more necessary for the good of the community generally, and the welfare of the agricultural classes in particular, than that landlords and tenants should have the strongest inducements to effect improvements in the land held by them as a protection against famine, and a means of promoting increased production of food to meet the growing demands of a rapidly increasing number of mouths. All legal obstacles which obstruct the carrying out of improvements should be removed so far as this can justly be done. This amendment of my hon'ble friend, if accepted, will perpetuate, instead of removing, such an obstacle.

“ It may be true that it will not operate in numerous cases, but still, if a cultivator of sîr-land has the will and the means to make an improvement, it is certainly for the public advantage that he should be empowered by law to call on his landlord to make it, and, in case of the landlord's refusal, to make it himself. Amendments have been introduced by my hon'ble and learned friend in charge of the Bill which will guard the rights and interests of minors and widows in sîr-land let to tenants. But it is of the highest importance that the capabilities of such land, as well as of all other land, should be developed at the earliest moment; and the reluctance of the landlord to allow of a tenant effecting such development from a chimerical fear that an unjust award of compensation might subsequently be given against him should not be allowed to outweigh the general good. He will, it is true, be liable to pay compensation for improvements, but the liability is measured by the increase given to the letting value of the land and other considerations stated in section 31, by which his interests are adequately protected.”

The Hon'ble SIR STEUART BAYLEY said :—“ My Lord, I am inclined to accept Mr. Barkley's amendment. I do not know much of the custom in the Central Provinces in regard to dealing with sîr-land, but I should think the practical effect would be very small. If I understand rightly, the man who cultivates a mâlguzâr's sîr-land can rarely be considered a permanent tenant of that land. The landlord employs him practically as a labourer, giving him his payment in the shape of a share of the produce. The tenant's interest is from year to year, the landlord's interest is permanent; and I think it unfair to the landlord, in regard to land which is strictly his own, and in which the tenant has no durable interest, that the latter should be able to create an interest by making an improvement which his landlord may be unwilling or unable to make, thereby preventing the landlord from ousting him except at heavy expense. I draw the most marked distinction in this respect between sîr-land and raiyatî lands, and, while in the latter I think the tenant should have every possible security and every encouragement to improve, I see no ground

for giving him similar security in land which is distinctly the personal property of the landlord. I see no objection to the present section in cases where the landlord may find it convenient to give a tenant a lease of (say) three or more years, but, in regard to sîr-land generally, I would vote for Mr. Barkley's amendment."

His Excellency THE PRESIDENT said :—"I should just like to ask one question as to the effect of this clause. The hon'ble member moves an amendment to section 29, but moves no amendment to section 30; and I am not quite clear whether, supposing an ordinary tenant of sîr-land were to make an improvement with the consent of his landlord, there would be any provision in the Bill which would secure him legal compensation for the improvement so made."

The Hon'ble MR. ILBERT said that an improvement so made would not be made "in accordance with this Act," and therefore would not entitle the tenant to compensation under section 30. His inclination was to agree with the recommendation of the Hon'ble Mr. Quinton that the Bill be left as it stood; but, as it was an arguable point, he was quite content to adopt the view of the majority of the Council. His hon'ble friend Mr. Barkley was not quite accurate in saying that improvements in sîr-land were excluded from the operation of the Bill. Sub-section (2) of section 30 merely said that the presumption as to improvements having been made with the landlord's consent should not apply to improvements made on sîr-land.

His Excellency THE PRESIDENT said :—"I agree with the Hon'ble Sir Steuart Bayley in thinking that it is very desirable to maintain the distinction between sîr-land and raiyatwâri land. The amendments introduced by the Hon'ble Mr. Ilbert all tended in that direction. I should, therefore, be personally prepared to accept Mr. Barkley's amendment of section 29, provided that it is made clear that, if the tenant of the sîr-land makes an improvement at his own expense with the consent of his landlord, he shall have a legal right to compensation. I am quite ready, in regard to sîr-land, to make the consent of the landlord a *sine quâ non*; but I am not prepared to admit that, that consent having been obtained, the tenant shall be entitled to no compensation for improvements made at his own expense. That appears to me to be a highly unjust proceeding and one which ought to be guarded against by the law; but, if that can be done, I shall be prepared to accept Mr. Barkley's amendment."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT moved that in section 30, sub-section (1), for the words "which have been made in accordance with this Act by him or by the persons under whom he claims," the following shall be substituted, namely :—"which he or the persons under whom he claims may have made in accordance

with this Act or with the landlord's consent otherwise than in accordance with this Act."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that to section 43, sub-section (1), the words "or unless the holding has been inherited from an ancestor common to him and the deceased tenant" be added. He said :—

"As Mr. Jones' Draft Bill is not with the papers circulated, and the subject is not referred to in his note and commentary, I have been unable to ascertain whether the exclusion of collaterals from succession to occupancy-tenants was proposed by him. They are excluded by section 81 of Bill No. I, but, under the previous law, section 6 of Act X of 1859, there was no bar to the succession of collaterals. When Bill No. I was circulated for opinions, Colonel Lucie Smith, the Commissioner of Chhattisgarh, stated that the proviso excluding collateral relatives 'is opposed to the custom of the country,' and considered that it should be omitted (Paper No. 11, page 47). Afterwards the Nágpur landholders, on the Bill as revised by the Pachmarhi Committee being communicated to them, remarked on section 14 in a letter to Mr. J. W. Neill, Officiating Judicial Commissioner: 'We allow collateral succession at present, and we will not object if the scope of the section be enlarged so as to allow of such succession in future.' It appears, therefore, that they did not desire a change of the existing law on this point. After Bill No. II was published, the tenants of the Harda tahsil of the Hoshangábád district objected to section 35 as excluding the succession of collaterals, and referred to section 6 of Act X of 1859 as permitting it (Paper No. 15). On the other hand, the landlords of the Hoshangábád and Narsinghpur districts, in Paper No. 14, approved of the Bill on this point, and the opinion submitted by them was afterwards adopted by the landlords of certain villages of the Nágpur division in Paper No. 16. In none of the remaining papers does the subject appear to be noticed.

"It is true that the law has been changed in the North-Western Provinces by section 9 of Act XVIII of 1873 (re-enacted in Act XII of 1881), but I do not think that this is a reason for making a change unfavourable to the occupancy-tenants in the Central Provinces. I can understand that there may be reasons for excluding remote collaterals, whose ancestors never held the land, from succession to occupancy-tenants, but such reasons would not be applicable to the claim of one brother to succeed another in land in which their father had acquired occupancy-rights. The Bill allows such succession in case the brothers held the land as co-sharers; but, if the land was not enough for both, and one gave up his share to the other and sought for other means of support, or if the hold-

ing had been divided between them, as it might be, with the landlord's consent, the right to succeed would be lost. Suppose that, on the death of a father who held land as an occupancy-tenant, there are three sons entitled to inherit, but the land is not more than enough for two. One may enlist in the army or leave the village to look for employment elsewhere, while the other two succeed their father. One of the latter dies, leaving no heirs but his brothers. If the holding has not been divided, the brother who has remained at home will succeed, but the brother who gave up his share will be excluded. Even if both the brothers who succeeded to the holding die and the absent brother is their sole heir, he will not be allowed to return and take up the family holding. A law which would lead to such results as this is not likely to commend itself to Native public opinion, and, when it came to be understood, there would be a strong temptation to all heirs to cling to their ancestral holding, even though it were manifestly inadequate to support them. If any one were to leave, some arrangement would be come to by which he might appear to continue a co-sharer with those who remained.

“In order to remedy this, I propose, as in the Panjáb Tenancy Act, to allow collaterals in the line of descent from the person who acquired the holding to succeed in the absence of lineal heirs.”

The Hon'ble MR. QUINTON said :—“As explained by my hon'ble friend, the Bill, following the precedent set by the North-Western Provinces Rent Act, limits the succession of collateral relatives to the occupancy-rights of a deceased tenant to such collaterals as were co-sharers in the holding at the death of the tenant. The amendment proposes to extend this limitation so as to bring within it all collaterals of the deceased, provided that the holding was inherited by them from an ancestor common to him and them.

“The objections to this course are, in my mind, great. It will introduce all the intricacies of Hindu law into the determination of questions respecting the ownership of occupancy-rights, which it has hitherto been the policy of the legislature to exclude. It will undoubtedly foster litigation and promote disputes among conflicting claimants, and, most important of all, will encourage sub-letting by absentee occupancy-tenants who have inherited rights under the provisions of the amendment.”

The Hon'ble SIR STEUART BAYLEY said :—“My Lord, the question here raised is whether in the Central Provinces we should make the custom follow that of the Panjáb, or keep it, as in the Bill, in accordance with the law prevailing in the North-Western Provinces. The Bill as drawn follows the North-Western Provinces law, and, considering the very complete sifting which the Bill has had at the hands of experienced local officers, I would

a priori accept their view. But, moreover, I think the Panjáb rule, however reasonable in a system founded on the supposition that the cultivators are themselves the proprietary body, is hardly adapted to a system where a single landlord is responsible for the land-revenue of his estate. The landlord must, in case of land being vacated by death, find another tenant. Where a son is on the spot, he succeeds by law—where a near relative is available, he would generally succeed by custom; but it seems to me most inequitable that the landlord, or the tenant who in the absence of other applicants he may have put in on the land, should be at the mercy of any one of a hundred collaterals who may have entirely separated himself from the land, and may turn up and claim the tenure any time within 12 years. The landlord can know nothing about these, and he would probably not only lose the tenant of his choice, but have to compensate him for being turned out. There is a still more serious objection on general principles in the tendency to *morcellement* and to consequent litigation, which would be involved by giving all collaterals the right to participate in every holding left vacant. Nor do I see how Mr. Barkley can reconcile his amendment with the principles laid down in section 33 of the Bill regarding relinquishment. By section 33 (b) a tenant is presumed to relinquish his holding by ceasing to reside. By section 34 a tenant is presumed to relinquish his holding by leaving the land uncultivated and the rent unpaid for two years even when he resides in the village. The collateral in the case supposed by Mr. Barkley has altogether ceased to reside in the village, and, instead of the limitation given in section 34, he would apparently, if the amendment be allowed to stand, be able to claim the inheritance—at least I suppose this would be the effect—under the ordinary law of limitation.

“ I presume also the amendment would have to be applied to section 61, also regarding ordinary tenants. To sum up, I would oppose the amendment because it is contrary to the opinion of the best local officers, because it is opposed to public policy by its tendency to burthen the land with more mouths than it can support, because it introduces all the complexities of Hindu law into the land-system and tends to foster litigation, because it is inequitable and oppressive to the landlord and his *boná fide* tenant, because it is contrary to the principles which regulate relinquishment under the Bill.”

The Hon'ble MR. ILBERT also opposed the amendment.

MR. BARKLEY stated in reply that, under Act X of 1859, collaterals had enjoyed the right of succession to occupancy-tenants in the Central Provinces, in default of lineal heirs, for the last 19 years; that there was no relinquishment of the holding in the lifetime of the deceased tenant, succession to whom was in question; and, if the heir did not come in within two years, there was no

reason why section 34 should not apply; and that he had not considered it necessary to propose any amendment to section 61, which related to a different class of tenants.

His Excellency THE PRESIDENT said:—"The question is one not altogether free from difficulty, but the weight of legal opinion appears to me to be so decidedly in favour of the Bill and opposed to the amendment, that I shall vote against it."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that in section 58, sub-section (2), clause (b), for the words "equal to," the words "not less than three times and not exceeding" be substituted. He said:—

"My Lord, the provisions of this chapter give a great degree of protection to ordinary tenants. Their tenures are made heritable, and, if their rent is enhanced under the provisions of this chapter, it cannot be again raised under these provisions until seven years have elapsed. The only check upon the amount of enhancement, however, is that provided by this section combined with sections 55 and 57, that, in case the tenant does not agree to pay the enhanced rent demanded, the landlord can only proceed by suing to eject him; and, if ejection is decreed, the landlord must pay into court any sum declared to be due as compensation for improvements, and further, as compensation for disturbance, seven times the yearly increase of rent demanded. Though it may be doubted whether this sufficiently provides for the case of an improving tenant, who does not wish to give up his land, and who, rather than do so may be compelled to pay an enhanced rent due to his own improvements, it cannot be denied that it affords a very efficient protection to the ordinary tenant in all other cases. The exceptional case is that of the sitting tenant, which is at present being discussed in England by men like Professor Bonamy Price and Sir James Caird. I was at first, I confess, doubtful as to the principle of giving heritable rights to ordinary tenants, which was not proposed either in Bill No. I or in the Pachmarhi Committee's draft Bill. But, on examining the opinions given on Bill No. I, I found that Colonel Lucie Smith, Commissioner of Chhattisgarh, urged (Paper No. 11, page 43) that all tenants in Chhattisgarh are entitled to hold their land, being other than *sir*, so long as they pay a reasonable rent, and quoted depositions of *mālguzárs* in a case in the neighbourhood of Raipur in support of this (page 42). In a subsequent communication, dated 20th December, 1880, he stated that there was 'hardly a man among the *mālguzárs* who would come forward openly and assert that he has the right to eject a *raiyat* who is willing to pay a reasonable rent;' and he quoted a minute by Sir George Campbell, in support of an argument he had previously

urged, that a custom which prevailed there, of the raiyats redistributing the lands amongst themselves, was an indication of proprietary right, though at settlement the managers of the villages had, by mistake, been recognised as proprietors. Again, while the Pachmarhi Committee's Bill had provided in section 23 that ordinary tenancies should lapse on the death of the holder, a pleader, Mr. Bipin Krishna Bose, who had previously acted for the Nágpur landlords, suggested to the Judicial Commissioner that heirs who had been members of a joint family with the cultivating tenant should be allowed to succeed on his death. Bill No. III made the rights of ordinary tenants heritable, and in the Report of the Select Committee it was stated that it was believed that the amendment would be in consonance with the general feeling of the people. Opinions have since been received from landlords of the Nágpur Division, and of the Hoshangábád, Narsinghpur, Betul and Raipur Districts; and in none of these has this amendment been objected to, though other provisions of the Bill have been warmly canvassed. The Raipur landlords indeed admitted that, before the introduction of Act X into the Chhattísgarh Division, ejections of tenants were unheard of, and that tenants should not be ejected so long as they pay fair rents. As the Bill puts a stop to the growth of occupancy-rights by 12 years' possession, the heritable right conceded to ordinary tenants of other than sír-land may be regarded as a compensating advantage; and, as the concession has not been objected to from any quarter, and in some parts of the country, at least, the right of such tenants not to be ejected so long as they paid reasonable rents was recognized, I see no reason to call in question its propriety. It would, however, be valueless unless there were some means of protecting the tenant from unreasonable enhancement of rent, and the provisions of section 58 furnish a convenient means of preventing this in most cases; and, though the principle of compensation for disturbance is objected to in some of the papers received (Nos. 25 and 28), the landlords of the Nágpur Division have accepted it (Paper No. 25), only urging that seven times the yearly increase is too much, and that five times would be a fair compensation.

"I think the Bill errs in laying down an unduly rigid rule on this point. There may be cases in which seven times the yearly increase demanded would not be excessive. There are tenants who, if the passing of this Bill were delayed, would acquire occupancy-rights under Act X of 1859 within a year, and, when the growth of such rights under that Act is stopped, there will be cases of ordinary tenants whose families have held the land for two or three generations. Such tenants would usually pay any rent the land could properly yield rather than give it up, and if an excessive rent were demanded to compel them to quit their holdings, it would not be unfair to allow seven times the increase demanded, especially if the tenants were already paying as much, or nearly as much, as they ought to be asked

to pay. But in other cases, the tenant may have held the land only for a year or two, without paying any premium on entering, and perhaps at a low rate of rent. In others, again, the land may have been let on favourable terms for a period of years in order to get it brought under cultivation. In the one class of cases, the claims of the tenant to compensation for disturbance would be but small; in the other, seven times the increase demanded, even though that increase was not unreasonable in amount, might be an excessive sum. If, for instance, the tenant held at half the normal rate of rent, and the landlord proposed to demand the normal rate, the tenant, if he chose to give up his holding, would get $3\frac{1}{2}$ years' rental, in addition to any compensation for improvements which might be due him.

"I therefore propose that the Court which passes the decree should be allowed to fix the compensation, with regard to the circumstances of each particular case, at from three to seven times the increase demanded. The compensation thus could not be merely nominal unless the increase of rent demanded was nominal, while it might be large in cases in which the tenant was entitled to special consideration. It would rest with the court to adjust it according to circumstances, and this, I think, would be a more satisfactory arrangement than to give a fixed number of times the increase demanded. It might also facilitate arrangements out of court, where the landlord's object was to resume his land, which he can only do by agreement with his tenant. He might say to his tenant: 'You have held my land for four or five years; you have made no improvements; it is now convenient to me to take it into my own hands, but I can only do so by asking an increase of rent which you will not give. I therefore propose to add one-half to the rent, and offer you three times the yearly increase.' The tenant might say: 'I am not prepared to pay the increased rent, but the court may give me more than you offer. I am ready to give up the land for five times the yearly increase.' If the landlord agrees, the tenant would get $2\frac{1}{2}$ years' rental, and if the landlord and tenant agree to four times the increase, the tenant would get two years' rental, to surrender land he had held only a few years.

"The principle of compensation for disturbance is entirely new to Indian law, and it may therefore not be out of place to remind the Council that the Irish Tenancy Act, in which this principle was first recognized, allows a discretion to the court to give compensation for disturbance not exceeding so many years' rental, the maximum varying according to the size of the holding, while no minimum is prescribed."

The Hon'ble Mr. QUINTON said :—"This is one of the means of protection for ordinary tenants devised by the framers of the Bill in lieu of the growth by prescription of rights of occupancy, and of which they as a class have been

deprived, and it is intended to operate as a check upon rack-renting. Seven times the yearly *increase* of rent demanded seems no immoderate compensation to award to a tenant who may be driven out of house and home with no resource before him but starvation; and, as the Select Committee have after mature deliberation accepted this amount as the minimum likely to prove effective for the object in view, I see no cause for giving the courts any discretion in the matter. It is difficult to see on what principles such discretion could be exercised; so that we should have to expect widely different judgments from different judges, and, as a consequence, fertile crops of litigation and discontent. This is pre-eminently one of the cases in which a hard-and-fast line is advisable. The minimum suggested in the amendment, namely, three times the increase demanded, would leave it in the power of any judge to defeat the avowed intention of the legislature."

The Hon'ble SIR STEUART BAYLEY said:—"My Lord, this amendment also, I fear, I must oppose. It introduces an element of elasticity no doubt, which is in itself desirable, but it also introduces a far greater element of uncertainty which would be most prejudicial. Doubtless the limit of seven times the amount of enhancement is arbitrary; but it was come to after very full consideration, and was discussed at two separate meetings of the Select Committee. The original proposal was ten times. This was considered too much in a temporarily-settled province, where the landlord was liable to have his revenue enhanced at the next settlement, as the enhanced rent which *ex hypothesi* he would receive from the incoming tenant might not pay him a fair interest on the compensation he would have to pay the outgoing tenant. After several proposals the amount was reduced to seven. My great objection to Mr. Barkley's proposed amendment is that, under the discretionary rule, not only would the landlord never know exactly what risk he ran in ousting a tenant for refusal to pay an enhanced rent, but, worse than that, the tenant would never know whether it was better worth his while to pay or to refuse. Each case would be a speculation in litigation. The courts would have no practical guide. Another objection is that the system itself is experimental and may possibly not work well; but, under the Bill as it stands, it would at least work consistently, and its action could be watched. If it broke down, the Government would know why, and would be able either to withdraw it or to strengthen its weak points. Under the proposed amendment, one could never judge fairly of the experiment, because its working would differ with the personal equation of each Revenue-officer. It is certainly better, in introducing an important experiment of this kind, about which, as Mr. Ilbert has shown, there is room for various opinions, that the conditions of its introduction should be fixed and known, and that they should not vary with the varying idiosyncrasies of every officer."

His Excellency THE PRESIDENT said :—" I cannot accept this amendment. The question, as my friend Sir Stuart Bayley has said, has been extremely carefully considered by the Select Committee and the Government. The original proposal was to fix the rate at ten times the increase, but, in consequence of representations received from the Central Provinces, that figure was reduced to seven times the increase of rent—a very small amount to be demanded for compensation for disturbance, and very greatly less than that demanded under the Irish Land Act. This is making the experiment on a small scale. It appears to me to be sufficient for the circumstances of the Central Provinces, where population is thin and where farms are rather seeking for tenants than tenants for farms. It seems to me to be the least that could be proposed, and, therefore, I cannot accept the amendment proposed by my hon'ble friend."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that for section 62 the following section be substituted, namely :—

"62. The landlord of any holding held by an ordinary tenant may confer upon him the rights of an occupancy-tenant in respect of the holding; and the landlord of any holding held by an occupancy-tenant or an ordinary tenant may confer upon him the rights of an absolute occupancy-tenant in respect of the holding; and a person upon whom such rights are so conferred shall, for the purposes of this Act, be deemed to be an occupancy-tenant, or an absolute occupancy-tenant, as the case may be."

He said :—

"This, my Lord, is the most important of the amendments of which I have given notice, and the section to which it relates is the only one in regard to which I find myself absolutely at issue with the principles adopted in the Bill. My objections to that section are so strong that, if it is allowed to stand, I shall, though with regret, feel it my duty to vote against the passing of the Bill.

"This section, like that giving heritable rights to ordinary tenants, was first introduced in Bill No. III, nothing similar having appeared either in the original Bill or in the revised draft prepared by the Pachmarhi Committee. It cannot be said to have been suggested by any of the opinions received from the Central Provinces, and the only opinions given after Bill No. III was published, except that of the Chief Commissioner himself (Paper No. 20), are strongly opposed to it. Unfortunately, these are the opinions only of landlords, the late Chief Commissioner not having thought it necessary to consult any of the local officers as to the changes made by the Bill No. III. But the landlords of the Nágpur Division (Paper No. 23) denounced the section as a departure from

what they called the Pachmarhi compromise, that is, the Pachmarhi Committee's draft Bill, which they had expressed themselves willing to accept, and as an encroachment on their rights, and urged that the compensation proposed to be given to the landlord is wholly inadequate. The opinion of the landlords of the Hoshangábád, Narsinghpur and Betul Districts (Paper No. 25) was similar, except that they did not refer to the Pachmarhi Bill. The landlords of Raipur (Paper No. 28) objected to the section that it arbitrarily interferes with voluntary contracts and nullifies the provisions contained in section 41, clause (c), and urged that, if a tenant desired occupancy-rights, he should pay at least six times the rental. The Chief Commissioner forwarded a copy of this petition without comment (Paper No. 29), remarking that it accepted the principles of the Bill, but stated certain objections to some details, which it was unnecessary for him to discuss. It is, I think, to be regretted that he did not discuss the objections taken to section 62. All that the Select Committee say in support of this section, the provisions of which do not appear to have been suggested by any local authority, and have been so strongly objected to by the landlords, is that—

‘The growth of occupancy-rights by lapse of time having been stayed, we think, with the Famine Commissioners, that some means should be provided by which a thrifty, industrious tenant can raise his status.’ The provision we have introduced can in no way injure the málguzár, while it holds out a prospect to the tenant which will induce him to retain and improve his holding. We have little expectation that tenants will avail themselves of this privilege for a long time to come, except in a few cases.’

‘The landlords, I observe, contend that it is likely to be very largely taken advantage of when the power becomes known, but it is of course possible that they are mistaken as to this. It may be that few tenants will be willing or able to give 2½ years’ rental for the advantages enjoyed by an occupancy-tenant over an ordinary tenant protected by Chapter VI. But, if so, the benefit to the tenants will not be very great.

‘I do not know how far the Famine Commissioners are responsible for suggesting a section of this nature, but, assuming that the suggestion is theirs, I do not think that their authority is so conclusive that we should refrain from discussing the merits of the proposal.

‘My own objections to it, being objections of principle, can be stated very briefly. They may be summed up in the four following propositions: 1st, that to give the tenant power to compel the landlord to sell a portion of his rights is an encroachment on the rights of the landlord; 2nd, that, while rights of property may be interfered with by the legislature when public interests require this, and on reasonable compensation being made to the persons whose rights are interfered with, all unnecessary interference with such rights

should be avoided; 3rd, that, in the present case, there is no evidence that public interests render it necessary that tenants should be empowered to compel their landlords to sell them occupancy-rights; 4th, that, even assuming such necessity to be established, there is no evidence that $2\frac{1}{2}$ years' normal rental would compensate the landlord for the alteration in the status of his tenant.

“As regards the first proposition, I do not see how it is possible to deny the encroachment upon the landlord's rights. The section does not protect any existing right of the tenant, but gives him a power to acquire new rights without the landlord's consent. The principle is precisely the same as if it were proposed to empower the tenant to buy absolute occupancy-rights at five years' normal rental, or proprietary rights at 8 years' normal rental. Whether these sums represent the value of the interests sold or not, the landlord has a right not to be compelled to part with those interests, unless, for sufficient cause, the legislature deprives him of this right.

“The second proposition is scarcely likely to be disputed in this Council, as it is difficult to see how it can be disputed by any one who does not disapprove of private property being recognized at all.

“The third proposition raises a question of evidence, and I think I am entitled to ask for the evidence of necessity. It tells against the existence of any necessity that the local authorities have not asked for the grant of such a power to ordinary tenants, and were originally content to give them much less protection than is given by the other provisions of this chapter. Mr. Grant, in introducing Bill No. I, urged the necessity of shunning heroic remedies, and, if it has since been found advisable to prescribe such remedies, a clear case of necessity for doing so should certainly be made out.

“The fourth proposition also raises a question of evidence. The Select Committee say that the provision they have introduced can in no way injure the *málguzár*, but I have been unable to discover the proof that the difference between occupancy-rights and the position of an ordinary tenant is not worth more than $2\frac{1}{2}$ years' rental in many instances. The only test of its value would be to ascertain what the tenant would pay and the landlord would accept in consideration of the superior status being conferred; but, unless free contract is allowed, this test cannot be applied. The difference may be worth five years' rental, or it may be worth only one. It may be worth five years' rental in one case, and only one year's rental in another. In the latter case, the section will have no operation; in the former, the landlord will be compelled to sell his property for half its value. How can it be said that in such a case he will be in no way injured? In short, except in the cases where the right to be

purchased is exactly worth two and a half times the rental, the section must either be inoperative or the landlord must part with his property for less than its value.

“If it were shown to be necessary on public grounds to give this power to tenants, then, instead of fixing an arbitrary value, some machinery should be devised for determining the value in each instance, when the parties did not themselves agree as to the sum to be paid. I consider the absence of any such machinery, and the absence of proof of necessity for conferring such a power, insuperable objections to the section as framed.

“But I think that in many cases landlords who find it necessary to raise money would have no objection to sell occupancy-rights to their tenants, if no compulsion existed. They would thus, instead of losing their land altogether by sale, or losing control over it for a time by mortgage, retain a substantial interest in it, though one of smaller value than that they previously possessed. And the proper sum to be paid would be ascertained by agreement between landlord and tenant, both parties being in a better position than almost any one else to judge of the value of the interest sold. If the compulsory power is retained, the landlord would feel its existence a grievance, even if the tenant did not exercise it; but in the absence of such a power, there would be no reason why he should not be willing to give a thrifty, industrious tenant a superior status, when this could be done without injury to himself. This would to some extent meet the views of the Famine Commission; and, as the Bill does not provide for the purchase of occupancy-rights otherwise than by section 62, I have proposed a new section to take the place of section 62 which will give effect to such transactions. The second proviso to section 80 of Bill No II contained a provision of this nature, suggested by the Pachmarhi Committee's Bill.”

The Hon'ble MR. QUINTON said :—“My Lord, this amendment, like the preceding, strikes at the root of one of the essential provisions of the Bill. For reasons which appeared to them of great force in the Central Provinces, and which I for one am not prepared to dispute, the Select Committee have omitted from this Bill all provisions enabling ordinary tenants to acquire rights of occupancy by prescription in the lands held by them, but they had no wish to leave the cultivators of the soil at the mercy of the landlords and without hope of raising their condition.

“To guard them against rack-renting and capricious eviction, measures will be found in the Bill which it is to be hoped will prove efficacious for that purpose, and to enable the thrifty and industrious tenant to better himself the section now under discussion has been drafted. The twelve-years' rule, coupled with an unrestricted power of eviction, in effect left it with the land-

lord to determine whether rights of occupancy should or should not be acquired by tenants. A vigilant landlord always had the means of preventing the accrual of such rights by the simple expedient of turning the tenant out of his holding. The result has been that these prescriptive rights have been attained at the cost of much ill-feeling, and that each party is on the watch to take advantage of any omission, mistake or misfortune on the part of the other.

“ It is not to be supposed that these consequences were within the intention of the framers of Act X of 1859, and, to avoid them and bestow a substantial instead of an illusory benefit upon the tenant, the present section makes it obligatory on the landlord to confer occupancy-rights on an ordinary tenant on tender of a sum equal to $2\frac{1}{2}$ times the rent paid, or equitably payable according to the decision of the settlement-officer for the holding.

“ The amendment of my hon'ble friend reverses all this, and throws things back into their old state, by making the consent of the landlord a condition precedent to the acquisition of such rights, and leaving the terms of the bargain to be adjusted by mutual agreement. He must be a man of sanguine temperament who expects that such provisions would ever have any operation.

“ The measure embodied in the section is in accordance with the recommendation of the Famine Commission, and the only objection which I have hitherto heard urged against it is that, from poverty or other reasons, tenants may fail to take full advantage of it.”

The Hon'ble SIR STEUART BAYLEY said :—“ My Lord, this amendment I cannot support. Mr. Barkley's proposal would practically abolish the principle of section 62. The section was introduced as a counterpoise to the abolition of the twelve-years' rule. It was felt that ordinary tenants would want some protection, and compensation for disturbance was provided. It is impossible to say how this principle will work, as, though we augur well of it, it is admittedly experimental. If it fails, the ordinary tenant would be, to a great extent, unprotected, and his position under the landlord's power to rack-rent would probably deteriorate. Moreover, as time goes on, since occupancy-rights can no longer be acquired by the prescriptive title of twelve years' holding, it is quite certain that the tendency will be for the class of occupancy-tenants to decrease, and for that of unprotected tenants to increase; and it seemed absolutely necessary, as a counterpoise to this tendency, to give ordinary tenants some means of protecting themselves by the acquisition of occupancy-rights. The particular rate of $2\frac{1}{2}$ years' purchase may be open to objection. I can only say it was adopted after careful consideration by those most competent to advise the Committee, but I cannot approve of the Bill being shorn of the principle altogether. If I may take an illustration from another province, I would refer to the use

that the raiyats in Eastern Bengal made of the increased receipts coming to them from jute-cultivation. They found themselves, as we fear the Central Provinces tenants may find themselves, insufficiently protected from arbitrary enhancement, and, as soon as they acquired the means, a movement set in, under which numbers of these raiyats, by payment of a large premium, got from their landlords a permanent lease of their lands. The permanently-settled Bengal Government is unaffected by this movement. In a temporarily-settled province, no doubt, the position, so far as the Government revenue is concerned, is different. But we wish a similar principle to apply, and we wish to facilitate it, by giving the raiyat the right to protect himself by acquiring occupancy-rights at a rate ordinarily settled by law, but in special cases after the rents have been adjusted through the Courts, so that the landlord shall not suffer. I should be unwilling to part with this principle, and must oppose the amendment."

His Excellency THE PRESIDENT said :—" I most strongly object to the substitution proposed by my hon'ble friend. When he speaks of section 62 as an encroachment on the rights of landlords, it is necessary that we should consider what are the rights of landlords at the present moment in the Central Provinces. We are not talking of the abstract rights of landlords. That subject is a very large one. What we have to deal with are the rights of landlords in the Central Provinces now, and those rights are subject to the provision of Act X of 1859, which confers on the tenant the power of obtaining occupancy-rights if he occupies the same land for a period of twelve years, therefore, the rights of landlords in the Central Provinces at present are limited by the rights of tenants to acquire, by a certain process, an occupancy-right in their lands. The framers of the Bill in its present shape were led to believe that it would be desirable to put an end to the existing mode of obtaining occupancy-rights by the tenants, in consequence of the serious objections which may be urged against any system under which a tenant acquires occupancy-rights by a mere lapse of time. It seemed, therefore, desirable that to get rid of that system in the Central Provinces before it had produced there those evils and those difficulties in the relations of landlord and tenant which have been found to spring from it in other parts of India. The question, then, the Committee had to consider was, what substitute they should give to tenants for this power of obtaining rights of occupancy by the lapse of time. My hon'ble friend Mr. Barkley says that Bill No. I as introduced by Mr. Grant did not contain this proposal. Doubtless not, but it did not propose to abolish the twelve-years' rule. Bill No. I retained the twelve-years' rule, and gave tenants that mode of acquiring rights which the present Bill seeks to supersede. It appears to me that one of the great advantages of the present proposal over to twelve-years' rule is that, whereas, practically speaking, the twelve-years' rule

gives occupancy-rights to tenants by accident, this proposal, on the contrary gives the power of obtaining such rights to thrift and to frugality. Under the twelve-years' rule, it depends on an accident whether a landlord gives a tenant notice to quit before the expiration of twelve years, and thus takes the measures necessary to prevent the accrual of the right; on the other hand, it is the thrifty tenants who will under the new proposal be able to purchase an occupancy-right. The right will depend not upon accident, not upon whether the landlord will allow the tenant to remain in possession for twelve years, but upon whether by frugality he is able to lay by sufficient to enable him to purchase an occupancy-right in the manner proposed by section 62. Now, my hon'ble friend Mr. Barkley says there is not much evidence to show that this proposal has been accepted by those best acquainted with the Central Provinces. I may say that, in the first place, it has been accepted by Sir J. H. Morris, than whom no one is better acquainted with the circumstances and requirement of these Provinces. It has also been most carefully and closely considered by my hon'ble friend Mr. Crosthwaite, who had charge of the Bill originally. I have discussed it with him several times, and it is most unfortunate that we have not his presence here to-day. I felt bound to call him to higher functions during the absence of Mr. Bernard, but, had he been present here, he would have given us the weight of his great experience in the Central Provinces to meet the objections taken by Mr. Barkley. I must also point out that, if we were to adopt the amendment proposed by Mr. Barkley in this matter, we should actually put the raiyats in the Central Provinces in a worse position than they are now in. We should have abolished their power of acquiring the right of occupancy under the twelve-years' rule, and substituted for it nothing but a legal power to the landlord to sell them this right if he chose to do so. It is quite impossible that the Council can accept a proposal of that kind. For a considerable time this clause may be made little use of, but it will enable those tenants who have laid by a small amount of capital to acquire the greater security which occupancy-rights afford, and without the result of the Bill would be to shut the door to all hope of raiyats ever acquiring that security at all.

"Under these circumstances, I cannot give my vote in favour of the amendment proposed by my hon'ble friend Mr. Barkley."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that in section 71, clause (a), for the words "one hundred," the word "twenty" be substituted. He said:—

"This amendment raises no question of principle, but merely one of expediency. A similar provision is to be found in the Rent Act in force in the North-Western Provinces, but I think it necessary to point out that, in cases

where rent is paid in the form of a share in the produce or of the estimated value of such a share, suits for arrears of rent usually involve questions of much difficulty, such as the actual amount of the yield, the value of the landlord's share, and the reason why that share was not taken when the crop was reaped,—the tenant perhaps alleging that the landlord would not accept it, because the yield was so small that he hoped to get more by suing, while the landlord asserts that the tenant removed the whole crop before any division of the produce could be made. The decisions of Assistant Commissioners of the first class in the simplest cases are at present subject to appeal, and neither landlords nor tenants appear to have such confidence in the courts of these officers as to make them willing to be deprived of the power of appeal in cases relating to arrears of rent. The tenants in the Harda tahsil ask that appeals may be allowed or that the limit of exclusion may be reduced to Rs. 10 (Paper No. 15), and the landlords of Raipur are willing that there should be no appeal from the Deputy Commissioner's decision in cases of this nature,—which that officer is not likely often to try,—but ask for an appeal from the decision of the Assistant Commissioner (Paper No. 28). I have taken Rs. 20 as the limit, as, in claims under that amount, it can rarely be worth the while of either party to appeal where no question of title or interest in land is involved. But I think we should avoid doing anything which would give colour to the supposition that we regard the right decision of cases where the amount of rent payable is in question as of less importance than the right decision of cases relating to small debts."

The Hon'ble SIR STEWART BAYLEY said:—"My Lord, I cannot concur in this. Against the limitation which prevails in the Panjáb, the Bill has adopted that which has been found to work well in Bengal under section 153 of Act X of 1859 and section 102 of the present Act, in the North-Western Provinces under section 80 of Act XII of 1881, and in Oudh under section 95 of the Oudh Tenancy Act. Assuredly, the tendency of recent legislation has not been to increase the facilities for appealing. I should prefer, therefore, to maintain the limit of 100 rupees."

The Motion was put and negatived.

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

The Hon'ble MR. QUINTON said:—"My Lord, I cannot refuse to support this Bill, which is the result of long and careful deliberation on the part of this Council and of the local authorities, and which offers a hopeful prospect of placing on a satisfactory footing for some time to come the relations between landlords and tenants in the Central Provinces. I am, however, reluctant to give a silent vote in favour of it, lest my acceptance of the measure should lead to the conclusion that I consider it a precedent to be invariably followed in other cases for which we may hereafter have to legislate.

“The speech of my hon'ble and learned friend Mr. Ilbert has shown very clearly why the Bill now before us differs so materially from that which the Government of India, with the consent of Her Majesty's Government at home, have thought fit to propose for the Lower Provinces of Bengal; and I would, even at the risk of some repetition, call the attention of the Council to a few circumstances in which the Central Provinces differ from that part of Upper India of which I have most personal knowledge, namely, the North-Western Provinces and Oudh, with the object of deprecating the inference that, in any future legislation for the latter, this Bill should, of necessity, be taken as a guide. Numerous provisions of the Bill are of a novel character; several of them, such as the stoppage of the growth of occupancy-rights by prescription, the modes of enhancing the rents of occupancy-tenants and the different methods adopted for the protection of tenants, without rights of occupancy from rack-renting and capricious eviction, are of a most important nature, and have been determined on with the advice of those best able to judge of the local peculiarities of the Central Provinces; but it by no means follows that such provisions would be found adequate or could be successfully applied under conditions essentially different.

“In the Central Provinces, culturable waste land is abundant, and is available in the shape most favourable to a wide extension of cultivation; that is, in large blocks for the use of new settlers. There is no district or part of a district in which there is an early prospect of the limits of cultivation being reached. In the North-Western Provinces and Oudh, on the other hand, there is left but a small margin of land easily culturable, much of that which is so recorded being portions of villages impregnated with salts pernicious to vegetation, and incapable of being rendered culturable by any experiment that is likely to prove remunerative.

“In the Central Provinces, there is a sparse population, the density of which is about one-fourth of that of the North-Western Provinces and Oudh, where, especially in the Eastern districts, the pressure of population on the culturable area is becoming extreme.

“In the former favoured regions, Act X of 1859 was introduced at a later period, and landlords have not been driven, and have not generally attempted, to work that enactment to the prejudice of the tenants; but in the North-Western Provinces and Oudh, the acquisition of occupancy-rights under the twelve-years' rule has been recognised since before the mutiny, and, together with its correlative right of barring such acquisition by ejecting the tenant before the expiration of the prescribed period received legal confirmation in 1859 by Act X of that year. These mutual rights of landlord and tenant are universally known and widely exercised, while

the powers of enhancement conferred on the landlord, which have remained in the Central Provinces almost a dead-letter, have been very generally enforced, in many cases to the uttermost farthing.

“ In fact, in the one case, abundance of waste land and a sparse population effectually protected the tenants from rack-renting and capricious eviction; in the other, a denser population, which has almost reached the utmost limits of cultivation, tended to compel both parties to insist on every jot and tittle of their legal rights. I think, therefore, I am justified in asserting that there are essential differences in the economic conditions and mutual relations of the agricultural classes in the two Provinces.

“ The discussion of the relative rights of landlords and tenants, and the due adjustment of these with reference to the good of the whole community, are not now subjects confined to a single province or even to British India. They have long been burning questions in Ireland, and the settlement of them has taxed to the utmost the wisdom of Parliament. They are coming rapidly to the front in England and Scotland, and indications are not wanting that even in the United States of America we are within measurable distance of a time when the operation of the land laws there in force will be subjected to rude criticism, and possibly to revision. In India, a tenancy Bill for Bengal is pending before this Council, proposals have been made and enquiries instituted having in view the amendment of the Rent Laws of the North-Western Provinces and Oudh and of the Panjáb, and even in British Burma the subject is attracting attention. It is impossible to suppose that in all these countries, the same remedies will be found equally applicable. There can be no doubt that widely different modes of treatment must be adopted in different cases, and that each case must be dealt with on its own merits.

“ Without, therefore, expressing any opinion as to the lines on which legislation for landlords and tenants in other provinces should proceed, which would be for me alike improper and inexpedient, I would on this occasion merely insist on the fact that the existence of differences such as I have attempted to describe, between the North-Western Provinces and Oudh on the one hand and Central Provinces on the other, is sufficient to refute the reasoning that, by passing the Bill now under discussion, we tie our hands from legislating in the future for the North-Western Provinces and Oudh in any direction that, after due deliberation, may appear most suitable.”

The Hon'ble MR. HUNTER said :—“ My Lord, I desire to say a few words in regard to the third class of tenants dealt with by this Bill. The two superior classes possessing occupancy-rights have, since the Provinces passed under British rule, enjoyed the fostering care of the Government. Their status is founded on ancient custom, it has been confirmed by the settlement-records,

and it will henceforth rest on the firm legislative basis provided by this Act. The position of the third class of cultivators, the tenants-at-will, is very different. They have no prescriptive privileges to plead, nor any settlement-papers to appeal to, and their whole future depends on the legal status now accorded to them. And not their future alone, but also in an important, although in a less direct manner, the future of the corresponding class of cultivators in the crowded districts of the North-Western Provinces and Bengal. For the population in some of those districts now presses so heavily on the land, that large numbers must either submit to suffering, at times bordering on starvation, in their native villages; or they must go forth in quest of new homes. Such movements of the people have already begun, not only under the spasmodic compulsion of famines, but also under the steady constraint of over-population. The sparsely inhabited tracts on the east and south of the Gangetic valley have from ancient times formed, and still form, the natural receptacles of this peasant outflow. Those tracts are now, for practical purposes, Assam and the Central Provinces. While population in some of the densely thronged districts of the Ganges has reached the stationary stage, the inhabitants in Assam increased by three-quarters of a million or over 18 per cent. in the nine years between the Census of 1872 and that of 1881. During the same period the inhabitants of the Central Provinces increased by 2½ millions, or over 25 per cent. How far the increase is due to immigration, and to the children born of immigrants, it is not yet possible to state with precision. The quality of the unoccupied soil varies from unhealthy hill tracts in the Central Provinces to the great grass plains of the Brahmaputra, which according to the Chief Commissioner, require only a sickle and a lucifer match to turn them into arable fields. Taken as a whole, the cultivable lands still unoccupied in Assam and the Central Provinces, deducting Government forests and the area within great private estates, exceed 17 millions of acres; or more than the whole area in Great Britain and Ireland under corn crops, green crops, grass and all other crops in 1879, excluding, of course, permanent pasture.

“These vast reserves of land are a trust which the State holds, not only for the growing inhabitants of the territories within which they lie, but also for the over-crowded population of the Provinces adjacent to them. In three districts of the Central Provinces, from 13 to 15 per cent. of the people are immigrants, and, if we add the children born to them, the proportion would be much higher. The majority of such new-comers cultivate the soil as tenants-at-will. When the land-settlement was made, most of the old tenants received occupancy or proprietary rights; and almost all the rest of them have since acquired occupancy-rights under the twelve years' rule. ‘The residuum,’ to quote the words of our late colleague, Mr. Charles Crosthwaite, when in

charge of the Bill, 'consists chiefly of new men—to a large extent of men who have taken waste or, abandoned lands since the settlement.' The number of these 'new men' has not been placed before the Council, and they seem to be dismissed as a less important class than the occupancy-tenants. But I find that the holdings of tenants-at-will have increased from under half-a-million to over $1\frac{1}{2}$ millions between 1872 and 1882 in the Central Provinces, and that they now exceed all the holdings of the two superior classes of tenants put together. Instead of being an insignificant residuum they have become the most important class of tenants, both numerically and for the purposes of this Act, as their whole status will depend on the rights accorded to them by this Act. They are also the most important class in regard to the future development of the Central Provinces. For it is these 'new men,' as Mr. Crosthwaite calls them, who will chiefly extend cultivation, raise rents and increase the revenue. A paper before the Council shows that they already cultivate nearly one-half of the whole land returned as tenants' holdings in the Central Provinces.

"What provision does the Act make for the well-being of this useful and important class of 'new men' ? In parts of Bengal the tenants-at-will are so over crowded, that a Bill now before the Council provides for, increasing the protection accorded to them, at the cost of curtailing rights hitherto enjoyed by the landlords. - The economic necessities of the case justify such increased protection. But I think that the Bengal landholders may reasonably ask that Government, before curtailing their privileges, shall do everything in its power to meet those economic necessities by throwing open the land to new comers in adjacent territories like the Central Provinces, where the State still retains a large measure of the proprietary right. By facilitating communication by road and railway, the Government has done much ; and the projected line from Lower Bengal into the heart of the Central Provinces will still further aid the distribution of the people. But the question still remains whether the Land Law offers sufficient inducements to new comers to settle in those Provinces, and secures to them an adequate protection in the fields which they cultivate, and which, in many cases, they have reclaimed.

"The present Bill, together with the papers before the Council, offers to this question an answer, in some respects satisfactory, but in other respects, I fear, the reverse. The new settler and the tenant-at-will at once enter, under the provisions of the Act, on certain clearly defined rights. In the first place, the new comer, or tenant-at-will, gets his land at the low rate of $13\frac{1}{2}$ annas per acre. Indeed, the superabundance of land is still so great in the Central Provinces, that, as far as the rates show, the tenants-at-will practically pay as low a rent as the conditional occupancy and absolute occu-

pancy-tenants, whose average rate is $12\frac{1}{2}$ annas per acre. The old occupancy-tenants, however, usually hold the most favourably situated fields. Once settled on a holding, the new comer or tenant-at-will immediately acquires the five following rights under this Act. First, he must pay the rent agreed between himself and his landlord, but it requires a process at law for the landlord to eject him, or to raise the rent except with the tenant's consent. Second, if the tenant agrees to pay the enhanced rent demanded by the process of law, he is exempt from any further enhancement by judicial process for seven years. Third, if he declines to pay the enhanced rent and gives up his holding, he is entitled to compensation for improvements, and to a compensation for disturbance equal to seven times the enhancement demanded on the rent. Fourth, subject to the above, his right to continue on his holding becomes, from the moment he enters on it, hereditary in his family, although not passing to collaterals. Finally, he has a right to purchase the status of an occupancy-tenant by the payment of $2\frac{1}{2}$ times the annual rent. As regards, therefore, the immediate rights of the new comer and the tenant-at-will, this Act makes a most liberal provision. It may fairly claim to have done away with tenants-at-will altogether, and to have raised them, in fact as well as in name, into the new class which it terms 'ordinary tenants.'

"But if we look beyond the immediate rights conferred to the future status created by the Bill for new comers and ordinary tenants, the prospect is not so satisfactory. Such tenants enter at once upon all the privileges which they will ever acquire under the Act, and the element of the growth of rights is altogether absent. But the superabundance of land affords an ample protection to such tenants in the meanwhile, apart from any legislative enactment; and the Bill makes no adequate provision for the time when the superabundance of land will have disappeared. So long as the economic relation of land and labour suffices to protect the new comer and the ordinary tenant, they have no need to resort to the Bill. When the present exceptional relations of land and labour in the Central Provinces shall have given place to competitive rents, the ordinary tenants will resort to the Bill in vain. For this Bill abolishes the chief safeguard which the ordinary tenant has enjoyed from time immemorial, not only in the Central Provinces, but in almost every part of India, namely, the growth of a right of occupancy accruing from the continued cultivation of the land.

"I am aware, my Lord, that, in raising the point which I now desire to bring before the Council, I may be charged with inconsistency. The Select Committee on this Bill has already presented several reports approving of the measure, and of that Select Committee I have the honour to be a member. The first report of the Committee suggested the abolition of the twelve-years,

rule which conferred the right of occupancy, and I signed the report. But in that report we distinctly said that the majority of the Committee desired to reserve its opinion as to the expediency of the amendments proposed. I was absent on tour as President of the Education Commission when the Committee came to the consideration of those amendments, and presented its second report, dated the 6th September, 1882, approving of the proposal with regard to occupancy-rights. That report I did not sign, and, at the first meeting of the Committee which I subsequently attended, I brought the question of the twelve-years' rule before the members. I ascertained that the subject had been fully considered; and it would have been unsuitable to again raise a question upon which the Select Committee had made up its mind. I now desire to state, while acknowledging the many admirable provisions of the Bill, and while giving my support to the measure as a whole, the reasons which lead me to regret this particular feature of it.

“Until to-day, one-half of the tenants' holdings in the Central Provinces have been held by men who were in the process of acquiring occupancy-rights under the twelve-years' rule. After the passing of this Bill, those men will lose all further chance of acquiring such rights. The arguments which have led to this sudden change seem to me inadequate; and the privileges which the Bill substitutes for the growth of occupancy-rights seem to me insufficient. The arguments for putting an end to the growth of those rights, as disclosed by the papers before the Council, are two-fold. First, that the landholders of the Central Provinces, in order to prevent these rights accruing, harass their tenants by frequently shifting their holdings. Second, that a large amount of litigation is thereby involved, injuries alike to the landlord and the tenant. The result is, as summed up in the speech of the hon'ble the Legal Member this morning, to render the position of the ordinary tenant one of great insecurity. But the first of these two arguments is stated by Mr. Jones, now Chief Commissioner of the Central Provinces, to be 'demonstrably unsound.' Mr. Jones points out in his letter, dated 18th September, 1880, that the protection clauses (in the Bill as it formerly stood) do not require that a tenant should cultivate the same land. Under such protection clauses, the tenants' claim to occupancy-rights by twelve years' continuous cultivation may run—and it is proposed in Bengal that it shall run—so long as the tenant holds lands in the same village or estate. I am aware that Mr. Jones has since accepted the Bill as a whole, but, as far as I have seen, he has not altered his opinion on this point. The demand for tenants is so great in the Central Provinces, and the present difference between the rate of rent paid by the ordinary tenant and the occupancy-tenant is so small, that, although a landlord might try to break the twelve years' continuous occupancy by shifting the holdings of his tenants upon his own estate, in very few cases would he drive a tenant off his property with a view to preventing the

growth of occupancy-rights. Nor is combination between neighbouring landlords for that purpose possible on any considerable scale, in the present relation of land to labour in the Central Provinces. As a matter of fact, Mr. Crosthwaite admits that the twelve-years' rule has operated freely in those Provinces, and that the great mass of the tenants who were in existence at the settlement have acquired rights under the twelve years' rule.' In support of the second argument, namely, excessive litigation, Mr. Crosthwaite, in his able memorandum of the 20th February, 1883, quotes the statistics of applications made to the Courts to eject tenants, and lays special stress on the increasing number of these applications during the past four years. I find that the average during the four years amounted to 2,839 applications, and that the number during 1880-81, the last year cited, was 2,780. Taking the highest of these figures and calculating it upon the 1,556,823 holdings by tenants-at-will in the Central Provinces, I find that the applications to eject averaged only one a year to 548 holdings by tenants-at-will. I do not think that this can be called excessive litigation. A large proportion of these tenants-at-will have acquired occupancy-rights or are approaching the acquisition of them. The obvious and simple way to test their occupancy-rights is by means of an application for ejectment, and I think that one such suit to every 548 holdings is a very cheap price to pay for the assertion of their rights. I am aware that in certain districts the average was higher. But in those districts the competition for land had become more severe, the value of occupancy-rights, if successfully maintained, had become greater to the tenant, and I think the increased litigation necessary to maintain those rights was a cheap price to pay for them. It is impossible to give land-rights without creating a necessity for asserting and defending those rights in the Courts of law. A third argument against the continuance of the twelve-years' rule was brought forward by the hon'ble the Legal Member in his speech this morning. If I caught the argument aright it amounts to this: The continuance of the twelve-years' rule would involve a settlement of rates, and a settlement of rates is a costly process to Government. But the general re-settlement of the Central Provinces is impending. In individual districts the period of the old settlement has expired, or will shortly run out. Until the re-settlement is effected in the ordinary course, the twelve-years' rule might continue to be carried out, as in Bengal, through the operation of the Court. I think, therefore that the arguments brought forward for the abolition of the twelve-years' rule conferring occupancy-rights, are inadequate.

“The privileges conferred by the Bill in lieu of the acquisition of occupancy rights by ordinary tenants seem to me equally insufficient. It is sometimes argued as if the twelve-years' rule was an arbitrary invention of Act X of 1859. As a matter of fact, the rule has existed in one form or another ever since

the British Government began to concern itself about the rights of the people. What Act X did was to select, from among the various terms of years which had been current in different parts of the country, the single term of twelve years, and to make it applicable to all Provinces to which the law was extended. This term coincided with the period of limitation in suits on account of immovable property, and it fairly applied to the older settled Provinces. But before any single term obtained the rigidity of law, there had been also other periods with the binding force of custom. More than sixty years ago Sir J. E. Colebrooke, in his Minute on Settlement, dated 12th July, 1820, proposed that an enactment should be passed 'declaring the resident-tenants to be not removable as long as they continue to pay the same rent which they have paid during the last five years.' Sir W Sleeman in 1840 applied the five-years' period of continuous occupation as a test of occupancy-rights to parts of the Central Provinces which were then under the British Government. Mr. Charles Grant, in his paper now before the Council, dated the 13th September, 1873, stated 'that this rule retained its place in popular acceptance as late as 1855; and it was acted upon in the settlement of some parts of the Central Provinces.' The five-years' rule in favour of the tenant was made harder by Act X of 1859, requiring twelve years of continuous occupation. The twelve years' rule in favour of the tenant is now to be altogether abolished in those Provinces, for reasons which, as I have shown, cannot be maintained. From this day the new-comers and ordinary tenants of the Central Provinces may bring the jungle under cultivation and reclaim the wastes, but their rights to the fruits of their labour will never increase (except by purchase) from the moment after they have entered on the land.

"I have admitted that the compensation given by the Bill to the tenants for taking away their growing rights of occupancy is liberal, if we look only to the immediate results. But the more successful that compensation may be as an inducement to immigration in the present, the harder will be the lot of the people in the future. For, with the influx of cultivators, rent will rise, and the whole advantages conferred by this Bill seem to me to depend upon the present low rate of rent due to under-population. The Bill leaves the ordinary tenant in all time coming to make such a bargain as he can with the landlord: which means in India submission to whatever terms the landlord may impose. Once the increase of population has taken place, the only practical check upon rack-renting will be the seven years' compensation for disturbance. The compensation for improvements will be inoperative, for the Bill gives the first right of making improvements not to the ordinary tenants but to the landlord. Nor does the Bill protect the ordinary tenant who clings to his land and submits to a rise of rent, from an enhancement arising out of the improvements which he himself has made. The provision for the purchase of occupancy-rights by

ordinary tenants will be little operative. Indeed, the framers of this provision admit that they do not expect it to be resorted to on any considerable scale. For, assuming, as the former draft of the Bill assumed, the maximum difference between occupancy and ordinary rates of rent to be 25 per cent., the sum which the ordinary tenant must pay for occupancy-rights would, at 12 per cent. interest per annum, exceed the maximum benefit in rent which he could gain by the transaction. It is doubtful whether the ordinary tenant could borrow at 12 per cent.

“The one real safeguard which the Bill gives is the compensation for disturbance equal to seven times the enhancement demanded. The Hon'ble Sir Steuart Bayley has told the Council this morning that, if the provision of compensation for disturbance fails, the ordinary tenant will be worse off than under the old state of things. Mr. Crosthwaite, when in charge of the Bill, admitted that compensation for disturbance was a new experiment in Indian legislation. I believe it is a new experiment in legislation in any country. The only precedent with which I am acquainted is the Irish Land Law. The experiment was first tried by the Irish Landlord and Tenant Act of 1870, and it did not succeed. The causes of its failure, so far as I have seen them stated, were due chiefly to the inadequacy and unsuitability of the scale. The Irish Land Law of 1881 has, therefore, amended and increased the scale. Whether even this higher scale will suffice to protect the tenant no man can yet say. But the higher scale found necessary to give compensation for disturbance a fair chance in Ireland is not seven times the enhancement claimed, but a sum not exceeding seven times the whole rent. This is applicable to rents of £30 or under, which would practically include all rents paid by ordinary tenants in the Central Provinces. That is to say, if an Irish tenant sitting at a rent of £10 refuses to agree to an enhancement of £1, and is ejected in consequence, his landlord has to pay him a sum not exceeding £70 as compensation for disturbance. The same man in the Central Provinces can receive as compensation only £7. I am aware that the competition for land is at present much less keen in the Central Provinces than in Ireland; but compensation for disturbance is intended to protect the tenant when the competition for land in the Central Provinces has grown more intense. The contrast is equally great if the tenant submits to the enhancement. In Ireland, he would receive a statutory lease for 15 years at a rent fixed by a Court of law. At the end of that period the rent could only be raised upon cause shown by the landlord to the Court, in which case the tenant would get a fresh statutory lease for another term of 15 years, and so on for ever. The tenant in the Central Provinces has to submit to an enhanced rent, not as impartially fixed by a Court, but as demanded by his landlord and enforced by process of law. He receives protection from a further arbitrary enhancement by the same process for only for seven years, and at

the end of the seven years he is entirely at the mercy of the landlord. This Bill substitutes for the old customary growth of occupancy-rights, which have existed from time immemorial in India, new legislative devices copied from the English law. But it deprives those devices of the stringency by which the English law renders them operative in favour of the tenant.

“I had hoped that the duty of stating these objections would have fallen to a member of the Council whose views would have carried the weight of greater experience than mine. My hon'ble friend Mr. Reynolds, one of the chief authorities in Bengal on questions of land-administration, signed the third report of the Select Committee with much hesitation, as he was not satisfied that the interests of the tenants were sufficiently protected. He has now written to me that he intended, if the Bill had come before the Council in Calcutta, to oppose it on grounds similar to those which I have taken up. If your Lordship will allow me, I should like to read the following sentences from his letter :—

‘In regard to the tenants who have not yet acquired the rights of occupancy, and the tenants who may take land hereafter, the provisions of the Bill are disastrous. They are resident cultivators, and, whether they have held for twelve years or not, they are entitled under the common law of India to the status of occupancy-riayats. But the Bill declares not only that they do not possess that status, but that they shall never acquire it. As to future tenants, the scheme is one of cottierism. Compensation for ejection is quite a new experiment in India, and it may safely be said that it will be inefficacious. It is certain that the riyat will submit to any exaction rather than surrender his holding. The Bill will reduce the great mass of the population to the condition of rack-rented tenants.’

“I do not go so far as my hon'ble friend either in regard to the common law of India, which has not yet been so accurately ascertained as in my opinion to permit of generalisations from it, or in regard to the disastrous consequences which he anticipates from this Bill. I believe that the Act as a whole will prove beneficial both in respect to the amended procedure which it lays down, and by the clearly defined status which it provides for the two superior classes of tenants. But I think that the abolition of the growth of occupancy-rights under the twelve-years' rule is particularly unfortunate at present. It is of the utmost importance that population should be induced to move into the unoccupied lands of the Central Provinces. I have shown that such a movement has already begun, and the Government is doing what it can to assist the movement by facilities of communication. But to tell the men who come in and clear the forest and bring the land under tillage that, while by their labours the landlord's rent shall rise and the Government revenue increase, they themselves shall never acquire occupancy-rights except by purchase, that, indeed, they shall never obtain a single further right in the soil than that which they possess on the

first day that they break up the land, seems equally opposed to Indian custom in the past and to economic expediency in the present. Before considering this aspect of the Bill, I examined² the available evidence regarding the movements of the people. It is to such movements quite as much as to the legislation now impending in Bengal, that we must look for a permanent remedy for the poverty and over-population of the Gangetic provinces. The facts available are of a scanty character, as the census does not show the children born to immigrants. But they suffice to disclose the inexpediency of putting any check upon the acquisition of land-rights in sparsely-peopled tracts. Since the census of 1872 a vast new population of cultivators has sprung up in the Central Provinces, all of whom have until to-day been acquiring occupancy-rights; but not one of whom will now be permitted to complete the acquisition of those rights, as the interval since the last census does not amount to twelve complete years. During the same period, more than a million of new holdings by tenants-at-will appear on the returns. How many individual tenants are represented by these holdings the statistics do not show. But every one of this million of new holdings will be now excluded from the customary growth of occupancy-rights. What Mr. Crosthwaite calls the 'residuum chiefly of new men,' at one time comparatively insignificant, but who now occupy nearly one-half of the whole area of tenants' holdings in the Central Provinces, and who will hereafter form the chief source of increase in the cultivation of those Provinces, are from to-day for ever debarred from acquiring occupancy-rights. I think it is much to be regretted that the movements of the people have never formed the subject of a comprehensive enquiry by the Government of India. I believe that the facts elicited by such an enquiry would have prevented this mistake in an Act which, in other respects, has been carefully considered, and which will prove beneficial to the people.

"I am aware that Your Lordship's Government had in this Bill to find a workable middle line between two extreme parties—between the partisans of the landlords and the tenants' friends. I acknowledge the fairness and the skill with which that line has been struck, excepting at one point—a point not of immediate urgency, although of great future importance. The increasing population in the Central Provinces is already making itself felt in two ways—by a rise of rent in some districts, and by a more intensive husbandry in others. The holdings of the two superior classes of tenants with occupancy-rights numbered just over a quarter of a million in 1872, with an average of 16 acres a-piece. They had increased to 1½ million in 1882, with an average of under five acres. The holdings of the tenants-at-will were under half a million in 1872, with an average of ten acres. They now exceed 1½ million, with an average of three acres. During the last ten years, therefore, the tenants' holdings in the Central Provinces have increased more than four-folds in numbers and have

decreased to one-fifth of their previous average area. The time when the tenants-at-will must require protection is, therefore, not in the distant future. But for the Act which we are now about to pass, that protection would have been given under the customary twelve-years' rule of continuous occupation, and it was given in the earlier draft of the Bill. I believe that the protection thus accorded would have been in strict consonance with the teaching of the past and with the wants of the future. It would have been accorded without any injury to private proprietary rights, for the Government has not yet permitted such rights to fully consolidate themselves in the Central Provinces. The proprietary body is there a comparatively recent creation of British rule, and still holds its land subject to conditions which the Government may make in favour of the tenants-at-will at the next settlement. In this respect the Government had an opportunity to provide for the future of the cultivators of the Central Provinces without infringing on proprietary rights—an opportunity which it has long since lost in Bengal, and which it will no longer enjoy even in the Central Provinces when private proprietary rights have consolidated. The very increase of population which will render a greater degree of protection necessary for the tenants, will also render it more difficult for the legislature to grant such protection without injustice to the landlords. The recognition of the pre-existing twelve-years' rule of occupancy under the safeguards recommended by the present Chief Commissioner of the Central Provinces, and set forth in the earlier draft of this Bill, would have got rid of that difficulty once and for ever. The rights of the cultivators would have grown with a natural and customary growth, as the necessity for such rights augmented. The problem which might at present have been so simple to deal with in the Central Provinces, has become complicated by private proprietary rights in Bengal. I therefore, equally with my hon'ble friend Mr. Quinton, enter a *caveat* against the arguments which I have used in regard to the Central Provinces being transferred, except with great caution and with many reservations, to the proposed Rent Bill for Bengal. I regret to observe a disposition in some of the papers before the Council to minimise this Bill as one intended only for the present, to refrain from seeking a basis for the tenants-at-will in the history of the past, and from attempting to forecast their necessities in the future. It was, therefore, with particular pleasure that I listened to the exhaustive retrospect in the speech of the hon'ble the Legal Member to-day. For land-legislation, if it is to be fair, must be based on the history of the past, and, if it is to be safe, it must take into consideration the economic changes impending in the future. For the future will assuredly arrive and bring with it the consequences of the present. Those consequences, if unchecked in the Central Provinces, will in time produce a population of small tenants holding at competitive rents. I sincerely hope that those consequences will be checked, and I think the Government of India

may be safely trusted to devise the means. For the great measures of land-legislation, with which your Lordship's name for ever will be associated, are in reality measures for the protection of the peasant. This Bill gives ample security to the cultivator so long as the population continues sparse; and I hope that additional safeguards will be provided as the population increases."

His Excellency THE PRESIDENT said :—" I should like to make one or two observations on the remarks which have fallen from my hon'ble friend Mr. Hunter. I listened with feelings of regret to a great portion of that speech, because I felt it was a very powerful argument against the provisions of this Bill, and I began to fear that the Bill might be open to the objections which he was urging against it. But I confess I was somewhat comforted by the last sentence of his speech, in which he said that this Bill made ample provision for the right of the cultivators so long as the population was sparse. That, however, is really all that the Bill professes to do. Certainly it was all I thought that the Bill will do. It appears to me that, in dealing with this very difficult question of the relations between landlord and tenant, what we have to do is to treat it with reference to the varying conditions of different parts of India as they come before us when we undertake legislation. I feel strongly that legislation which might be wise for one province with a thin population might be altogether inadequate to provide proper securities for the cultivators of the soil in the more thickly populated districts of India.

" In preparing the Bill, the object of its framers has been to deal with the circumstances of the province at the present time. It is undesirable to interfere more than may be necessary in the relations between landlord and tenant, because such interference is always a delicate matter. I am not, however, one of those who object to interference of that kind when necessary, but I think it wise in undertaking such interference to pay careful regard to the agricultural arrangements of each district, and I am not at all inclined to attempt to force one uniform system upon all parts of the country.

" My friend Mr. Hunter spoke of the case of Ireland. He said that some of the proposals in this Bill were borrowed from Bills passed in respect of Ireland, and that they were even less extended in their scope than the proposals contained in the Irish Land Act of 1870, which have been proved to be inadequate. My answer to that objection is this. In Ireland you have a much more keen competition for land than at present exists in the Central Provinces. What may be inadequate in Ireland may not be inadequate in the present circumstances of the Central Provinces. It is very possible that this measure may not afford sufficient protection for the rights of ordinary tenants in the Central Provinces if their circumstances should change. But if they do change, it will be

the duty of the Government of India to consider what legislative arrangements will be necessary to meet their altered condition. What we have endeavoured to do now is to provide for these circumstances as we find them, and to have recourse to the minimum of interference in the arrangements between landlord and tenant, which appear to us to be sufficient to give the cultivators of the soil in those Provinces due protection against exorbitant enhancement of rent and arbitrary eviction. It is my hope that this measure will be effectual for that purpose; but this remains to be seen. Ten or twenty years hence it is possible that these arrangements may be found inadequate, and, should that be the case, it will be for the Government of that day to apply a remedy.

“I confess, with respect to the twelve-years’ rule, that I cannot speak of it with the amount of satisfaction with which it has been spoken of by my hon’ble friend Mr. Hunter. I share strongly the opinion expressed in an able paper on the Bengal rent question by my friend Mr. Justice Cunningham, who brings forward there, very clearly and plainly, the objections which lie against any system which makes the acquirement of occupancy-rights dependent on the afflux of a fixed and determined period of time. All the evidence goes to show that that system is open to objection, and it is very undesirable that it should be allowed to grow up. My hon’ble friend Mr. Hunter argues that the evils resulting from it have not yet sprung up in the Central Provinces; but there is evidence to show that they are already appearing there as the population increases; and it seems to me that it was advisable to put a stop to them now, rather than to wait till we have to encounter hereafter those difficulties which now meet us in Bengal. I yield to no man in the desire to protect the just rights of tenants, and I hope and believe that this Bill will operate to strengthen the position of the cultivating tenants of the Central Provinces. The Bill is not intended, as has been justly remarked by the Hon’ble Mr. Quinton, as a precedent to be followed in other provinces the condition of which is very different, but it is a measure applicable to the circumstances of the day in the Central Provinces; and, if hereafter it should require amendment, I have no doubt that the Government of India will know how to deal with any fresh circumstances which may arise.”

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon’ble Mr. ILBERT moved for leave to introduce a Bill to amend the Native Passenger Ships Act, 1876. He said that the object of the Bill was to amend the Native Passenger Ships Act, VIII of 1876, with a view to provide for the better regulation of the pilgrim-traffic between British India and Arabia. This traffic had formed the subject of correspondence between the Secretary of

State, the Government of India and the various Local maritime Governments in India. A careful consideration had brought the Government to the conclusion that the importance of the pilgrim-traffic made its detailed regulation imperative and that, to secure uniformity of procedure, and thereby avoid the friction which must inevitably follow divergence between rules separately framed by different States, it was desirable that on all the more important points a common understanding should be come to among the Governments who were chiefly interested in the proper management of that traffic. The establishment of a practical coincidence between the general provisions of the local Turkish regulations and those of the law of India could only be effected by diplomatic correspondence between the British and Turkish Governments. But, since experience had shown that the provisions of the Indian law as it at present stood were insufficient to meet the peculiar exigencies of this traffic, and that in some respects they required revision, it seemed desirable, before attempting to bring about an assimilation of the British and Turkish laws, to make such amendments of our own law as were necessary to put it in a satisfactory state.

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 *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

RANGOON STREET TRAMWAYS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to authorize the making, and to regulate the working, of Street Tramways in Rangoon. He said that the Municipal Committee of Rangoon had entered into an agreement with Mr. J W. Darwood by which they conferred upon him the exclusive right to construct and work public tramways within the limits of the municipality. The sanction of the Chief Commissioner had been obtained, but legislation was necessary both for the purpose of giving the requisite powers for interference with the streets and for the purpose of regulating the use of the tramways.

The Motion was put and agreed to.

CATTLE-TRESPASS.

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 *Gazette of India*, and in the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Cattle-trespass Act, 1871. He said that, by the Central Provinces Local Self-government Act passed at the beginning of this year, provision was made for transferring to the local authorities constituted under that Act some of the functions which, under the law as laid down in the Cattle-trespass Act, must be performed by the Magistrate of the district or the local officers, and also for crediting the surplus sale-proceeds of impounded cattle to the local fund. Provisions for the same purpose had been introduced both into the Bill which had been introduced at the Legislative Council of the Lieutenant-Governor of Bengal for amending the system of local self-government in that province, and also into the Bills now pending before this Council for local self-government in the Panjáb and the North-Western Provinces. There was no difficulty about these provisions so far as they were contained in the latter Bills, but doubts had been entertained whether, inasmuch as these provisions amounted to an amendment of the Cattle-trespass Act, their enactment would not be beyond the competency of a local legislature such as that of Bengal. Under these circumstances, the best course to adopt would be to make the Act more elastic by enabling Local Governments to make the requisite changes by executive order.

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 *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette* and the *Calcutta Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PROTECTION OF INVENTIONS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill for the protection of inventions exhibited in the Exhibitions of India. He said that this Bill had been prepared in view of the forthcoming Exhibition to be held at Calcutta next cold season. It had been brought to the notice of Government that the want of some such protection might probably deter inventors of important inventions from sending them, and thus prevent the exhibition of some interesting exhibits. The effect of the Bill, if it became law, would be that, if an inventor exhibiting his invention applied, within six months from the opening of the Exhibition, for leave to file a specification, the circumstance of the invention having been publicly used after the opening of the Exhibition would not affect his rights. The Bill was based on an English Statute which had been passed for a similar purpose, and the differences between the present Bill and the English Act were mainly to be explained by reference to the differences between the English and Indian Patent Acts.

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 *Gazette of India*, and 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.

SUNDRY BILLS.

The Hon'ble MR. QUINTON moved that the Hon'ble Mr. Barkley be added to the Select Committees on the following Bills:—

Bill to provide for the constitution of Local Boards in the North-Western Provinces and Oudh.

Bill to make better provision for the Organization and Administration of Municipalities in the North-Western Provinces and Oudh.

The Motion was put and agreed to.

AGRICULTURAL LOANS.

AGRICULTURAL LOANS BILL.

The Hon'ble MR. LBERT moved that the Hon'ble MR. QUINTON be added to the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 27th June, 1883.

SIMLA ;
The 6th July, 1883. }

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, Simla, on Wednesday, the 27th, June, 1883.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, K.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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

AGRICULTURAL LOANS BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the Native Passenger Ships Act, 1876, be referred to a Select Committee consisting of the Hon'ble Sir S. C. Bayley, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

RANGOON STREET TRAMWAYS BILL.

The Hon'ble MR. ILBERT also moved that the Bill to authorize the making, and to regulate the working, of Street Tramways in Rangoon be referred to a Select Committee consisting of the Hon'ble Messrs. Hope, Hunter and Quinton and the Mover, with instruction to report in one month.

The Motion was put and agreed to.

*PROTECTION OF INVENTIONS.***CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.**

The Hon'ble MR. ILBERT also moved that the Bill to amend the Cattle-trespass Act, 1871, be referred to a Select Committee consisting of the Hon'ble Sir S. C. Bayley, the Hon'ble Messrs. Quinton and Barkley and the Mover.

The Motion was put and agreed to.

PROTECTION OF INVENTIONS BILL.

The Hon'ble MR. ILBERT also moved that the Bill for the protection of inventions exhibited in the Exhibitions of India be referred to a Select Committee consisting of the Hon'ble Sir S. C. Bayley, the Hon'ble Mr. Barkley and the Mover, with instruction to report in seven weeks. He said :—

“My Lord, I observed last week that this Bill was based on an English Statute. The Council are perhaps aware that a Bill to consolidate with amendments the Patent Law is now before Parliament; and I observe that a clause of that Bill, which purports to reproduce the Statute to which I have referred, contains a proviso which appears to me to be new, and which requires the exhibitor (in order that he may get the benefit of it) to give previous notice of his intention to exhibit. I mention this detail, as it may possibly be thought desirable to introduce a similar condition into the Indian Bill.”

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 11th July, 1883.

D. FITZPATRICK,

SIMLA ;
The 5th July, 1883. }

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, Simla, on Wednesday, the 11th July, 1883.

PRESENT:

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

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

Major the Hon'ble E. Baring, R.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

BIKRÁMA SINGH'S ESTATES BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to confirm and give effect to an award made by His Excellency the Viceroy and Governor General regarding certain matters in dispute between Sardár BIKRÁMA Singh and the Kapurthhala State.

EMIGRATION BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Quinton be added to the Select Committee on the Bill to amend the law relating to the Emigration of Natives of India.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 18th July, 1883.

D. FITZPATRICK,

SIMLA ;
The 11th July, 1883.

} 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, Simla, on Wednesday, the 18th
July, 1883.

P R E S E N T :

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

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

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

Major the Hon'ble E. Baring, B.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

BIKRÁMA SINGH'S ESTATES BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to confirm and give effect to an award made by His Excellency the Viceroy and Governor General regarding certain matters in dispute between Sardár BIKRÁMA SINGH and the Kapúrthala State 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.

BURMA LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the law relating to Local Self-government in British Burma. He said:—

“The Government of India has for some time had under consideration the question of amending the law relating to municipalities in British Burma, so

as to bring it more completely into harmony with those principles of local self-government which have been recently laid down by the Government of India, and generally adopted in other provinces. The Bill which I am now asking for leave to introduce has been prepared for the purpose of making such amendments in the existing Municipal Act for British Burma (Act VII of 1874) as are needed for the purpose of giving effect to this object. We have found it convenient to repeal this Act, and opportunity has been taken to introduce various improvements in matters of minor detail, such as arrangement, drafting and so forth, which the experience of the last eight or nine years has suggested.

“I do not propose to trouble the Council with any detailed account of the Bill, the provisions of which are fully explained in the Statement of Objects and Reasons. It will be sufficient to refer very shortly to one or two of the more important alterations which it will make in the law.

“In the first place, the Local Government is empowered by the Bill to include, within the limits of a municipality, not merely a town, but also any tract of country adjoining a town. This provision is not suited to the circumstances of the larger seaport towns, but it will enable a small town to be made the nucleus of some kind of organization for the neighbouring rural district. Where the provision is applied, it will be necessary to supplement the municipal fund from rural sources, and also to give such additional powers to the municipal authorities as will be requisite to enable them to deal with rural questions. Provisions having these objects in view have accordingly been introduced into the Bill.

“Then, as to the constitution of the municipal authority. Under the existing law, the municipal committee may be either elected or appointed. As a matter of fact, I believe the members of municipal committees are at present appointed in every place except Rangoon and Maulmain, where the elective system has been recently introduced. Under the Bill, at least three-fourths of the municipal board, as the authority is to be hereafter called, must be elected, except in places where the Chief Commissioner is of opinion that no suitable system of election can be devised. The chairman of a municipal board will be elected, except in places which the Local Government excludes by notification from the operation of this rule.

“The Bill does not reproduce the provision of the existing law which requires a municipality to maintain out of its funds an establishment of police. Police charges will now be borne by the Government, and a considerable amount of money will thus be set free for the purposes of general improvement.

“Under the existing Act, the Chief Commissioner has absolute power to cancel, suspend or limit any of the acts, proceedings or rules of any municipi-

pal committee. For this power the Bill proposes to substitute a carefully modified system of control similar to that established by the Local Self-government Bills recently introduced for other provinces. Again, under the existing law, the Chief Commissioner has full discretionary power to determine by rule the limits within which the local authorities are to be empowered to execute public works. This discretion is limited by the Bill, which provides that the four largest municipalities may undertake, of their own authority, works for which the estimates do not exceed Rs. 20,000, and that other municipalities may in like manner undertake works for which the estimates do not exceed Rs. 10,000."

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 *Gazette of India*, and in the *British Burma Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

EMIGRATION BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Sir S. C. Bayley be added to the Select Committee on the Bill to amend the law relating to the Emigration of Natives of India.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 25th July, 1883.

D. FITZPATRICK,

SIMLA;
The 20th July, 1883.

} *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, Simla, on Wednesday the 25th July, 1893.

P R E S E N T :

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

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

Major the Hon'ble E. Baring, R.A., 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

BOMBAY PORT-DUES BILL.

Major the Hon'ble E. BARING moved that the Bill to give power to reduce port-dues in the Port of Bombay be taken into consideration.

The Motion was put and agreed to.

Major the Hon'ble E. BARING also moved that for the enacting clause of the Bill the following be substituted, namely:—

“ In the Indian Ports Act, 1875, first schedule, for the first entry in the third column in respect of the Port of Bombay, the following shall be substituted, namely:—

“ Not exceeding four annas per ton for each class of vessels as the Trustees incorporated under the Bombay Port Trust Act, 1879, may from time to time direct.”

He said that the Motion was a purely formal one. The Bill in its new form would have the same effect as the Bill as it was originally introduced, that is to say, it would allow the Bombay Port Commissioners to levy duty at less than two annas per ton, which they could not do under the existing law. The change of form was suggested by the Solicitor of the Bombay Government and approved by that Government. The present proposal was intended to give effect to their proposals.

The Motion was put and agreed to.

Major the Hon'ble E. BARING also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BURMA LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the law relating to Local Self-government in British Burma be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Hope, Quinton and Barkley, and the Mover.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 8th August, 1883.

D. FITZPATRICK,

Secretary to the Government of India

Legislative Department.

SIMLA;

The 27th July, 1883.

*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, Simla, on Wednesday, the 8th
August, 1883.

P R E S E N T :

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

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

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

Major the Hon'ble Sir E. Baring, B.A., K.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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

BURMA PILOTS BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee
on the Bill to provide for the grant of licenses to Pilots in British Burma and
for investigating certain charges against them.

The Council adjourned to Wednesday, the 22nd August, 1883.

SIMLA ;
The 9th August, 1883. }

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

Merchant Shipping Acts, and Hon'ble Members will remember that our latest Merchant Shipping Act, which is modelled on a corresponding English Statute, provides for the holding of Courts of Inquiry to investigate shipping casualties, and enables those Courts to try charges preferred against masters, mates and engineers in connection with those casualties. The result would be that there might be sitting at the same time, at the same place, and in connection with the same casualty, two separate and independent Courts—one constituted under the Merchant Shipping Act and investigating a charge against the master of a ship, and the other constituted under the Pilots Act and investigating a charge against the pilot. Furthermore, I could not help thinking that there was a good deal of force in the objection taken by two of the Burma pilots, namely, that the power given to the Chief Commissioner to dismiss, suspend and degrade was somewhat arbitrary. I agree with them in thinking that this power should not be exercised without some preliminary judicial investigation. Lastly, it seemed to me worth while enquiring whether any special Act was necessary for British Burma at all, and whether the objects of the Bill might not appropriately be met by an amendment of the Merchant Shipping Act and the Indian Ports Act. We referred this point to the maritime Local Governments, but were satisfied with the replies we received that whilst special legislation is necessary for British Burma, yet the difficulty which this Bill was intended to meet is either not likely to arise in other parts of British India, or could be more suitably dealt with under the provisions of the existing law.

“This being so, we determined to proceed with the Bill, but to amend it in such a way as to remove the objections to which I have referred. The Bill in its present form provides for the grant of licenses to pilots, and enables the Chief Commissioner to make rules regulating the conduct of licensed pilots. Breach of these rules is punishable by fine or imprisonment. If a pilot is charged with an offence of a simple nature, such as drunkenness or refusing to take charge of such a ship, he goes before the ordinary Courts, and is dealt with in the ordinary way. If, on the other hand, the Local Government thinks there are grounds for charging him with incompetency or misconduct in the discharge of his duties as pilot, or with a breach of rules made under the Act, and that the charge is of such a nature that it cannot be satisfactorily investigated by an ordinary Court, provision is made for summoning a special Court with duly qualified assessors. This Court will submit their report to the Chief Commissioner, but will have no power to punish. With the Chief Commissioner will rest the power to dismiss, suspend or degrade a pilot in the following cases :—

- (a) if the pilot is found guilty by a Criminal Court of any offence punishable under the rules, or of any other offence the commission of which, in the opinion of the Chief Commissioner, shows him to be unfit to discharge the duties of a pilot; or

“(b) if, on considering a report submitted by a special Court under the Act, or transmitted under section 17 of the Merchant Shipping Act, 1883, the Chief Commissioner is of opinion that the pilot is incompetent or has been guilty of any misconduct in the discharge of his duty as pilot or of any breach of a rule under section 5.

“It will be observed that it is proposed to empower the Chief Commissioner to act on the report of an investigation into a casualty under the Merchant Shipping Act; and I presume that, in cases in which the pilot has been allowed a full opportunity of defending himself in the course of such an investigation the Chief Commissioner would act on that report and dispense with any special enquiry under the Pilots Act. But the Committee have suggested—and I should like to emphasise the suggestion—that, for the purpose of facilitating this proceeding and preventing the necessity for summoning two Courts, it is very desirable to amend the Merchant Shipping Act in such a way as to enable a Court of Inquiry held under that Act to formulate and try a charge against a pilot in somewhat the same manner as it can formulate and try a charge against a master, mate or engineer.”

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.

UNIVERSITIES DEGREES BILL.

The Hon'ble MR. ILBERT also moved that the Bill to authorize the Universities of Calcutta, Madras and Bombay to grant certain honorary degrees be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Reynolds and the Mover. He said:—

“This Bill was introduced by the Hon'ble Mr. Gibbs last February, and the only order passed upon it was that it should be published in the official Gazettes. On looking into the papers, however, it seemed desirable to make one or two minor amendments which could be more conveniently dealt with by a Select Committee. But no action will be taken upon the Bill until Mr. Gibbs returns”

The Motion was put and agreed to.

MÚLTÁN DISTRICT LAWS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to declare the law in force in certain lands which have been, or hereafter may be, ceded by the Baháwálpur State for occupation by the Indus Valley State Railway. He said that, under an existing Act (Act X of 1880), the law in force in the Múltán District was declared to be in force in certain lands which had been

before the passing of that Act ceded for the purpose of the Indus Valley State Railway and annexed to the Múltán District. Since the passing of the Act of 1880 certain other lands had been ceded for the same purpose and annexed to Múltán and it was obvious that the Act could not apply to them. Under these circumstances, it was thought convenient to repeal the Act and re-enact it in a more general form, so as to declare the law which was to be in force in all lands either already ceded, or hereafter to be ceded, for the purposes of this Railway, and which had been or might be annexed to Múltán or any other district of the Panjáb.

The Motion was put and agreed to.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Hon'ble Mr. Hunter be added to 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.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 5th September, 1883.

D. FITZPATRICK,

SIMLA;
The 31st August, 1883. }

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, Simla, on Wednesday, the 5th
September, 1883.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

MÚLTÁN DISTRICT LAWS BILL.

The Hon'ble MR. LEBERT introduced the Bill to declare the law in force
in certain lands which have been or hereafter may be ceded by the Baháwal-
pur State for occupation by the Indus Valley State Railway.

The Hon'ble MR. LEBERT also moved that the Bill be taken into consider-
ation at the next meeting.

The Motion was put and agreed to.

N.-W. P. AND OUDH LOCAL BOARDS BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee
on the Bill to provide for the constitution of Local Boards in the North-Western
Provinces and Oudh.

N.-W. P. AND OUDH MUNICIPALITIES BILL.

The Hon'ble MR. QUINTON also presented the Report of the Select Com-
mittee on the Bill to make better provision for the Organization and Adminis-
tration of Municipalities in the North-Western Provinces and Oudh.

PANJÁB MUNICIPAL BILL.

The Hon'ble Mr. BARKLEY moved for leave to introduce a Bill to make better provision for the Organization and Administration of Municipalities in the Panjáb. He said :—

“My Lord, when the Panjáb Local Self-government Bill was introduced about three months ago, it was explained that the legislation which might be required with regard to municipalities had been reserved for separate consideration.

“Some of the Panjáb municipalities may be said to have arrived at the age of majority, as they were originally established 21 years ago, and many more were formed before the passing of Act XV of 1867, which was the first Act of the Legislature passed with special reference to them. A few, such as Delhi and Simla, had been formed under the provisions of a General Act, XXVI of 1850, relating to improvements in towns; but the majority received no legal recognition before the passing of Act XV of 1867. That was a temporary Act, its duration having been originally limited to five years, and afterwards extended for one year more by an Act passed in 1872. Its place was taken in 1873 by Act IV of 1873, which contains the law now applicable to all municipalities in the Panjáb.

“Act IV of 1873 is a short Act consisting of only 23 sections, being less than half the number of sections contained in the similar Act passed in the same year for the North-Western Provinces and Oudh; and though its provisions have been supplemented by rules framed under it by the Local Government and rules and bye-laws made by committees with the sanction of the Local Government, it has been found to be defective in many particulars in regard to which the Municipal Acts in force in other parts of India contain express provisions. These defects were brought to the notice of the Panjáb Government so long ago as 1876 by Mr. Plowden, now the senior Judge of the Chief Court, who was then Government Advocate; and, though it was not found necessary to ask for legislation at the time, the experience of the last few years shews that steps must now be taken to remedy them.

“While it would have been possible to give effect to the proposals for the extension of local self-government in municipalities made by the Local Government in its Resolution No. 1777, dated 7th September, 1882, by rules under the existing Act, the amendment of that Act appeared to be a more suitable mode of effecting this purpose. The present Bill has accordingly been framed, both with this object and with a view to remove the defects known to exist in the law now in force. It is proposed to repeal Act IV of 1873, so that the

whole of the law applicable to municipalities in the Panjáb may be included in one Act.

“The provisions of the Bill are fully explained in the Statement of Objects and Reasons, and I do not therefore propose to do more than notice some of the more important alterations which it will make in the law.

“By the rules in force under Act IV of 1873, committees are divided into three classes, but the orders and proceedings of committees of the third class are subject to the confirmation of the Deputy Commissioner before they can take effect. The classification of municipalities is now provided for by the Bill, but only two classes are retained, it being thought that any municipalities, the committees of which cannot with advantage be placed in a position of greater independence than that of the third class committees at present, had better be abolished, while those which are fit for higher powers can be transferred to the second class.

“Except in a few of the more important municipalities, in which a portion of the members have hitherto been elected, all the members of municipal committees have hitherto been nominated. It is now proposed to give the committees a more representative character, and for this purpose to have recourse to election where this can properly be done. There are cases, especially on the frontier, in which no form of election would be suitable, and the section relating to the constitution of committees therefore provides either for election or for appointment in the same way as in the Local Self-government Bill, defining, as far as possible, the circumstances under which the system of election, when once introduced, may be departed from. It also raises the proportion of members other than salaried officers of Government from two-fifths to two-thirds of the committee, unless when such officers are elected as members.

“Though, under the existing Act committees might be empowered to elect their chairman, the rules under the Act make the Deputy Commissioner chairman of all municipal committees in his district, and it is only in a few recent instances that any committees have been empowered to elect. Under the Bill, the chairman will be elected, subject to the approval of the Local Government, except where that Government may by notification otherwise direct, but the committee, instead of electing, may apply to the Local Government, to appoint a chairman from among its members. In some cases it is believed that committees will prefer this course to having to make the choice of one of their members as chairman themselves.

“A section has been introduced, enabling the chairman, or in his absence the vice-chairman, in cases of emergency, to exercise all powers of the

committee which the Act does not require to be exercised by the committee at a meeting.

“When a paid secretary is appointed, his appointment, removal and salary are made subject to the sanction of the Commissioner of the division. The office is one for which it is highly important to secure the appointment of a competent man, and such a man might not care to accept office under a committee without some guarantee against arbitrary dismissal. Other servants may be employed by the committee, the Deputy Commissioner being given such powers of control as are necessary to prevent improper appointments or the employment of too large or too expensive an establishment, subject to appeal to the Commissioner. It was at the suggestion of one of the most important municipal committees in the province—that of Delhi—that this check was made applicable to all committees, and not, as originally intended, to second class committees only.

“The subject of taxation is much more fully dealt with in Chapter III than in the corresponding sections (7 to 9) of the existing Act. Those sections contained no description of the taxes which might be imposed. This has now been supplied, and other taxes than those mentioned cannot be imposed without the previous sanction of the Governor General in Council. In the case of taxes on immovable property, a maximum rate has been fixed. The rate of $7\frac{1}{2}$ per cent. on annual value, with the additional rate of $2\frac{1}{2}$ per cent. which may be imposed for special objects, may appear high, but this was necessary to cover the rate of 10 per cent. on annual value now sanctioned in Simla. Similarly, the rate of three rupees per running foot of frontage which may be imposed as an alternative to the tax on annual value is the present rate in the main bázár of Simla. It may be regarded as certain that rates so high as these will only be sanctioned in very exceptional cases like that of Simla.

“Some of the taxes enumerated are not now levied in any municipality in the province, but have been included, as it may in some cases be necessary to provide a substitute for the octroi tax, which is the chief source of income of almost all Panjáb municipalities, but which cannot be continued where it is not possible to prevent it from operating as a tax upon through trade. In the case of tolls, which are not allowed by existing rules, it is provided that they may be imposed only where no octroi is levied.

“Instead of section 8 of the present Act, which prohibits the collection of any tax until the assessment has been confirmed as prescribed by rules made by the Local Government—a provision which is clearly inapplicable to indirect taxation like the octroi tax—express rules have been laid down for the assessment, confirmation and collection of taxes on immovable property, and for

the collection of the octroi tax, and the Local Government has been empowered to make rules for the assessment and collection of other taxes. Appeals against taxes or assessments have also been provided for.

“ Under the existing Act, municipal taxes may be recovered as arrears of land-revenue. For this a power to recover arrears by distress and sale under the orders of a Magistrate is substituted, and provision is also made for seizing articles on which any octroi tax or toll is chargeable in default of payment of the charge.

“ Chapter IV, which relates to the powers and duties of committees, is also in much more detail than the corresponding sections 11 to 17 of the existing Act.

“ While the cost of the municipal police is made, as before, a first charge on the municipal fund, provision is made for the Local Government relieving the committee of such charges on its agreeing to undertake services within the municipality, the cost of which has hitherto been borne by Government, and does not exceed the cost of the establishment ordinarily employed on police duty within the municipality. When the municipal police consists of a body of watchmen, it is proposed to place that body under the orders of the District Superintendent of Police, and provision is made for putting its members on a footing similar to that of members of the general police force, so far as is consistent with their not being enrolled in that force and subjected to general service nor brought under the same rules as to pay and pension.

“ Section 67 enables committees, with the previous sanction of the Local Government, to make rules for the prohibition, prevention or punishment of acts or omissions of a similar character to those punishable as public nuisances under the Indian Penal Code, and of offences against public decency. Its form resembles that adopted in the committee on the North-Western Provinces Bill for the similar section in that Bill. Sections 68 to 70 give powers for the prohibition of nuisances, and enable the Local Government to confer powers to issue conditional orders for the removal of nuisances which committees in the Panjáb have not hitherto possessed. These are taken, with some modification, from the Municipal Acts in force in the North-Western Provinces and in British Burma.

“ In addition to the general powers given to committees to make rules, subject to the sanction of Government, binding on the public, for purposes which are stated more at length in the Bill than in the Act now in force, section 72 gives a special power to committees in hill stations to make rules for the regulation of traffic, and for the prevention of acts likely to cause

-serious injury, unless proper precautions are taken, being done without the permission of the committee. Examples of such acts are quarrying or making excavations and cutting down forest trees on private grounds. The general law is, of course, sufficient to prevent such acts being done on public property without proper authority.

“Sections 74 to 85 give certain powers of interference with objectionable trades and with private property, which it has been thought better to include in the Bill than to leave to depend upon the authority of bye-laws, as has hitherto been the case. In this respect the Bill follows the precedent of the Municipal Acts of the local Legislatures of Madras, Bombay and Bengal, though it does not go so far as those Acts do in defining the acts and omissions which should be prohibited within municipal limits.

“Section 89 enables the Local Government to give a power which it is thought may be found convenient in places like Simla, of accepting a small composition for petty nuisances out of Court instead of prosecuting, when the offender consents to pay such composition.

“The sections relating to control in Chapter V are similar to those in the Local Self-government Bill, and take the place of the wide power the Local Government possesses, under the existing law, to suspend or limit all or any of the powers of any committee, and to cancel any of their proceedings or rules. Some of the gentlemen consulted have thought that the powers given to local officers are too great, and have proposed that, in the case of first class committees at least, these powers should be exercised only by the Local Government, but the cases in which interference would be most necessary would generally be of such a nature as to call for prompter action than would be possible if nothing could be done until the facts had been reported to the Local Government, and time had been allowed for such enquiry as would satisfy Government that interference was called for.

“Section 94, which requires the orders of the Deputy Commissioner and Commissioner under the preceding sections to be forthwith reported to Government with a statement of the reasons for making them, and with any explanation which the committee may wish to offer, affords a check which should prevent any capricious or unnecessary interference; and the experience, which the more important municipal committees have already gained, should preserve them from falling into errors which would render interference necessary. But a sufficient power of control must be reserved to protect the public interests against the effects of negligence or ill-judged action on the part of committees, even though the cases may rarely occur in which any interference with the functions of the committee will be necessary. It is only subject to this condi-

tion that committees can be given greater freedom of action, than they have hitherto had, but experienced committees, well informed as to the wants of the public, and willing to exert themselves to supply them, so far as the means at their disposal allow, have no cause to fear that they will be exposed to any undue interference.

“The power to make rules to supplement the provisions of the Act given to the Local Government by section 97 and the provisions of the concluding chapters of the Bill call for no remark.”

The Motion was put and agreed to.

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

The Hon'ble MR. BARKLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Panjab Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 12th September, 1883.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA ;
The 7th September, 1883. }

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, Simla, on Wednesday, the 12th September, 1883.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, 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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

MULTÁN DISTRICT LAWS BILL.

The Hon'ble MR. ILBERT moved that the Bill to declare the law in force, in certain lands which have been or hereafter may be ceded by the Baháwalpur State for occupation by the Indus Valley State Railway be taken into consideration.

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.

NORTH-WESTERN PROVINCES AND OUDH LOCAL BOARDS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to provide for the constitution of Local Boards in the North-Western Provinces and Oudh be taken into consideration. He said:—

“MY LORD, in moving for leave to introduce this Bill in May last, I explained to the Council that it embodied the views of the Local Government as to the degree to which the principles of local self-government already recog-

nised in the North-Western Provinces and Oudh should be extended, as to the mode in which the existing machinery of district committees should be utilized for that purpose, and as to the steps considered necessary to supplement that machinery in order to carry out the object in view. I showed that the proposals of Sir Alfred Lyall were the result of careful deliberation and of consultation with all persons likely to be able to give an opinion of value on the subject, and that those proposals had received the assent of the Government of India in the Executive Department.

“The Bill, after its introduction, was published in the usual way for the information of the public, and was referred back to the Local Government for further opinion on its details. Divisional and district officers of the united provinces were again consulted, a committee was again assembled at Naini Tal, presided over by the senior member of the Board of Revenue, and having as its members one Commissioner from the North-Western Provinces, one from Oudh, three officers of the Secretariat, of whom two had not long ago been in charge of districts, and four Native gentlemen, including a member of this Council, the Hon'ble Rájá Siva Prasád.

“The opinions of the Local Government and of the officers consulted by it, the report of the Naini Tal Committee, and the criticisms of the English and Vernacular newspapers which discussed the measure, have been carefully weighed by the Select Committee; alterations, which it is hoped are amendments, have been made in the Bill in accordance with many of the suggestions emanating from these different sources; and I have to ask the Council to pass it into law to-day, after taking our report into consideration.

“I do not propose to detain the Council by discussing, or even enumerating, all the alterations which we have made. They will be found set forth at length in our report, but I shall confine myself to explaining a few of the more important changes.

“The Bill as introduced made no reference to towns in the united provinces in which Act XX of 1856 is in force. As the Council is doubtless aware, that Act provides for the appointment and maintenance of police chaukídárs in towns other than agricultural villages. In the North-Western Provinces and Oudh, where small towns are numerous, many have been brought under the Act, being too small as yet to constitute municipalities. The cost of watchmen, and in some places of sweepers for conservancy purposes, is raised by an assessment on persons or property within a limited maximum. The assessment is made by a pancháyat, and in no cases does it exceed double the charge for watchmen; in many it falls short of that amount. The surplus, when there is any, is spent in petty improvements in the town—generally in making or repairing roads or

surface-drains—by the Magistrate, who is directed to consult the wishes of the rate-payers. Sir Alfred Lyall considers that these embryo municipalities should be left as they are for the present outside the jurisdiction of district boards, a discretionary authority being given to the Local Government to treat exceptionally any case that may seem to call for such treatment.

“Section 3 of the Bill as amended accordingly excludes from sub-districts formed under that section, unless the Local Government otherwise directs, the portions of the district in which Act XX of 1856 is in force.

“We have made a change in the mode of appointing nominated members of district boards in those districts where the central board will consist only of delegates from the local boards. Instead of leaving such members to be chosen by the local boards, which we considered might give rise to complications and difficulty in maintaining the prescribed proportion of nominated and elected members on the district board, we have, in section 6, given to the Local Government the power of appointing the proper number of nominated members to the district boards from among the nominated members of the local boards. •

“On the mode of appointing chairmen of local and district boards, a constitutional question of great importance, I dwelt at some length on the occasion to which I have before alluded, and need only now say that no change has been made on this point, and that section 14 has been very carefully drawn, so as to give effect to the proposals of Sir Alfred Lyall.

“The Bill as introduced limited the term of office of chairmen of local boards to one year, in accordance with the suggestion of the Local Government. It was believed that this would give boards the opportunity within a reasonable time of ridding themselves of chairmen who turned out to be inefficient, but the Lieutenant-Governor and many of the officers consulted, on reconsideration of the question, have urged that the term is too short; and the Select Committee agrees with His Honour that annual elections of chairmen might keep agitation constantly alive, might deter competent men from accepting office, and might tend to prevent the acquisition of that knowledge of the rules and of business which it is essential that a chairman should possess. The preponderance of argument turned the scale in favour of the later opinion, and sections 13 and 16 accordingly provide that the term of office of an elected chairman shall coincide with that of his term of office as a member of the board.

“For chairmen who are not elected the term of office will be fixed by the Local Government, but is in no case to exceed three years, the term of office for members. District boards will thus be able at reasonable intervals to review their determination not to elect their own chairmen.

“Questions may arise occasionally in which residents of military cantonments and district committees are jointly interested, and on which it is well that each party should have an opportunity of hearing the views of the other and stating its own. With this object, section 27 enables district boards to form a joint committee with the cantonment authorities whoever they may be. We have not specified cantonment committees, of which no mention is to be found in Act III of 1880, the latest enactment which amends the law relating to cantonments; but it will rest with the military authorities to determine in what form the residents of cantonments shall be represented in the joint committees.

“Some of the local officers consulted took strong exception to the clause of section 24 which enabled district boards to establish and maintain relief-works in times of scarcity or famine, urging in effect that undivided responsibility was essential to the successful conduct of a famine-campaign, and that this could not be expected from district boards. They appear to have overlooked, or to have thought insufficient, the qualification in the first sentence of section 24, which applies to all that follows, ‘subject to such exceptions and conditions as the Local Government may from time to time make and impose.’ There is no doubt of the general truth of the proposition on which the objection is based, where a widespread and severe famine has to be dealt with, but periods of scarcity frequently occur which do not require the universal application of official agency; and during such periods, or even occasionally in more serious famines, the services of the boards may often be utilised with advantage in administering relief-works of a subsidiary character. To meet such cases, the provision was inserted. It was intended by it not to empower the Local Government to divest itself of the responsibility for famine-administration, but to enlarge the armory of weapons at the disposal of the Government for employment against the common enemy. The clause has been re-drafted so as to make this clear.

“In the Statement of Objects and Reasons, and in my speech when I asked leave to introduce this Bill, it was explained that the measure proposed to extend the financial independence of local bodies; and this object was secured by the provision which vested boards with the district fund. A suggestion of the Naini Tal Committee, supported by the Lieutenant-Governor, that ‘unexpended balances of yearly income should be credited to the boards subject to such conditions as the Lieutenant-Governor might impose,’ was carefully considered by the Select Committee, which felt compelled, for the reasons given in the Report, to reject it. Such a condition appeared to the Select Committee to be fatal to that financial independence which it is the object of the Bill to confer on every district board. Sections 13 of Act III of 1878 and section 12 of IV of 1878, which left unexpended balances of the allotments at the disposal of the

Lieutenant-Governor and Chief Commissioner, have been accordingly repealed and not re-enacted.

"The sections respecting the appointment of officers and servants have been recast. As regards the appointment of the secretary, no substantial change has been made; but we have rendered subject to rules made by the Lieutenant-Governor appointments to offices requiring professional skill. The supply of candidates for professional employments is limited, and the boards to be constituted under this Bill will not, at least for some time to come, be well adapted to judge without guidance of professional qualifications and scientific acquirements, whereas the selection of competent professional servants is of the utmost importance to the success of their administration.

"Two sections (36 and 37) have been added respecting the grants by boards to their servants of gratuities, pensions and leave-allowances. Here also it was felt that boards should be enabled to resist the pressure to which they will no doubt be largely subjected, and that the law should strengthen their hands in refusing to burden the rate-payers with extravagant charges.

"We have empowered the Local Government (clause (8), section 47) to make rules for the guidance of the boards in conducting litigation, but have struck out altogether the section of the Bill as introduced which conferred upon district boards and their officers and servants the privileges which the Secretary of State for India or a public officer has under Chapter XXVII of the Code of Civil Procedure. As stated in the Report, the tendency of recent legislation in England has been to remove special protection in the case of legal proceedings against public bodies, and, except that boards might possibly be placed at a disadvantage in the conduct of their legal business by the delay necessitated by the reference to Government under the rules, there appeared no good reason for continuing such protection to the boards for which we are now legislating. Such delay would, we think, be always accepted by the Courts as a good and sufficient reason for granting a postponement under the ordinary provisions of the Code.

"It also appeared to us that a provision for special notice of an intention to institute a suit against a board was uncalled for. Cases will rarely, if ever, occur in which persons thinking themselves aggrieved will not apply for redress to the boards before bringing them into a Court of law; and plaintiffs who fail to make such an application would doubtless be made, or, probably my honorable friend of the Chief Court will agree with me, ought to be made, to pay for their laches by being mulcted in the costs of the suit.

"I also propose to ask the Council to pass an amendment to section 40 of the Bill. Section 47 gives the Local Government the very necessary power of making rules as to the manner in which the accounts of the Boards shall be

audited; but section 40, which specifies and limits the charges and expenses to which the funds of the board can be legally applied, makes no provision for payment of the expense of auditing those accounts, so that the Local Government has the power of making rules for the performance of a duty the cost of which the board is under no obligation to pay.

“Section 47, clause (12), enables the Local Government to make rules as to the language of the board. This power was originally given to the district board, but on further consideration we adopted the view of the Lieutenant-Governor that, if this matter were left to the decision of the members, much controversy might be the result, and in some districts business might be seriously and uselessly retarded. My hon’ble friend the President of the Education Commission will, I am sure, bear me out in saying that the use of Hindi or Urdu as an official language has in many places become a burning question, and that opposite sides are frequently taken by Hindus and Muhammadans more from a desire to secure a badge of race-ascendancy than from considerations of the public convenience.

“The Bill, my Lord, will thus confer on the people of the North-Western Provinces and Oudh a substantial, though not an unsafe, measure of local self-government: it is a move, and a decided, but not a rapid move, in that direction. For a somewhat centralized system of administration of local funds, it establishes local bodies appointed mainly by such a form of election as is considered by those best acquainted with the provinces most suitable to their present condition, presided over by chairmen of their own choice, charged with the performance of definite duties, vested with the control of their own funds, and possessed of the local knowledge and local interest which it is the tendency of centralised departments in their zeal for improvement sometimes arbitrarily to override. It is not to be expected that large results will at once be apparent from the passing of the Act, or that a population composed chiefly of peasants and petty landholders, engaged in a hard struggle for existence, of whom not quite 6 per centum have acquired the arts of reading and writing, will suddenly manifest a great amount of public spirit, will display an unselfish interest in commercial affairs and develop a conspicuous genius for administration; but we may reasonably hope that in these respects a promising start will be made, and a steady rate of progress gradually attained, under the guidance of a body of divisional and district officers second to none in India in sympathy with, and knowledge of, the agricultural classes, controlled by a Lieutenant-Governor who has so thoroughly familiarised himself with the ideas and principles underlying the structure of Indian society.”

THE HON’BLE MR. HUNTER said:—“My Lord, after the exhaustive statement made by my Hon’ble friend in charge of the Bill, it is not needful that I should enter into further details connected with this measure. But a

question arose in the Select Committee with regard to which it is expedient that, by your Excellency's permission, I should ask my Hon'ble friend for a fuller explanation in Council. The Bill provides, among other things, for the Local Government making over 'the control and administration' of schools to the Local Boards. No definition is given of the class of schools thus to be transferred, but they are placed in a list ending with the words 'and other public institutions.' It may therefore be inferred that the schools to be placed under Local Boards are of the nature of State schools. But perhaps the Hon'ble Member in charge of the Bill will, at the close of this debate, make it clear that the schools to be handed over 'to the control and administration' of the Local Boards, at the discretion of the Local Government, are not intended to include aided schools, or schools managed by European or Native associations or by similar bodies. It would be particularly unfortunate at the present juncture, if an unfounded surmise should get abroad that Government intends to interfere in any way with private enterprise in education. From what passed in the Select Committee, I am aware that there is no such intention; and I have a perfect confidence that the Local Government will prevent any injustice by the rules to be framed under this Act. I also agree that it is inexpedient to attempt a definition of the schools now to be transferred to Local Boards, as the whole question of popular education and of educational legislation is shortly to come before your Excellency's Government. Nor do I ask for any pledge in regard to schools which the Boards may themselves establish. But it seems desirable that it should be made clear to managers of schools, and to European or Native associations engaged in school work, that the present Bill will not infringe on their private rights. I shall, therefore, with your Excellency's permission, ask my Hon'ble friend for an assurance that nothing in this Bill is intended to interfere with the powers at present exercised by individual managers, or by public associations, over aided or other non-Government schools; or to transfer their management to 'the control and administration' of the Local Boards.

"Two objections of a more general character have been brought against the control and administration of those Boards. On the one hand, it has been urged that the powers entrusted to the Boards go too far in the direction of local self-government; on the other hand, it is complained that they do not go far enough. As an independent member of the Council, not pledged by responsibilities to your Lordship's Executive Government, I desire to state my own opinion in regard to these two categories of complaint. The first class of critics seem to suppose that this and similar measures now before the Council, have been modelled upon institutions, and are built up on theories, foreign to India. But if there was ever a series of measures free from the charge of *doctrinaire* legislation, it is the series to which the present Bill be-

longs. Every one of that series has been based upon existing institutions, and in each one of them the development of those institutions is strictly carried out on lines laid down by the District Officers and the Local Government. The Bill for the Central Provinces starts from the village-school committees, characteristic of that part of India, and links them through Local Boards with the District Councils. In Burma, such rural mechanism is comparatively wanting, and the Burmese Bill now before the Council, practically confines its scope to municipalities or townships and the areas attached. In the Panjáb, different tracts vary widely in their circumstances. The Panjáb Bill refrains, therefore, from any attempt to bring that Province under uniform provisions, and it allows the largest liberty to the Local Government in regard to the rules by which the system will be worked in each district. The North-Western Provinces form a more homogenous territory. But, while the provisions of the present Bill are consequently made applicable to them as a whole, these provisions are based upon local experience and local advice collected from the separate Districts. It embodies the views arrived at by the North-Western Government upon the recommendations of a Committee of its own District Officers. It has been carried through this Council by a gentleman of exceptional experience in the management of North-Western Districts. At each stage of the Bill, the opinion of the Lieutenant-Governor of the North-Western Provinces has been sought; and to that opinion more than one member of the Select Committee has, on particular clauses, yielded his own. Whatever may be the defects or the merits of this Bill, they are not the merits or defects of *doctrinaire* legislation.

“The Bill accepts the existing system of District Boards in the North-Western Provinces, and provides them with Local Boards as agents acting under them. But, in thus giving hands to the District Board with which to do its work, we are told that the Bill has deprived the District Board of its head. The meaning of this is, that the Chairman of the District Board will no longer be necessarily an official appointed by Government, but may, under certain conditions, be elected by the Board itself. Those conditions, however, afford ample security against evil results from so moderate a change. In the first place, a District Board must, at a meeting of not less than three-fourths of its whole members, determine whether the Chairman shall be elected by the Board, or be appointed by the Local Government. The condition requiring an attendance of three-fourths of the whole members, although an effective safeguard against hasty or partial elections, seemed, to me at any rate, to be unduly stringent. But, after the careful consideration given to this question by the Local Government, and as local experience shows that this safeguard can be practically carried out in the North-Western Districts, I think that no true friend of self-government should withhold his assent from a condition which those best

acquainted with the North-West believe to be requisite for the successful working of self-government in those Provinces. The second safeguard consists in the circumstance that, when a Chairman has been elected, the approval of the person so selected rests with the Local Government; and, in the event of an unsuitable election, the Local Government shall appoint as Chairman such person as it thinks fit. The third safeguard resides in the right reserved to Government of nominating a portion of the members of the Local Board, not exceeding one-fourth of the whole. The fourth safeguard is to be found in the provision that every resolution passed by a District Board shall, within ten days, be forwarded to the Magistrate of the District. A fifth safeguard rests in the efficient but well-guarded powers of inspection, suspension and control vested in the Commissioner of the Division, and eventually in the Local Government. I do not think that any one can carefully read this Bill without the conviction that its provisions represent the best results of local experience, and that they take ample security against any dangers which might arise from the increased responsibilities now assigned to the District Boards.

“Those responsibilities are of a very real character. The list of duties made over to the District Boards include much of the daily work of rural administration. The evils of the undivided responsibility borne by Indian officials, have long been recognised, and have received fresh illustration in the most able of popular accounts of India by Mr. J. S. Cotton, which has just reached this country. But, in regard to the duties and powers of District Boards, this Bill has been based on the past experience of District officers in the North-West, not upon theories or first principles. The construction and maintenance of public roads, wells, waterworks and certain local buildings; the management and inspection of schools, hospitals, markets, cattle-pounds, staging-houses and public ferries; the regulation of encamping grounds for travellers; the licensing of stage-carriages; the conduct of local works likely to promote the public health, comfort or convenience; and the relief of the people in time of scarcity or famine, are among the duties entrusted by the Bill to the District Boards, under rules and conditions to be laid down by the Local Government. Some of these duties have already been conducted by District Boards; but hereafter the District Boards will have an inducement to efficiency and economy which they did not possess before. For, any balance unexpended at the end of the year from the sums allotted to them by the Local Government, will no longer be swept back into the Provincial Treasury. Such balances will form a fund to enable the District Board still more efficiently to carry out its duties; and the more economically it performs its work each year, the better will be its financial position at the beginning of the next.

“With the responsibility for many branches of the rural administration, will come, I believe, an increased appreciation of the difficulty of the task. The

British Government has, during the past twenty years, accepted responsibilities for the continuous welfare of its subjects which no previous Government of India admitted. The State now interposes its efforts between the calamities of nature and the people. When it fails in its almost insuperable task, the people are apt to blame, not the calamities of nature, but the efforts of the State. No one has so clearly described the result of this condition of things as the present Lieutenant-Governor of the North-Western Provinces. 'Cholera, famines and great sea-inundations,' writes Sir Alfred Lyall in one of his brilliant essays, 'when they are not made the text of invectives against the British Government, do at least, in some confused way, bring upon it great discredit; not apparently from the idea that the gods are angry with the Government, but upon the dim feeling that the Government has undertaken the gods' business and is breaking down.' The best remedy for such a state of things is to make the people themselves share the difficulty of the task; and I believe that the Bill to be passed to-day for the territories over which Sir Alfred Lyall presides, is the most important legislative step yet taken in that direction.

" We have lately heard much of the great influence exercised by the small but highly educated Native communities in the towns. It is complained that that influence is altogether disproportionate to the number of the persons who wield it, or to the pecuniary stake which they have in the country. Without pronouncing as to the justice of this view, I think that the present measure affords a new and valuable guarantee against the evil complained of. For this Bill creates effective mouthpieces for public opinion outside the great towns, such as the rural population never possessed before. Public opinion exists in the village as it does in the town; but under previous Indian Governments the village was separated by wide untraversed tracts from the ruler. This separation has stamped itself in the language of the people. The terms for the village and its internal life are almost everywhere taken from the vernacular Indian speech; but beyond the village stretched the Persian *zild* or District, and beyond the *zild* the Persian *subah* or Province, whose capital formed the residence of the remote Government or Persian *sarkar*. My Hon'ble friend in charge of the Bill, has mentioned that the language to be used by the Local Boards is a burning question at the present day; that is to say, whether the language is to be the native Hindi of India, or the naturalised Urdu derived from its former foreign rulers. He has dealt, I think, very wisely with that question. But the Bill which he has to-day conducted to a successful issue, goes to the root of the evil which bequeathed to us this and similar difficulties in the rural administration. Indian history discloses scarcely anything of the nature of a political institution between the village and the Central Government; and after the downfall of each successive dynasty the village alone survives,

raising its head above the waste of anarchy like the Lower Bengal hamlets in time of flood. This absence of cohesive institutions has always been a source of political weakness in India. The present Bill and the series of measures to which it belongs takes the village, the indestructible unit of the Indian social system, and links it to the Central Government. My Hon'ble friend has truly said that the progress of local self-government must at first be slow. But the progress, such as it is, will be steadily in the right direction. The peasant landholders and the village heads will be represented on the Local Board. The Local Boards will, either directly or by election, constitute the District Board; and the District Boards will be in immediate communication with the responsible representatives of the Government. The old indestructible element of organization in India, the village, will no longer stand out as a solitary unit, but will be incorporated into a well-knit system of rural administration.

"I think the local Government of the North-Western Provinces, as well as the Hon'ble Member in charge of the Bill, is to be congratulated on the passing of this measure. I believe it to be an honest effort to carry out the policy of local self-government laid down in your Excellency's Resolutions, and to carry out that policy with due safeguards against the risks which must attend all administrative changes in India."

His Honour the LIEUTENANT-GOVERNOR said :—"My Lord, I was not aware that any difficulty had arisen in connection with those provisions of section 24 of the Bill which refer to the control and management of schools made over to local bodies. No mention of any such difficulty has been made in the report of the Select Committee, and therefore I have not come prepared to discuss the principle at any length. Nor do I clearly understand what is the particular difficulty in respect to aided schools to which my hon'ble colleague Mr. Hunter has referred. Perhaps when the Hon'ble Member in charge of the Bill comes to answer the appeal which has been made to him, some further light may be thrown upon the subject. But if it is asked that a pledge be given that the clause in the Bill shall apply only to Government schools and in no respect to aided schools,—that is to say, that grants-in-aid are to be given only from provincial finances and not from local funds, that all examinations in aided schools are to be conducted by provincial and not local establishments, and that local boards and committees are to have no concern with aided schools,—I sincerely trust no such pledge will be given. As far as the Panjáb is concerned, I distinctly contemplate, under the provisions of the Panjáb Bill, now before a Select Committee of this Council, to give certain powers to local boards in connection with aided schools, as well as Government schools. In regard to the Bill now before us, I think that the clause in the first part of section 24 which makes the provisions of the section subject

‘to such exceptions and conditions as the Local Government may, from time to time, impose,’ provides an ample check against any arbitrary or unwise interference with aided schools. ‘Altogether, the matter is one which should be left to the discretion of the Local Government.’”

The Hon’ble SIE STEUART BAYLEY said :—“My Lord, I cannot anticipate the answer which my hon’ble friend Mr. Quinton will give to the question asked him by the Hon’ble Mr. Hunter in regard to the control and management of aided schools, but I am of opinion that it is undesirable that any definite pledge should be given in their case. It seems to me that there is a principle underlying the question which may enable the Local Government to come to a decision in the matter; and that, in regard to schools for the higher education, where these schools are in the main private institutions and can only be called public in consideration of the grants-in-aid they receive, they would hardly come under the wording of the section. Where, for instance, private persons or associations have invested time and money in starting a school on the faith of a system of grants-in-aid administered by Government, there is a *prima facie* reason for not making over such schools to local bodies without the consent of those persons and associations. I think that might be the guiding principle, but at the same time much must be left to the discretion of Local Governments, and it would be unsafe to give anything like a definite pledge.”

The Hon’ble Mr. QUINTON said :—“The question raised by my hon’ble friend Mr. Hunter is no doubt one reasonably suggested by the wording of section 24 of the Bill, and, as it also arises in the Municipal Bill, I shall deal with both at the same time.

“It was found impossible to lay down by law a precise classification of the schools which should be placed under the control and administration of the boards, and the decision was accordingly left to the Local Government, while we indicated by a general qualification in the section the principles on which such decision should be based.

“The section runs—‘Every district board shall, so far as the funds at its disposal will permit, but subject to such exceptions and conditions as the Local Government may, from time to time, make and impose, provide, among other things, for the establishment, management, maintenance and visiting of schools.’

“It was not the intention that boards should have anything to do with schools other than those maintained or aided from the district or municipal funds.

“Schools which in future accept grants-in-aid from boards will of course be bound by the conditions on which such grants are given, and must make their own terms.

“ Schools which at present receive grants-in-aid from Provincial funds are in a different position. Government may find it convenient to transfer the charges for such grants-in-aid to the funds of the boards; but, as the schools were often established on the faith of the continuance of the grants-in-aid by Government, as stated by my hon'ble friend Sir Steuart Bayley, the latter would doubtless, before taking action, we presume, consult the wishes of the managers of the institutions, and, if they objected to being rendered subject to the control of the boards, would probably either not make the transfer at all, or attach to it such 'exceptions and conditions' as would satisfy the reasonable objections of the proprietors or managers of the schools. I cannot give any assurance beyond this. We have left the matter to the Local Governments with every confidence that the discretion will not be abused.”

The Hon'ble MR. ILBERT said :—“ My Lord, we are much indebted to our hon'ble friend Mr. Quinton for the great care and skill with which he has conducted this measure through Council, and for the fulness of his explanations. It clearly appears from what he has said that, with respect both to the details and to the principles of this measure, we have adhered as closely as possible to the views and suggestions expressed by the Local Government; and I have every reason to believe that this measure will lay down the lines of a useful and effective system of local self-government. To what has been already said, I need only add a very few words, and those will be in explanation of the financial clauses of the Bill. In defining the funds and sources of income to be placed at the disposal of local boards, we have endeavoured to keep in view three considerations. First, for the purpose of securing the requisite amount of elasticity in the adjustment of provincial and local revenue and expenditure, we have found it necessary to reserve to the Local Government a certain amount of discretion with regard to the funds to be allotted. We have done this by providing in section 38 of the Bill that the arrangements specified in that section are to be subject to such conditions and exceptions as may be made and imposed by the Local Government. Secondly, it has been thought desirable to give the Local Government, by express words, the power of reserving from the local rates fund such amounts as may be necessary for expenditure on matters of the district which it may be necessary to place under provincial as distinguished from local administration. We have provided for this by a sub-section, which will be found in section 56 of the Bill, amending the Local Rates Act of 1878. Whilst conferring these discretionary powers, we hope and believe that they will be exercised in accordance with fixed rules, and in such a manner as not to cripple the independence and responsibility we intend to give to local bodies. In connection with this point, I have to express my entire concurrence in the principle of leaving unexpended balances in the hands of those bodies. Lastly, it is necessary that local bodies should pay the expenses of such services

as may be rendered to them by the officers of Provincial Departments, and we have accordingly charged the district fund with the payment of such amount as may be held to be equitably due in return for such services."

His Excellency THE PRESIDENT said:—"The remarks which have been made by the hon'ble members on this and previous occasions at the several stages of the Bill have so fully explained the objects and purposes of this and the sister measure which will be passed, I trust, in a few minutes, and I myself have had so many occasions of expressing my views on the question of local self-government in India, that I need not now occupy the time of the Council. But I cannot let those two Bills pass without expressing my hope that they will prove to be measures calculated to make a substantial advance in the development of local self-government; and it is a great satisfaction to me that these Bills should be passed by this Council during the time I have the honour to preside over it."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that, in section 40, sub-section (I), after the words "payment of" the following be inserted, namely:—"the expenses incurred in auditing the accounts of the district and local boards, and".

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.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES BILL.

The Hon'ble MR. QUINTON also moved that the Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the North-Western Provinces and Oudh be taken into consideration. He said:—

"The printed report of the Select Committee enumerates at length the changes, except amendments in matters of minor detail, which have been made in the Bill as introduced, and gives briefly the reasons for each. It also states that, in making those alterations, the Select Committee was guided by the opinions of the local authorities, which in the case of a Bill of this nature appeared to be specially deserving of attention.

"The changes as regards terms of office of chairman of the board, the appointment of joint committees with the cantonment authorities, the language of the board and the appointment of officers and servants, the grant of pensions, gratuities and leave-allowances and special privileges in conducting

litigation, correspond with those made in the Local Boards Bill; and, as I have dwelt on the reasons for these changes in the remarks I have just made on that measure, I need not weary the Council by going over the same ground.

“Towns in which Act XX of 1856 is in force were not alluded to in the Bill as introduced, but, as the Local Government is enabled to apply the Municipalities Act when passed to any town or group of towns, we have provided that, when a town in which Act XX of 1856 is in force is brought under the Municipalities Act, the former enactment shall cease to have effect therein, and every pancháyat constituted under it for the local area in which such town is situated shall cease to exist. The maintenance of a proper establishment for watch and ward will then become the duty of the municipal board.

“The maximum term of office of members of the board was originally fixed at two years, but the local authorities and Native gentlemen consulted considered this period too short, especially where the system of retirement by rotation is in operation—a system which has worked satisfactorily and is well understood. In deference to these views, we have extended the period to three years.

“The Bill as introduced practically allowed a board to elect as its chairman any person whatever: ‘one of its own members or some other person’ was the language used. Exception was taken to this as throwing open the chairmanship in a manner inconsistent with ordinary rule and practice elsewhere, and as allowing a person who had not stood for election, or who, having stood, had not been elected, to be brought in to preside over the board’s deliberations as chairman. It was urged that, although the power might occasionally be used to bring in a man of peculiar ability or aptitude, the probability was much stronger that it might be misused for purposes of private interest, and that it might foster dissension, especially if a candidate who had been defeated at the election for board membership were nominated.

“The Select Committee has given full weight to these considerations; but, looking to the fact that *all* elections are subject to the approval of the Local Government, has decided not to narrow the field from which chairmen may be chosen, except by the single restriction that they must possess the qualifications which would enable them to stand for election as members of the boards. These qualifications will be prescribed by rules made by the Local Government under section 9 of the Bill. This will prevent the election of an outsider who has no interest in the municipality, while the Local Government will be able, by withholding its approval, to cancel the election to the office of a person obviously improper or unfit.

“To prevent municipal administration coming to a standstill by the neglect of a board to fill up the chairmanship within a reasonable time after the occurrence of a vacancy, we have enabled the Local Government to appoint a chairman when the office is allowed to remain vacant for three months. The control of the ordinary business of the committee will rest in a great degree with the chairman, and inconvenience to the public would result from its being interrupted. I shall leave to my hon'ble and learned friend Mr. Ilbert to explain the grounds on which we have altered the sections giving power to the board to make rules regarding nuisances. The principle involved is one of general application, and will doubtless regulate litigation on the point in other provinces than those to which this Bill relates. No power was given to the Local Government in the Bill as introduced to alter the limits of a municipality. The law now in force, Act XV of 1873, section 5, does enable the Local Government to effect this by notification, and on the suggestion of the Government of the North-Western Provinces and Oudh we have inserted a section (74) to make provision for future cases in which it may be necessary to alter municipal limits.

“The object of this Bill, my Lord, like that of the Bill just passed, is to develop in the direction of local self-government institutions already in existence; and I may say that the institutions to which it applies have attained a much more advanced stage of development, and call for much less radical changes, than those with which we were dealing earlier in the day.

“Some degree of local self-government in municipal affairs existed in the North-Western Provinces since 1850, when Act XX of that year enabled residents of towns to apply for the extension of the Act to the town in which they lived, and to form committees for the purpose of taxing themselves and administering the funds raised by such taxation.

“As to Oudh, a Municipal Act for Lucknow and other towns to which it might be extended by the Governor General in Council was passed in 1864; and the Governor General in Council was subsequently empowered to extend to any towns in Oudh the Panjáb Municipal Act of 1867. In 1868, a new Municipal Act was passed for the North-Western Provinces, and was keenly debated in this Council; the opposition, headed by Sir H. Durand and Sir W. Mansfield, being opposed to granting to the Lieutenant-Governor power to apply the Act to any town irrespective of the wishes of the inhabitants and to the preponderance on the committee of official members, and the influence which it was likely they would exercise.

“Finally, in 1873, a fresh Act, No. XV of that year, being the law now in force, was passed for the North-Western Provinces and Oudh, in order to

provide for municipalities in Oudh governed by the Panjáb Municipal Act, then about to expire, and to make alterations and amendments in some small matters, to which experience had shown to be required, to the North-Western Provinces Act, regarding which the mover, Mr. (now Sir) Arthur Hobhouse, stated his belief that it had worked in a very satisfactory manner. By this Act all municipalities in both provinces are now regulated, and a brief account of its operation, taken from the printed Administration Report of the North-Western Provinces and Oudh for the year ending on the 31st of March, 1882, may interest the Council, as showing the stage of advancement which municipal institutions have there reached.

“There were in that year in the united provinces 109 municipalities, with a population slightly in excess of 3,000,000. Members were appointed in some places by election only, in others by nomination only, and in others again by election and nomination combined. There were 438 *ex officio* members, against 1,022 nominated or chosen by election. An income of Rs. 23,30,837 was raised by taxation, of which 88 per cent. was derived from octroi-duties, and the average incidence of taxation per head was 12 annas.

“The first charge on the net income was for police, of which an establishment consisting of 2,802 constabulary and 4,006 non-constabulary forces was entertained. I may say here that, by the present Bill, municipalities will be entirely relieved from the cost of the former, under the obligation of devoting the funds thereby set free to purposes of education, medical relief and the like. Conservancy, maintenance and construction of roads and buildings, drainage, sanitation, charitable and educational grants, absorbed most of the remaining funds.

“Any one conversant with the condition of the towns and cities of Upper India five-and-twenty years ago, who compares it with their present state, must admit that the improvement effected by municipal administration in matters affecting the public health, safety and convenience is immense. I may perhaps be permitted to mention the cities of Lucknow, Allahabad and Cawnpore, of which I have personal knowledge, and in the two former of which a considerable portion of my official life has been spent. These cities are now distinguished by wide and handsome streets, excellent roads, comparatively good drainage, which is being daily improved, and efficient conservancy; all brought about by municipal committees, in whose proceedings some of the leading and most intelligent citizens took an active part. In Lucknow, my friend Nazim Agha Ali Khán Bahádúr, commonly known as the Agha Sahib, and the late Daroga Wajid Ali, so conspicuous for his loyal services to the British Government during the Mutiny, interested themselves above others in municipal affairs, and rendered invaluable assistance in municipal administration.

“Similar public spirit to that manifested, by these gentlemen and others was not universal, and the system, under which the satisfactory results I have just alluded to were obtained, depended largely for its success in the first instance on the presence on committees of *ex officio* members. The number, however, of non-official residents of towns and cities who evince an intelligent interest in municipal business has been gradually increasing, and it is believed that the time has now come when the co-operation of officials on most municipal boards is no longer needed. The provisions of the present Bill have accordingly been framed with the view of giving to residents of the cities and towns to which it applies the sole management of their own municipal affairs, under rules for securing due attention to the public health, safety, convenience and interests generally—objects which no Government can suffer to be neglected. Some few places will still require the guiding hand of an official president, and in all a judicious exercise of the control from without established by the Bill cannot be safely dispensed with; but, with these exceptions, the State practically withdraws from the management of municipal affairs, in the expectation that the boards will prove themselves equal to the fresh responsibilities thrown upon them, and carry on with zeal and efficiency to ever advancing stages of development the system of municipal government, which has already conferred such substantial benefits on the united provinces.”

The Hon'ble MR. BARKLEY said:—“My Lord, there is only one point to which I wish to refer in connection with this Bill. I have no desire to oppose the passing of the Motion now before the Council, but it will be observed that I have qualified my assent to the Report of the Select Committee by expressing a doubt whether it was expedient to dispense with the notice now required before a suit can be brought against a committee or its officers for compensation for any thing done under the Municipalities Act. This question is likely to arise again with reference to other Bills now before this Council, and I may therefore briefly explain my reasons for considering it desirable that the law should require notice of such suits to be given.

“The principal reason is the tendency of such notice to reduce the number of cases in which municipal committees need be concerned as litigants. The object of the notice is to give them an opportunity of offering amends out of Court; and section 43 of Act XV of 1873 goes on to provide that, if sufficient amends are tendered before suit is brought, the plaintiff shall not recover. A similar provision is to be found, I believe, in all Municipal Acts now in force throughout India, those of the Presidency-towns included, and there is reason to believe that it has often led to claims being adjusted out of Court. It is said in the Report that the provisions of the Code of Civil Procedure on the subject are sufficient; but the only notice before suit required by that Code is that pro-

vided by Chapter XXVII before suing Government or public officers. It was decided in Committee that it was not desirable to make Chapter XXVII of the Code, as originally proposed in the Bill, applicable to municipal committees; but, while I agree in considering the provisions of that chapter unsuitable, I still think that it would have been desirable to retain a provision similar to that contained in section 43 of the existing Act. Claims may of course still be adjusted out of Court, either after suit, or, if sufficient notice is given, before suit; but in cases of the former description the costs of bringing the suit must be paid by one party or other; and, if no notice is prescribed by law, cases of the latter description will be rare, as formal notice before suing is rarely given in India, and a plaintiff will think that he has done more than is necessary if he has told a member or servant of the committee that he intends to sue.

“ My hon’ble friend Mr. Quinton has suggested that the Court would decree costs against the plaintiff if no formal notice had been given, but it is quite possible that the Court might think it harsh to throw all costs upon the plaintiff if he had given an informal warning to a member or servant of the committee.

“ It appears that a similar provision which has long existed in English law has recently been found unnecessary, but the circumstances of England are very different from those of the interior of India, and I am unwilling to deprive municipal boards, which are bodies appointed to discharge a public duty, and are, like individuals, liable to err, of a protection which is given to public officers.

“ A minor reason is that, as the protection has hitherto been given by law to municipal committees, it does not seem desirable to withdraw it just at the time when it is proposed to give them a more representative character and place them in a more independent position than before. This would not be a very strong reason if the protection served no useful purpose, but, from what has been already said, it will be seen that I think it is beneficial.

“ But, as the Local Government has been informed that the Select Committee did not think that Chapter XXVII of the Procedure Code should be made applicable, and has not suggested that a provision similar to section 43 of the existing Act should be substituted, and the subject is one closely connected with local administration, I have not thought myself called upon to propose an amendment.”

The Hon’ble MR. ILBERT said:—“ My Lord, my hon’ble friend Mr. Quinton has asked me to explain, somewhat more fully than it has been found possible to do in the Report of the Select Committee, the principles by which we have been guided in framing section 55 of the Bill, which delegates to municipal

authorities the power to frame bye-laws. It is obvious that a power of this kind ought to be very carefully guarded and its exercise as carefully watched. Experience has shown that similar bodies have not unfrequently framed bye-laws which are either unnecessary, vexatious or in excess of their powers. This remark, I need hardly say, applies not only to India, but also to England. For the purpose of preventing similar abuses, it has been suggested that we ought to take away from municipal authorities the power of framing bye-laws, except those which are necessary for the regulation of their own proceedings, and to insert an exhaustive list of acts and omissions punishable within municipal limits, and of the penalties to be imposed for them. I do not think, however, that such a suggestion is practicable. I have examined carefully the different Indian Municipal Acts, and I find that, whilst they differ from each other materially with respect to the extent to which they define offences in the Act itself, or leave them to be defined by bye-laws, they all agree in reserving to local authorities a supplementary power of framing bye-laws for the prevention and punishment of petty municipal offences. The English Public Health Act, which goes into greater detail than is usual in Indian Acts, is framed on similar principles, and reserves to local sanitary authorities extensive powers of making bye-laws. This is a matter with respect to which I should be disposed to leave a reasonable amount of discretion to the Local Governments. I have not yet had an opportunity of minutely examining the Panjáb Municipal Bill, but it appears to have been framed with great care, and it contains provisions apparently borrowed from the Bombay, Bengal and Madras Acts, which specify in some detail the offences punishable under the Act. The North-Western Provinces Bill, however, has been framed on somewhat different lines, and the reason for this difference probably is, that the North-Western Provinces Government have already framed a model Code of bye-laws which, as I understand, has been put in force, with local modifications, in a good many municipalities in the Province, which has been found to work well, and which, I presume, the Local Government would wish to continue in force with as little alteration as possible. Under these circumstances, the Select Committee have not thought it necessary to insert in the Bill provisions which had not been suggested by the Local Government, and the suitability of which they would not have had sufficient opportunity for considering. At the same time, we thought that the bye-laws clause which appeared in the Bill as introduced was susceptible of improvement. This clause appeared to me to be open to two objections. In the first place, it gave to municipal authorities the power to interpret the term 'public nuisance'—a power which should properly be left to the Courts of law; and secondly, it gave, by implication, to those authorities the power of creating offences punishable by so heavy a penalty as a fine of Rs. 200. I have gone through the offences which are punishable under the model Code of bye-

laws now in use in the North-Western Provinces, and I find that, with few exceptions, the offences dealt with under them can be brought under one of two categories. They are either offences which might properly be treated as belonging to the same class as those defined as public nuisances by section 268 of the Penal Code, or else they are offences which might be appropriately dealt with under that chapter of the Code (Chapter XIV) which contains this section, and which is headed 'Of offences affecting the public health, safety, convenience, decency or morals.' We have accordingly, by the first sub-section, given a general power to municipal authorities to frame bye-laws for the prevention and punishment of offences belonging to either of these two categories, and we have added sub-sections dealing specifically with offences about which a doubt might be entertained whether they were sufficiently covered by the general words of the first sub-section. And, in order to avoid an artificial extension of the term 'public nuisance,' we have not given that name to offences against municipal bye-laws as such. Of course, there are many offences which might be punishable both under the Penal Code and under a municipal bye-law. In these cases, the prosecutor will have the option of proceeding either under the one or under the other, subject to a proviso, which will be found in section 70 of the Bill, and which provides that no person shall be punished twice for the same offence.

"Then, we have provided sundry safeguards against the possibility of municipal committees exceeding or abusing their powers. In the first place, the maximum penalty for an offence against a municipal rule is limited to Rs. 50, with a proviso for the case of continuing offences; next, a draft of the proposed rules must, under section 68, be published, and objections and suggestions from persons interested must be invited before the rules are passed; and, lastly, the rules are made subject to the approval of the Local Government. This procedure is substantially the same as that prescribed in the case of bye-laws under the English Public Health Act. All such bye-laws require the sanction of the Local Government Board, and the course adopted by that Board in dealing with such bye-laws is this. They have drawn up a model Code of bye-laws containing all such provisions as have been shewn by experience to be necessary and sufficient, and they do not allow local authorities to depart from this model except for special reasons to be assigned in each case. I think that, if Local Governments in India adopt a somewhat similar course, and employ a reasonable amount of care in framing their model Code of bye-laws, there can be no ground for apprehension that the powers entrusted to municipalities are likely to be abused or exceeded.

"So much for bye-laws. Next, as to the point which my hon'ble friend Mr. Barkley has raised, with respect to the propriety of omitting the provision which requires a month's notice before the institution of legal proceedings against

a municipal committee. As my hon'ble friend Mr. Quinton has explained, we have, in omitting this provision, followed the most recent precedents of English legislation. Protective clauses of a similar kind to that which we now propose to omit are to be found scattered up and down in great abundance in the English Statute-book. I once had occasion to make an exhaustive examination of these clauses for the purpose of seeing whether they could not be enacted once for all in a generalized form. I found that they had a long history, and that some of the forms now in use contained provisions which dated from the time of James I, and had been copied mechanically from one Statute into another, though they had long ceased to be of any practical utility. When the English Army Act was being framed, the most suitable form of such a clause was carefully considered, and the conclusion came to was that the requirement of a month's previous notice of action was likely to do more harm than good, and had better be omitted; the reason being that no person of ordinary prudence begins legal proceedings against an individual or a body of individuals for acts done under colour of statutory authority without taking the precaution of previously sending a lawyer's letter or in some similar way affording an opportunity of settling the matter without litigation; and that, if any person was so foolish as to dispense with this precaution, he would probably be mulcted in costs, even if he won his case. It appeared to me that, notwithstanding the differences between English and Indian circumstances to which Mr. Barkley has referred, the same considerations applied in India also; and, though I am fully impressed with the importance of protecting persons in office from vexatious litigation, yet I am very reluctant to increase the number of formalities of which proof must be furnished before a suit can be maintained, or to make any addition to the number of the existing opportunities for delay and procrastination which our civil procedure affords. Moreover, if such a provision as this is really required, it ought to be embodied in a general Act, which should grant the necessary kind of protection to all persons acting under statutory or other similar authority. These were the reasons which induced me to advise the Committee to omit the clause in question from 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.

PANJAB MUNICIPALITIES BILL.

The Hon'ble MR. BARKLEY moved that the Bill to make better provision for the organization and administration of Municipalities in the Panjáb be

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, Simla, on Wednesday, the 19th September 1833.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.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 W. W. Hunter, LL.D., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

PROTECTION OF INVENTIONS BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill for the protection of inventions exhibited in the Exhibitions of India.

NATIVE PASSENGER SHIPS ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Native Passenger Ships Act, 1876.

LEGAL PRACTITIONERS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Legal Practitioners Act, 1879, and the Indian Stamp Act, 1879. He said :—

“ The object of this Bill is to amend the Legal Practitioners Act, 1879, in certain respects in which experience has shown that the existing law is defective.

“ Section 13 of the Legal Practitioners Act, 1879, contains a provision that the High Court may suspend or dismiss any pleader who takes instructions in any

case except from the party on whose behalf he is retained, or from a private servant of such party, or from some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure. It has been brought to the notice of the Government that the practical operation of this provision is in certain cases attended with inconvenience to litigants and pleaders. In litigation in which pardánashín women are concerned, instructions must often, as a matter of necessity, be given through their near relatives. Again, there are cases in which male litigants, who have not the means of employing private servants, are unable from various causes, such as physical incapacity or old age, to instruct their pleaders in person. In such cases, it seems right to allow the relatives of the litigants to instruct pleaders on their behalf. Section 3 of the Bill accordingly adds a proviso to section 13 of the Act enabling pleaders to take instructions from a relative of the party deputed by him or her to instruct the pleader when the party is a pardánashín woman or unable for any sufficient cause to instruct the pleader in person.

“ Under the Legal Practitioners Act, 1879, an advocate not ordinarily practising in his own province must, if he wishes to practise in such a province as the Central Provinces, for example, where the Judicial Commissioner has at present no power of enrolling advocates, first enrol himself as a pleader. As this state of the law is felt by certain persons to be a grievance, a new section has been added to the Act, empowering all High Courts not established by Royal Charter to enrol advocates as the Chief Court of the Panjáb is at present empowered to enrol them. As the power of suspension or removal would, except in the case of the Panjáb Chief Court, be vested in a single officer if it were conferred absolutely on the High Court, it has been thought well to make every order by any High Court other than the Panjáb Chief Court suspending or removing an advocate subject to confirmation by the Local Government.

“ The new section 42, which section 5 of the Bill adds to the Act, provides for the repeal of Acts I of 1846 and XX of 1853 in all places to which that section may be extended. The Madras High Court has noticed that these Acts have not as yet been expressly repealed in that Presidency, though a great portion of the Legal Practitioners Act, 1879, has been brought into operation there. These Acts are, it is believed, already repealed in all the provinces to which the Legal Practitioners Act, 1879, extends *proprio vigore*; but it is possible that they may be still unrepealed in some of the other provinces to which the Act either has already been or may hereafter be extended under the power conferred by its first section. The new section 42, taken with section 1 of the Act, will enable the Local Government of any such province to repeal the Acts if still in force in it.

“ Lastely, section 6 of the Bill amends article 27 of schedule I and article 11 of schedule II of the Indian Stamp Act, 1879, by omitting the words which confine their operation to advocates of the chartered High Courts. As section 41 of the Legal Practitioners Act, 1879, empowers the Chief Court of the Panjáb to enrol advocates, and as the Bill will confer similar powers on the other non-chartered High Courts, the words in question are, as represented by the North-Western Provinces High Court, out of place, so far as advocates are concerned, and should therefore be omitted.”

The Motion was put and agreed to.

The Council adjourned to Thursday, the 4th October 1883.

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

SIMLA ;
The 20th September, 1883.

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, Simla, on Thursday, the 4th October 1883.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.C., G.M.S.I., G.M.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 Rájá Siva Prásád, C.S.I.

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

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

PROTECTION OF INVENTIONS BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill for the protection of inventions exhibited in the Exhibitions of India be taken into consideration. He stated that the Bill appeared to have been generally accepted as useful and sufficient, and the only alterations made by the Committee were alterations of a verbal nature.

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.

NATIVE PASSENGER SHIPS ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the Native Passenger Ships Act, 1876, be taken into consideration. He said :—

“ The object of this Bill is to give effect to certain international arrangements with respect to the pilgrim-traffic in the Red Sea. On looking into the matter, it was found that most of what was required could be effected by means of alterations in the rules made under our Native Passenger Ships Act, but that it

would also be necessary to make one or two amendments in the Act itself, and it was for this purpose, and this purpose only, that the present Bill was prepared.

“The local officers have directed attention to various points, other than those covered by the amending Bill, in which it appears to them that the Passengers Act is defective. We admit the existence of some of these defects, and the question as to the best mode of remedying them is at this moment under the consideration of the Home Department, and will shortly be brought under the consideration of the Legislative Department. But in the meantime, as the present Bill is urgently required, we think it desirable not to postpone its passing until the more general amending measure can be prepared and passed. I mention this in order that it may not be supposed that some of the very useful suggestions which we have received have been overlooked. Some of the criticisms which have been passed on the Bill seem to be based on an imperfect apprehension of the limited scope of the Act which we propose to amend. For instance, it has been suggested by some that the provisions of the Bill may interfere in an inconvenient manner with the traffic of cargo-ships trading to the Red Sea, and by others that we ought to obtain a more extensive control over all passenger-ships trading to or from ports in the Red Sea to British India or elsewhere. But if you look at section 2 of the Passengers Act, you will find that the scope and operation of the Act are restricted within very narrow limits. The Act extends to the whole of British India, and applies—

“to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty ;

“to all Native Indian subjects of Her Majesty without and beyond British India ; and

“subject to the exceptions mentioned in section 2, to vessels carrying more than thirty passengers, being Natives of Asia or Africa.”

“But the section expressly provides that nothing in the Act is to apply—

“to any ship of war or transport belonging to, or in the service of, Her Majesty ;

“to any ship of war belonging to any Foreign Prince or State ;

“to any sailing vessel not carrying as passengers more than thirty Natives of Asia or Africa ;

“to any steamer not carrying as passengers more than sixty of such Natives ;

or

“to any sailing vessel or steamer not intended to convey passengers to or from any port in British India.

“ The Act does not apply to mere cargo-ships ; it does not apply to ships carrying passengers, other than Native passengers as defined by the Act ; it does not apply even to those ships unless they carry a minimum number of such passengers, nor unless those passengers happen to be bound either to or from some port in British India. Thus, the Act would not apply to a ship carrying Native passengers from Jeddah to Ceylon, or *vice versa*, even though the ship happened to touch at Aden on its way. Again, the section to which I have referred is so framed as to exclude from the operation of the Act those ships over which we have no jurisdiction, and over which our Indian legislature, with its limited powers, cannot give us jurisdiction. We have done our best to meet the difficulty arising from want of jurisdiction in such cases by requiring the owner, agent or master of every ship carrying Native passengers, and proceeding from a port in British India to the Red Sea, to execute a bond which is conditioned for the observance of the requirements of the Act both on the outward and on the homeward voyage, and which can be enforced in Indian Courts. We are only concerned with the pilgrim-traffic to and from British India, and I have been informed—though I cannot vouch for the accuracy of the information—that almost all the ships engaged in this traffic start from British Indian ports and sail under the British flag. If that is the case, I do not apprehend that there will be any practical difficulty in enforcing the provisions of the Act. But whether it is so or not, we cannot exceed the powers of our legislature, and if it should appear desirable to obtain more extensive control over foreign ships or over British ships when outside British Indian waters, we must seek the assistance of the British legislature, acting if necessary in concert with the Governments of foreign States. A precedent for legislation of the kind required will be found in the Imperial Merchant Shipping Act of 1876 (39 and 40 Vict., c. 80, s. 37).

“ Under these circumstances, we have not thought it necessary to make more than two substantive alterations in the Bill as introduced. The first of the alterations which we have made relates to the power to be conferred on the Government to require an assurance as to the state of health of the passengers before embarkation. The Bill as introduced empowered the Government to require passengers to produce a medical certificate, but it has been pointed out that, while the obtaining of such certificates might in many cases involve considerable trouble and delay to those concerned, the certificate would not always afford a guarantee that the holder of it was not at the moment of embarkation free from disease. We have accordingly substituted for the power to require certificates a power to subject passengers to a medical inspection before embarkation;

and to prevent the embarkation of any person who may appear to be suffering from any dangerously infectious or contagious disease.

“The other alteration which we have made consists in the addition to the Bill of a section empowering the Local Government, with the previous sanction of the Governor General in Council, to exempt for sufficient reason any class of ships from any provision of the Act. This section has been inserted at the suggestion of the Bombay authorities, who represent that, under exceptional circumstances, some of the provisions of the Act as now amended might operate inconveniently; for instance, if at a time when steamers were being taken up for a military expedition and only sailing vessels could be procured for Native passenger-traffic, we were to insist rigidly on the condition as to a Native passenger-ship bound for the Red Sea being propelled principally by steam.”

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.

LEGAL PRACTITIONERS BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the Legal Practitioners Act, 1879, and the Indian Stamp Act, 1879, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart 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 local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Cattle-trespass Act, 1871.

PANJÁB LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. BARKLEY presented the Report of the Select Committee on the Bill to make better provision for Local Self-Government in the Panjáb.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble Mr. ILBERT moved for leave to introduce a Bill to amend the Indian Ports Act, 1875. He explained that this was a small Bill which had been prepared at the suggestion of the Financial Department, and that its object was to amend section 47 of the Indian Ports Act, 1875, in such a way as to make it clear that the pensions of port-officers might be charged against the port-account.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 10th October, 1883.

D. FITZPATRICK,

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

SIMLA ;

The 5th October, 1883.

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, Simla, on Wednesday, the 10th October, 1863.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, 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.

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

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Cattle-trespass Act, 1871, be taken into consideration. He said :—

“The object of this Bill is to enable Local Governments to transfer to local boards and similar authorities certain functions, such as the management of pounds and the like, which under the existing law have to be performed either by the District Magistrate or the Local Government; and also to hand over to local funds under the management of those authorities certain sources of income which are derived from the surplus proceeds of the sale of impounded cattle, and which, under the present Act, have to be applied under the orders of the Local Government to the construction of roads and bridges and other works of public utility. The Select Committee to which the Bill was referred have made the measures somewhat more elastic by omitting the reference to the specific sections of the Cattle-trespass Act, and thus empowering Local Governments to transfer to local bodies any such functions as might, in the opinion of the Local

Government, be appropriately discharged by those local bodies, and also to hand over, not necessarily the whole, but either the whole or any part of the sources of income to which I have referred. The Bill in this form is in accordance with the provisions to the same effect introduced into the various local self-government measures already passed, or in course of being passed, by this Council, and will remove certain technical difficulties which stand in the way of the Governments of Madras, Bombay and Bengal giving effect to their proposals for the extension of local self-government by means of legislation of their own. These are the only alterations which have been made."

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.

LAND IMPROVEMENT LOANS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements be taken into consideration. He said :—

"My Lord, it will be in the recollection of the Council that this Bill was introduced in October last by my friend Mr. Charles Crosthwaite, and that on that occasion, and at a subsequent meeting of the Council when the Bill was referred to a Select Committee, observations were made by the mover, by the Hon'ble Major Baring and by the Hon'ble Sir Steuart Bayley on the subject of agricultural banks, which attracted much attention and excited much public interest. The intention then was to legislate in this Bill for the promotion of the application, not merely of State loans, but also of private capital to the improvement of land; but, on closer enquiry, the latter was found to be a question of so wide a nature, and of such great importance, and to be attended with so many difficulties of detail, as to demand for its introduction a separate measure, instead of being brought in, as it were by a side wind, in a Bill of which it was not the main object.

"My hon'ble friends of the Executive Council who may speak after me will, no doubt, explain that the subject of agricultural banks has not been laid aside, and that it has been omitted from the present Bill solely on account of its importance and magnitude.

"This measure is accordingly one of a simpler character than that originally introduced, and is meant merely to consolidate and amend the law relating to loans of money by the Government for agricultural improvements.

"The necessity for amending the present law, which is contained in Acts XXVI of 1871 and XXI of 1876, was forcibly pointed out by the Famine Commission. As a protection against famine, no measures can be more effective than successful undertakings to improve permanently the productive powers of the soil; and, among such undertakings, the construction of wells, tanks and other works for the storage, supply and distribution of water has in all ages in India been regarded with approbation, and fitfully prosecuted, alike by the people and their rulers. The artificial lakes of Bundelkhand and Central India, the large tanks found all over the Madras Presidency, the inundation-canals of the Western Punjab and the Madras Delta, are monuments of the anxiety of the Government of the day to counteract the disastrous effects of the failure of the periodical rainfall on which Indian agriculture is so dependent; and the Ganges, the Eastern and Western Jumna, and the Orissa canals, the anicuts and distribution-channels of the Godavari and Kistna, and on the Bombay side Lake Tifa and the Ekrakh and Ashti tanks testify that the British Government has not lagged behind its predecessors in efforts to protect its subjects from the ravages of famine. But the field is too vast to be completely covered by the direct exertions of any Government, however powerful, and it has always been the policy of the Government of India to encourage the people themselves to execute smaller protective works by giving them advances for that purpose from the public treasury.

"To give legal effect to this policy, which had previously been carried out on the authority of the Executive Government, was the object of the enactments to which I have just referred; but unfortunately their provisions, when put in practice, were found to be either defective on the one hand, or too stringent on the other, and they failed consequently to realise the intentions of their framers. The Famine Commission enumerated several obstacles to their successful operation, the reports received from Local Governments and their officers on this Bill allude to others, and contain many valuable suggestions, and a committee of experienced Revenue officials considered the whole subject in Calcutta last cold weather, and reported on it to the Revenue and Agricultural Department of the Government of India. The information derived from these different sources has been carefully weighed and sifted by the Select Committee; and I shall now proceed to state briefly to the Council the alterations we propose in the existing law, and some of the reasons which have induced us to adopt them.

"Before doing so I may premise that the Select Committee were unable to accept a recommendation of the North-Western Provinces Board of Revenue to amalgamate with the present Bill the Northern India Takkávi Act. That Act gives power to the Local Government to make advances to the owners and occupiers of arable land for the relief of distress, for the purchase of seed or

cattle and other like purposes. Its object is quite distinct from that of the present Bill. It is intended to secure Government from loss in making advances for the relief of temporary distress, whereas the Bill now before us is meant to promote the lasting improvement of the productive powers of the soil. The Northern India Takkávi Act requires for its application in each case but little preliminary enquiry, and the loans made under it are petty and are generally recovered within the year; whereas in any system of loans for land-improvement the enquiries must of necessity be more tedious, the sums advanced will, as a rule, be of far larger amount, and the time fixed for their repayment will be far longer. It would thus be difficult, if not impossible, to frame a single enactment which would admit of both objects, namely, the improvement of the land and the relief of temporary distress, by loans from Government, being carried out to the fullest extent.

"The Northern India Takkávi Act has been brought into operation with conspicuous success in parts of the North-Western Provinces and Oudh. By means of it, the vigorous and intelligent exertions of my friends Messrs. M. Conaghey and La Touche have effected the reclamation of extensive tracts of land rendered barren by kans grass in the Banda district; and in the Rae Bareili district in 1880, my friends Messrs. Arthur Harrington and Bennett, by making liberal advances for the construction of temporary wells and the purchase of plough-cattle and seed, were able to save thousands of cultivators from penury, if not from famine.

"We considered it altogether inexpedient to endanger the successful working of an Act under which such beneficent results have been attained by amalgamating it with one intended to effect a different object, and we declined to seek for legislative symmetry at the risk of practical failure.

"I now turn to the provisions of the Bill.

"By section 4 we authorise Government to advance money for the purpose of making improvements on land to any person having a right to make those improvements, or, with the consent of that person, to any other person; but we do not attempt to define what persons have the right to make the improvements. We empower no person, who has not the right already, to injure another by making an improvement which might alter the extent of their respective interests in the holdings. It has been objected that we enable tenants to make improvements without the consent of their landlords, but this is exactly what we carefully avoid doing. Whether a tenant can make an improvement with or without his landlord's consent is a question to be settled by the law of landlord and tenant in different provinces. In the Central Provinces, the respective rights of the two parties on this subject have been explicitly laid down in the Act recently passed here; in the Bengal Tenancy Bill, now

pending before Council, the same point is provided for; and in the North-Western Provinces I believe I am correct in saying that custom recognises the right of certain classes of tenants to make such improvements. In no province is the law in force on the point, whatever it may be, in any wise altered by the Bill.

“In section 4 we also define what we mean by improvements. The list is substantially identical with that contained in the present law; but, in order to provide for works which might be called for by the circumstances of one province and not of another, we enable Local Governments, with the sanction of the Governor General in Council, to bring under the category any other works of a like nature. Vats for agricultural purposes, farm-buildings, planting topes, channels, preservation of the soil on ridges and slopes, and in the villages of hilly tracts, and the prevention of landslips and of the formation of ravines and torrents have all been suggested from different quarters as fit objects for which loans might be advanced.

“By making subject to the sanction of the Governor General in Council the exercise of the power conferred upon Local Governments, we endeavour to guard against hasty action likely to affect private rights.

“One main reason given for the reluctance of agriculturists to avail themselves of the provisions of the present law is the delay in obtaining the loan caused by the elaborate enquiries prescribed by the Act on receipt of the application. By section 5 we leave it optional with the officer to whom the application is made to issue a notice calling for objections. In provinces where a record-of-rights is carefully maintained, and where the rights of the applicants to make improvements are clearly laid down by law, it will rarely be necessary to issue the notice, and much delay in granting the loan will thereby be avoided; but where these favourable conditions do not exist, a slower procedure is inevitable, and notice will issue as a matter of course.

“When questions of title or the like are raised which the officer feels that he cannot satisfactorily dispose of, the parties will be referred for a settlement of their disputes to the Courts of law; and, until such settlement be made, no loan will be granted.

“As explained in the Statement of Objects and Reasons, section 6 prescribes with some detail, following the model of the English Acts on similar subjects, the mode and the period in which the loans shall be repaid. They must be repaid by instalments, in the form of annuity or otherwise, within a period not to exceed 35 years, unless the Local Government and Governor General in Council, having regard to the durability of the work for the

purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by it, think proper to extend it beyond that term. The existing law laid down no period for the repayment of these loans. The practice was to require repayment within a certain number of years, fixed with reference not to the durability of the work but to the amount of the sum borrowed. The result was that small men who had taken loans were compelled to repay principal and interest before they had realised the full benefit of the works for which the loans had been granted, as the amount of the annual instalments was generally out of all proportion to the extent of the annual profits derived from the improvement. It seemed to us, therefore, that the law should clearly indicate the policy to be universally adopted, and show that the object aimed at by the Government of India is not the speedy realisation of the loans, but the promotion of improvements on the land.

“ I believe I am warranted in saying that the Government of India has no wish to make money out of these transactions, and that, so long as the interests of the general tax-payers are guarded by adequate security for the payment of instalments sufficient to cover risk of loss, the period fixed for the liquidation of the debt may be a long one.

“ We were unable to adopt a suggestion, emanating from high Revenue authorities, that repayment of the principal lent should never be required but that the loan should be commuted into a permanent addition to the land-revenue equivalent to the interest on the sum advanced. This plan, specious though it seems, we found to be open to the fatal objection of mixing up inextricably the affairs of the State in its capacity of capitalist with its business as a landholder, and we believed it impossible to devise a plan which would reconcile borrowers to paying an annuity for ever on account of an improvement the duration of which is necessarily temporary.

“ Section 7 is an expansion of the corresponding section of the present law, empowering Government to recover, with interest (which by some unaccountable oversight was omitted from Act XXVI of 1871) and costs, advances made under this Act from the borrower or his surety, or from the land improved or hypothecated, as if it were an arrear of land-revenue ; and we have added a proviso protecting interests in the land which existed before the date of the loan.

“ We have further authorised the Collector, on the application of a surety from whom any arrears due by the principal debtor on account of a loan, interest or costs have been realised, to recover in a similar way such sums from the borrower or from the land. This provision is intended to induce persons to come forward readily as sureties.

"In section 8 we have to some extent adopted a suggestion of the Government of Bengal, and provided that the order of an officer granting a loan should be conclusive evidence that the work for which the loan was granted is an improvement, that the person mentioned in the order had, at the date on which the order was made, a right to make the improvement, and that the improvement is one benefiting the land specified. These are points which, so far as Government is concerned, it is not desirable or expedient to have called in question in Courts of law; but we have guarded against injury to private rights by restricting the operation of the provisions to the purposes of this Act only. No one will be able to contest the right of Government to recover a loan taken for an improvement under this Act on the grounds that the work was not an improvement, or that it did not benefit the land, or that the person who made it had no right to do so when once an order has been recorded on these points by the proper officers but as amongst private persons, such disputes may be fought out in the Courts of law notwithstanding the existence of such order.

"Section 9 was framed to meet a wish of the Panjáb Government, with the object of inducing village-communities or joint proprietors to take loans for improvements, such as tanks or embankments, in which they were jointly interested, by enabling them to define conclusively at the time of taking the loan the amounts for which, as among themselves, each should be held liable, without impairing the joint and several liability of the entire body for the debt to Government.

"As explained by Mr. Crosthwaite in the original Statement of Objects and Reasons, everything for which it is not absolutely essential to provide in the body of the Act is left to rules to be framed by the Local Governments with the previous sanction of the Government of India. In an Act of this nature, intended to apply to all India, it is impossible to lay down rules on points such as are enumerated in section 10, which will be equally suitable for every province; and as the only interests likely to be affected are those of Government, the ordinary objections to giving such extensive powers to Local Governments have no weight. Local Governments have the strongest motives to promote the successful working of the Act, and may safely be left to guard their own interests.

"Section 11 contains a very important innovation on the existing law. It declares generally that the increase in value derived from an improvement made with the aid of a loan granted under this Act shall not be taken into account in revising the land-revenue assessment of the land benefited.

"On this subject the Famine Commissioner wrote:—

"In addition to the difficulties mentioned as arising out of the working of the rules made under the Act (XXVI of 1871), another reason has been prominently alleged for the disinclination

of landholders to spend money, whether their own or borrowed, on the improvement of the land, and that is their doubt whether, at the expiration of the term of settlement, they will be allowed to enjoy the whole profits of such an improvement, or whether it will form the occasion for an enhancement of their assessment. In the Panjáb, it is a rule of the revenue system that the constructors of new wells should be protected for 20 years from enhancement on account of the irrigation thus provided and that repairs of old wells and diggers of watercourses should be similarly protected for 10 years. In the North-Western Provinces, Oudh and the Central Provinces, no definite rule appears to have been laid down. In Birár and Madras, rules have been issued providing that the assessment on lands on which wells or other improvements have been constructed by the owners or occupants at their own cost shall not be enhanced at a future settlement except on the ground of a general revision of the district rates. But these rules have not the force of law, and in the Bombay Presidency alone has this understanding been embodied in an Act. We think it important that *a precise and permanent understanding should be come to on the subject and ratified by law*. The landholder should be guaranteed against any enhancement of his assessment for such a period as shall secure to him such a reasonable return on his investment as will encourage the prosecution of improvements.'

"As regards the allusion to the North-Western Provinces, I would observe in passing that a rule of the nature indicated has been executive prescribed, but it is indefinite in its terms, and there is reason to believe that it has not been generally or uniformly acted on.

"The section as it left the hands of the Select Committee proposed to go even beyond the recommendation of the Famine Commission, and to exempt from increase of assessment profits arising from improvement effected by the aid of loans taken under this Act, not merely for such periods as would secure to the maker a reasonable return on his investment, but for all time. In those temporarily-settled provinces where cultivation has almost reached its natural limits, this principle might perhaps be applied with advantage; but in others where extensive areas are still awaiting reclamation, which can practically yield no return and pay no revenue until irrigated, the enactment of such a hard-and-fast rule would result only in a useless sacrifice of the prospective financial resources of the State. I therefore propose to move the amendment, immediately after the Motion now before us has been disposed of, of which notice has been given, with the view of empowering the Local Governments, with the sanction of the Governor General in Council, to fix, by rule, periods after the expiration of which increase of value arising from the reclamation of waste land, or from the irrigation of land previously assessed at unirrigated rates, may be taken into account in assessing the land-revenue. To all other improvements under the Act, the general principle prescribed will apply. No enhancement of land-revenue will ever be claimed by Government on account of them.

"If the amendment be accepted, the section will then, in the words of the Famine Commission, embody a precise and permanent understanding on the

subject, and give to such understanding that legal ratification which is essential to its successful operation.

"This Bill being intended to regulate only transactions to which Government is a party, no place can properly be found in it for a provision corresponding to section 11, as to improvements effected by tenants. Tenants, as well as landlords, have an equitable right to enjoy the fruits of their labour and expenditure, but the legal provisions for securing this object must be sought for in the law of landlord and tenant. In enactments already passed, or now pending before this Council, they have not been overlooked, and the subject has lately engaged the attention of the legislature in England as well as in India.

"Such, my Lord, are the main provisions of the Bill. We have endeavoured to amend the present law by simplifying the procedure on applications, and to give to it greater elasticity by conferring on the Local Governments extended powers of making rules for matters of detail. We have indicated with no uncertain sound the wish of the Government of India that repayment of advances should be made as easy as possible to the borrower consistently with the interests of the general tax-payer, and we have announced in unmistakable terms that Government will not hasten to appropriate, in the shape of enhanced land-revenue, profits arising from improvements effected under this Act. I cannot assure the Council that the passing of the measure will inaugurate a new era of improvements, or give an irresistible impetus to the building of wells. The Indian agriculturist is not a man of enterprise, and inert habits, the growth of centuries, are not altered in a day; but if, under the present Act, with all its imperfections, over a lakh and a half of rupees were expended in the Panjab within three years, if within the same period the expenditure in the North-Western Provinces and Oudh reached nearly 3½ lakhs, the bulk of this being due to the influence with their people possessed and exercised by the same district officers to whose successful working of the Northern India Takkavi Act I have already alluded, and if the Opium Department was able to induce its cultivators to take in advances for wells since 1879 no less than Rs. 1,22,600, we may reasonably anticipate that the removal of obstacles which have hampered the operation of Act XXVI of 1871 will not be unfruitful, and that it will be followed by a steady, if not rapid, increase in the number of new works constructed year by year to protect the people from famine by improving the productive powers of the soil throughout the empire."

The Hon'ble SIR STEUART BAYLEY said: "There are several points connected with this Bill which, from the point of view of the Revenue and

Agricultural Department, are of considerable importance, and, though they have been mostly dwelt upon by my hon'ble friend Mr. Quinton, still there are two or three of them on which I would ask the permission of the Council, to offer some additional remarks. The first of these points relates to the question of loans by private persons or agricultural banks. The reason which led to the introduction in the original Bill of the provision regarding loans for agricultural purposes, made by private persons duly authorised by the Collectors, to be recovered by revenue-process was explained in the three last paragraphs of the Statement of Objects and Reasons, and it was further dwelt upon in my hon'ble friend Mr. Crosthwaite's opening speech and amplified again by myself. Those reasons briefly put, were, first, the natural dislike of cultivator-borrowers to come to the Government and get their loans exclusively from them. It was explained that where a man has two competitors both offering to lend him money, one of whom can only lend him money for one purpose, and the other for all purposes; where in the one case the procedure was exceedingly complicated, and in the other money was readily available, it is perfectly clear that under such circumstances the borrower will go to the Native money-lender and not to the Government. Another reason was that Government officers are, from the very nature of their duties, and from the circumstances under which they carry on those duties, incapable of sufficiently acquainting themselves with the circumstances of the borrower. These two facts seemed to indicate as a natural conclusion that Government, if possible, should let the business be done by private persons, and that, in consideration of private persons or banks taking up this business, and carrying it out on conditions, to be approved by the Government, that Government should give them special facilities for recovering their debts. These were the circumstances which led to the sections being originally introduced into the Bill. The sections were purely skeleton sections, and as was observed at the time, could lead to nothing without very careful consideration of the details and being thoroughly thrashed out in committee. When the question came to be considered, it was found that it bristled with difficulties of all kinds. There was, first, the difficulty of distinguishing between loans given for one purpose and loans given for other purposes; for obviously, although Government might undertake to recover loans lent for special purposes under special conditions, it was not at all so clear that they might undertake to recover loans given for ordinary transactions. Then objection was taken to giving preference to one kind of loan and on a class of creditors, over other kinds of loans and other classes of creditors, and considerable doubts were expressed by experienced officers as to the expediency of allowing Revenue-officers to collect those private debts. There was also great difficulty in arranging for the clearing up of prior incumbrances before banks could be induced to advance money on risky business on what the Government considered moderate rates of

interest. Still further complication was likely to arise out of the simultaneous or concurrent jurisdiction in regard to identical transactions between the Revenue and Civil Courts. The consideration of all these difficulties led to the general conclusion that it was better not to include legislation for this purpose in the present Bill, but to take the subject up separately and consider it with all its difficulties on its own basis. My hon'ble friend Mr. Quinton has observed that the matter is not done with. As a matter of fact, since Sir Evelyn Baring made his speech in this room about a year ago, the special experiment to which he therein referred in regard to some particular taluqs in the Dekkhan has been the subject of considerable correspondence with the Bombay Government, and, through that Government in communication with Sir William Wedderburn, committees of capitalists have been induced to consider the experiment. The subject has now been thrashed out; most of the details of it are about to be submitted to the Secretary of State, and, until he has expressed his opinion upon it, no further action will be taken. That is how the case at present stands, and I may mention that the conclusion come to by the Select Committee to not legislate for this particular point had already commended itself to the Secretary of State.

"The next point upon which I have to ask the attention of the Council is that of the repayment of loans under section 6 of the Bill. My hon'ble friend Mr. Quinton has observed that the section in its present shape is very much amplified from what it stood in the original Bill, and has explained what the object in amplifying it was. Nothing is more noticeable in the correspondence of the Local Governments on the subject than the frequent complaints made that one great obstacle to working the present system is the very short period over which the repayment of loans extended. It is generally from five to ten years, and it varies, not with regard to the nature of the improvement, but with regard to the amount of money spent upon it. The point is one which recommended itself strongly to my hon'ble friend Sir Evelyn Baring; and it was at his request principally that the section is drawn as it is in the Bill and the special reference made to it in the Statement of Objects and Reasons. He wanted it to be understood that the Government have no objection to extending to 30 or 35 years the repayment of loans where necessary; and also, in special cases, in permanent and costly improvements; that it would be a matter for the consideration of the Local Government whether they should not extend the period of repayment beyond the generation that actually borrowed the money and throw some of this burden upon the succeeding generation.

"In connection with this question of the repayment of loans, one important and difficult proposal has been made, and it is one which has the support of some experienced Revenue-officers, among whom I may mention the Secretary to the Government of India in the Revenue and Agricultural Department.

That proposal is that the loan should be commuted into a perpetual charge on the land instead of being repaid within a certain term of years, and that it should form a perpetual addition to the rent or revenue, but for present purposes only to the revenue. The proposal has in it certain obvious advantages. I myself think that it would be exceedingly popular, and that it would induce a rapid acceptance of these loans for improvements.

“It would be popular for this reason—that the interest is fixed below that at which a man could borrow from a Native capitalist: he has also the immense advantage and satisfaction that he has never got to repay the loan, and that the burden of it will be thrown upon future generations. There is also another great advantage connected with it, and that is that, the security being land, and not personal, not only can Government afford to lend the money at a lower interest, but also you do away with the necessity for collateral security, which is a very serious obstacle to the working of the present system. You only require collateral security where the borrower has not got a transferable interest in his land, but that unfortunately is the case with the great majority of the cultivators in Northern India. There is consequently a good deal to be said for the proposal, and at one time I was rather inclined to support it; but other considerations prevailed, and I found that the objections to it were very serious. It is obviously inapplicable to the permanently-settled districts, to tracts where there is much sub-infeudation, and to tracts where the assessment is made with joint proprietary bodies, village brotherhoods for instance. There is a further objection to it, that it would necessarily lead in the future to great inequality of assessment; for instance, where two men made similar improvements with the same amount of money, the one has repaid his loan and the other has had his loan commuted into a permanent addition to his revenue. In course of time the man who has repaid his loan is assessed, and his assessment will be much below that of the man whose interest on his loan is added to the revenue. That may be kept in view for a short time, but the inevitable tendency of it would be in the course of time to bring the assessment of the man who has repaid his loan up to the same level as that of the man who is still paying the burden of his interest as an addition to his assessment. But, besides these objections, it was considered by the best authorities that it was economically wrong in principle for Government to mix up this loan business with its reversionary interest in the produce of the soil. The loans should be lent as anybody else would lend money, and all that Government wants to recover is the interest on its own money and sufficient to cover risks and the cost of collection. It was felt that such a proposal as making a permanent addition to the revenue for improvements was scarcely consistent with the particular principle in section 11, which desires to exempt all improvements hereafter from future assessment. There would fur-

ther be a risk of serious complication in the case of an exhausted improvement. The man who has had his revenue permanently increased in connection with it will very naturally call for a remission, and it would be exceedingly difficult for Government not to grant that remission; in other words, he will borrow money for his failure too cheaply and at the expense of his neighbours. For all these reasons it was determined in Committee that this proposal should not be embodied in the law, and I have quite come to the conclusion that the Committee's decision was correct; I only notice the matter here to show that it has not lightly been cast aside but fully considered.

“Still connected with this question of interest, my hon'ble friend Sir Evelyn Baring had intended to make a few remarks, and as he was not to be here when the Bill was to be considered in Council, he sent me a short note telling me what he intended to say. It was merely to point out that, under the present law, the rate of interest is fixed by rules made by Local Governments with the previous sanction of the Government of India, and that in our new Bill we do not attempt to alter the procedure in any way; that the present rate is a uniform rate of $6\frac{1}{2}$ per cent. which was fixed by the Government in 1877, the Government desiring it to be understood that they did not wish to make any profit by these loans; that the object in fixing the rate of interest was to fix it at such a point as would not only suffice to cover their own interest, but also the cost of collection and secure them from loss; and when that was done that was all they wanted; but if any Local Government thought that these objects could be secured at a lower rate of interest their representations would be considered. That is what Sir Evelyn Baring had to say upon that subject.

“I now come to a still more important question—that of improvements under section 11. My hon'ble friend Mr. Quinton has already given the history of the section and of the proposed amendment which he would make. I may say for myself that I am very pleased to see this amendment; for without it I should have had some difficulty in accepting the section as it stands. Mr. Quinton has already quoted what the Famine Commission have said upon the subject; and there is one other extract I may read to you in conjunction with his remarks. They wrote:—

“In addition to the difficulties mentioned in paragraph 2 of this section as arising out of the working of the rules made under the Act, another reason has been prominently alleged for the disinclination of landowners to spend money, whether their own or borrowed on the improvement of the land, and that is their doubt whether at the expiration of a term of settlement they will be allowed to enjoy the whole profits of such an improvement, or whether it will form the occasion for an enhancement of their assessment. In the Punjab it is a rule of the revenue system that contractors of new wells should be protected for 20 years

from enhancement on account of the irrigation thus provided, and that repairers of old wells and diggers of watercourses, should be similarly protected for 10 years. In the North-Western Provinces, Oudh, and the Central Provinces, no definite rule appears to have been laid down. In Birár and Madras rules have been issued providing that the assessment on lands on which wells or other improvements have been constructed by the owners or occupants at their own cost shall not be enhanced at a future settlement, except on the ground of a general revision of the district rates. But these rules have not the force of law, and in the Bombay Presidency alone has this understanding been embodied in an Act. We think it important that a precise and permanent understanding should be come to on the subject and ratified by law. The landowner should be guaranteed against any enhancement of his assessment for such a period as shall secure to him such a reasonable return on his investment as will encourage the prosecution of improvements. It appears to be quite possible to draw up a set of rules defining what the period should be for any locality or any class of cases, so that it may be clearly known, without fear of mistake or danger of retraction and change of view, by every landowner or tenant who executes a permanent improvement on the land, whether he is entitled to the entire profits arising from it, or to a part for ever or for a term of years. We have made a further reference to this subject in the section which treats of wells.

“The question of how far the State could properly intervene directly in the construction of wells in the case of the landlords declining to take advances, or not assenting to the charge for the construction being placed on the land, is not one easily answered. But, notwithstanding the arguments that have been adduced by some experienced officers in the opposite sense, we are not able to satisfy ourselves either that the Government could safely or equitably insist upon the construction of a well on any land at the cost or risk of the owner of that land or its occupier for the time being, or that it would be practicable for the Government under any system which provided for the first construction of wells at its cost, also to undertake their maintenance for all time. Assistance might properly be given by the loan of dredging tools, or of boring tools in countries where rock is likely to be met with; it might also take the form of loans of money, or both loans and supervision. Provision might also be made for meeting all difficulties dependant on complications of tenure or differences of opinion among interested parties, the law being so amended as to provide that where co-proprietors whose land will be benefited by the construction of a well cannot agree, the wish of the majority should override the dissent of the minority. It might also be possible to stimulate well-construction by extending the practice of Bombay and Madras to Upper India so far as to rule that the assessment of land irrigated from a permanent well should not be liable to enhancement on account of the well at any revision of the settlement, provided that the well is kept in efficient repair. But whatever plan be adopted to facilitate well-construction, we can hardly doubt that in some way the landholder must discharge the cost of first construction, with interest thereon in a term of years and thereafter become the sole owner of the well, and be placed in respect to it in exactly the same position as that which he would have occupied if he had made the well himself.”

“The Revenue Department last year in taking up the recommendations of the Famine Commission piece by piece had to consider the whole question. They called upon each Local Government for a statement as to how the law and rules stood in each province. The answers came and the Bombay Government have legislated for it and Madras has provided for it, in its Revenue

rules. The Bombay law stands thus. Section 106 of the Bombay Revenue Code is as follows :—

“ It shall be lawful for the Governor in Council to direct at any time a fresh revenue-survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102.

“ A revised assessment shall be fixed not with reference to improvements made from private capital and resources during the currency of any settlement made under this Act or under Bombay Act I of 1865, but with reference to general considerations of the value of land, whether as to soil or situation, prices of produce or facilities of communication.’

“ Then a subsequent section (107) provides :—

“ Nothing in the last preceding section shall be held to prevent a revised assessment being fixed—

“ (a) with reference to any improvement effected at the cost of Government, or

“ (b) with reference to the value of any natural advantage when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or

“ (c) with reference to any improvement which is the result only of the ordinary operation of husbandry.’

“ The Madras rules are found in the Standing Orders of the Board, I paragraph 5—

“ Collectors of districts in which settlement by the Settlement Department has been completed or is in progress will notify in their Gazettes that the rates will be liable to revision after thirty years’ duration. It is to be explained however to the raiyats that if the general rates of a district are altered, the demand will be regulated with reference to the intrinsic quality and position of the land as compared with other land of similar natural soil and situation, and not with reference to any improvement which may have been effected by the raiyats at their own cost.’

“ And again in paragraph 8—

“ The raiyats should receive the most distinct assurance, that the tax on lands cultivated by means of wells henceforth to be reconstructed by them at their own cost, will never be enhanced, unless on a general revision of the district rates ; and that in such revision any modification in the assessment of lands so improved will be irrespective of the increased value conferred upon them by their holders.’

“ I need not go into the rule for the other provinces. With the exception of the Panjab the rules are somewhat indefinite, and I cannot say that they have been very carefully acted upon in all the settlements made hitherto. With these facts before us the question of how the Famine Commissioner’s recommendations were to be carried out came to be considered, and a proposal was made to legislate upon the subject. Mr. Crosthwaite was consulted, and

he drew out a rough sketch of the lines on which in his opinion legislation ought to be conducted. I will briefly mention those lines because they contained some suggestions of importance. He proposed that improvements made during the currency of existing settlements should be registered. That is a very valuable suggestion. The value of the improvements was to be settled by a committee of arbitrators and registered, together with the improvement and the area covered by it. Then he divided his improvements into two classes, one of which might be specified as quasipermanent improvements and costly; the other more temporary and less costly improvements and partaking of the nature of reclamation. The first class Mr. Crosthwaite proposed to exempt from assessment altogether; the second class he proposed to exempt absolutely for five years, and thereafter to let him recoup his interest, by deducting $6\frac{1}{2}$ per cent. on cost of improvement from the full assessment of the land. These were the lines upon which Mr. Crosthwaite thought that it would be possible to legislate. When the question came up to be discussed, we found that difficulties cropped up at every turn. The first main difficulty was perhaps one of theory; it was in fact to reconcile two conflicting theories—what I may call the English theory and the Indian theory. The English theory has regard to the relation between lessor and lessee, and from this point of view the English theory naturally urges that any increase in the letting value of the land caused by the lessee should be his and benefit him, and that he should get this benefit in the shape either of an increased length of lease on the old terms, or compensation for the unexhausted portion of his improvements. The Indian theory, if I may say so, disregards altogether the relation between lessor and lessee and looks upon Government, as a joint proprietor with the landholder, and that Government, as joint proprietor, is by the ancient law and custom of India entitled to a share in the produce of every bigha of land. The logical deduction from the English point of view would be that the landholder should have, as a permanency, the full benefit of any increased value caused by his improvement. Even here I think myself that the fact of the landholder in India having a permanent right of occupancy in his land really divides off his position in a very marked way from that of the leaseholder in England whose position is a temporary one. The natural outcome of the Indian point of view is that when the Government as the sleeping shareholder in the land has provided that the improver should receive full interest for his money spent on improvement, and that he has been recouped for his original outlay, thereafter the Government should retain its right to a share in the improved produce of the soil. These two theories no doubt are antagonistic, but I think that it would have been possible to have come to a reasonable compromise upon them. As a matter of fact you will see that Mr. Crosthwaite based his proposals on the Indian theory, but he went far outside that Indian theory when he proposed that permanent improvements

of a valuable kind should be exempted for ever. His object in so doing was that he considered that public policy required that we should do all in our power to encourage improvements of this kind rather than look to future increase of revenue. And in this view, as a matter of expediency, I most fully concur. I think that it would have been very possible to arrange the two conflicting theories upon somewhat such terms as these if we had gone on and proceeded to legislate. But there was another difficulty and that was the difficulty of distinguishing between the two classes of improvements which Mr. Crosthwaite desired to distinguish. It was almost impossible to draw any line or to find any logical terms to cover the distinction which he desired; permanent and temporary would not do, nor perfect and imperfect; and after considering the matter again I have come to the conclusion that our mistake was in looking at the nature of the improvement instead of trying to find the distinction in the condition of the country to be improved. I think that if we had looked rather to the question of complete or incomplete cultivation, by a sparse or full population, we might probably have more easily found the means of logically distinguishing between the two classes than in looking to the nature of the improvement to be effected. However, the idea of special legislation upon this point was abandoned, and it was abandoned because it was inextricably mixed up with the very much larger question with regard to the whole principle of re-settlement in Northern India which was at that time under reference to the Secretary of State. In referring that question to the Secretary of State, the Government of India expressed in very general and broad terms its desire that improvements effected by landholders should hereafter be exempted from assessment, and in reply the Secretary of State, in equally general and broad terms, expressed his thorough approval of the principle. The general question, including the special point of assessing improvements, is now under the consideration of the Local Governments. When, therefore, section 11 was introduced in Select Committee I had very great doubts as to whether it ought to be accepted; not because I doubted the principle of it, I quite accepted and most strongly endorse the principle that as a matter of policy we ought as a rule to secure to the improver the full value of his improvement;—but for the reason that the general question was then under the consideration of the Local Governments, and it appeared to me that modifications might have to be made by each Local Government. It was also perfectly obvious that we could not deal with improvements made under this Act with the money borrowed from Government in a different way from improvements made out of private capital, and that whatever we did in the one case would bind us in the other; and it seemed to me that it would be better if we were first to get the Local Governments' opinions and that the matter should be legislated for in regard to improvements as a whole, and not in regard to improvements

only on money borrowed from the Government. However, my views did not command the assent of the majority and I gave in on that point, but shortly after that, as my hon'ble friend Mr. Quinton has explained, it became obvious that some modification in the broad and general rule we have adopted should be made; and it became specially obvious in regard to the Panjab. In the Panjab, in the south-western districts, the condition of things is that there is a very large amount of waste land unoccupied, and a very sparse population; the land in its unirrigated state is of very little value, and in Montgomery for instance, such land is assessed at somewhere about one anna an acre; but as soon as water is brought to it, it can be assessed at 14 annas or one rupee an acre; and it seems monstrously unjust to the general taxpayers of India that the Government of India should give up all further claim to the increased produce of land assessed at one anna an acre when by a very small expenditure that land becomes assessable at one rupee. That would be the effect of section 11 as it stands, and consequently I think that the amendment which my hon'ble friend Mr. Quinton proposes to introduce to that section is a great improvement. The point has a further indirect bearing on the Government revenue, for it is not merely in the present that you lose, but as has been already pointed out, there is this to be considered—when you come to revise your settlement hereafter, the question of improvements made before the passing of this Act must come up. People who have been assessed for improvements made on unirrigated land before the Act was passed would complain that others have not been similarly assessed on improvements made since the Act was passed and the result would be a general levelling down of assessments, and consequent loss of revenue to Government. That would be the effect if it were not for this modification which it is now proposed to put in the Bill. The present practice of the Panjab Government as has been stated by the Famine Commissioners is to give an exemption of 20 years and this apparently carries out the principle which I have explained that the improver should get back the cost of his improvement and a fair amount of interest. I find it stated that the average cost of sinking a well may be put down at Rs. 300 and the average assessment from which it is exempted is put down at Rs. 18, and 20 times 18 is 360; and so he is enabled fully to recoup his expenditure with at least a portion of interest on it. Obviously to my mind this principle if accurately worked out, is far fairer as regards such lands than would be the broad exemption for ever of all improvements from assessment. I quite admit—in fact I most fully concur—in what Mr. Quinton observed as to districts where the land is fully cultivated and where there is a very small margin of waste and a very full population—where, in other words, it is far more important to improve existing cultivation than to bring additional land under the plough—that there section 11 in its broad application may well stand, and the Government should say 'improve your lands by

all means, we shall never take anything for it.' But where the position is reversed, where there is much waste land, where improvement is scarcely so much improvement as reclamation, there I think that the Government ought to return in its hands some security, and safeguard its right to share in the future produce of the land. As I have said the proviso which my hon'ble friend Mr. Quinton proposes to introduce as an amendment quite meets my views in regard to this particular Bill, and I shall very gladly support it; but it may well be that Local Governments in dealing with the matter in regard to their own provinces, not with reference only to improvements made with Government money but to improvements generally, will see the necessity of adapting the modification in the proviso to the local circumstances of each particular province and they may have to modify the form if not the principle of the proviso."

His Excellency THE PRESIDENT said :—" I do not wish to detain the Council at any length, but I should like to make one or two observations before this motion is submitted to the Council. The object of the Bill has been very clearly stated by my hon'ble friend, Mr. Quinton. It has been found in practice that the provisions of the Acts upon the subject of loans from Government for land improvement, have not been made use of so largely as was desirable, and have, in certain respects, tended to discourage recourse on the part of landholders and cultivators of the soil to the Government for assistance of this description. My hon'ble friends, Mr. Quinton and Sir Steuart Bayley, have quoted extracts from the report of the Famine Commission, which show how much importance they attached to loans of this sort, and there can be no doubt I think that there are few objects of greater public interest than the encouragement by every possible means of the improvement of land devoted to agricultural purposes.

" The amendments in the existing law proposed in this Bill have all been made with the object of rendering recourse to loans from the Government for land improvement more easy; and removing some, at all events, of the proved obstacles which exist under the present law to the use of such loans.

" I no more than my hon'ble friend, Mr. Quinton, can venture to say whether this Bill, when it becomes law, will lead to a great extension of applications for Government loans. When this measure was first introduced it was I think my hon'ble friend Sir Evelyn Baring—whose loss to this Council every Member, I am confident, deeply regrets—who said that he was not very sanguine as to the practical results that might follow from this measure. Be that as it may, I hope that the greater facilities which this Bill will afford for obtaining these loans will, at all events, tend to encourage applications for them, and to induce the cultivators of the soil to make greater use of the capital of the Government for the improvement of their land.

"I might content myself with these few remarks and put the question at once, but there are one or two points which have been alluded to by previous speakers upon which I should like to say a few words.

"With respect to Agricultural Banks I desire only to say that I hope no one will suppose that by the omission from this Bill of the clauses touching upon that subject, which were included in the original Bill, the Government imply any intention of abandoning the object which they then had in view. My hon'ble friend Sir Steuart Bayley has stated that that important object is still under the consideration of the Government, and that it is shortly their intention to address the Secretary of State in respect to it. No measure of this kind could be undertaken without the sanction of the Home Government, and I hope that the public will clearly understand that the withdrawal from this Bill of those clauses, imperfect in their nature as they were, does not in the least degree mean that the Government have lost their interest in the question or given up the solution of it as hopeless.

"I now come to the point touched on at some length by Sir Steuart Bayley, namely, that dealt with in the eleventh section of the Bill as it now stands to which Mr. Quinton is about to move an amendment when the present discussion is disposed of. Sir Steuart Bayley has said that he at one time was of opinion that it would have been better to have omitted section 11 altogether from this Bill, and not to have dealt in this measure with this particular subject. I quite admit that section 11 relates only to a portion—in fact only to a small portion—of a much larger question, and that the principles which that section lays down are principles which must have, and ought to have, a much wider application than that which can be given to them under the present Bill. But at the same time I think that the Select Committee acted wisely in not striking out section 11 from this Bill; because I cannot but think that when that section had once been introduced and the Bill published with it, its entire removal would have led to serious misapprehension as to the intentions of Government with regard to the assessment on land improved by the owner or occupier and increased in value by such improvement. I therefore think that it was wise, having once put in the section, to leave it in the Bill, amending it so as to make clear the views of the Government upon the matter with which it deals. With regard to the question of principle I will not detain the Council long, because it is a much larger question than that raised in this particular measure, and it is one on which the Government will have hereafter to express their opinion much more fully: but at the same time after what has fallen from my hon'ble friend Sir Steuart Bayley, I should like to say a few words as regards my own opinion on this subject. Sir Steuart Bayley has said that there are two theories on this question—the English theory and the Indian theory—and he defined the English theory to be

that a tenant who made improvements in the land which he occupied, ought, if he were removed from his farm, to receive compensation based upon the addition which his improvement had made to the letting value of the land, I very much wish that I could say that that is the recognised English theory upon this question. It is my own theory unquestionably, and it is a theory which has been partially, and in the end I fear imperfectly, adopted by Parliament at home; but it is a theory only held by a certain number of persons, and there is a wholly antagonistic theory very prevalent among other persons in England, namely, that the tenant should only receive on quitting his holding repayment of the actual outlay he may have made on his improvements.

“For myself as I have said, I entirely hold, in respect to ordinary cultivated land, to the theory which Sir Steuart Bayley has described as the English theory.

“I think that if a tenant, by his own exertion, and the expenditure of his own capital, adds to the letting value of my land, I ought if he leaves his farm to compensate him for the additional letting value of the land of which I am about to take possession. I think that is a perfectly sound and just principle with respect to land under full cultivation because although it is I know said that there are two factors in the results of all improvement, namely, the expenditure of the tenant's capital and labour, and the inherent qualities of the soil, in the case of cultivated land, this second factor should not, as it seems to me, be regarded as constituting an appreciable element in the calculation of the value of a tenant's improvements. For the right to enjoy the results of the inherent qualities of the soil is already covered by the payment of his ordinary rent, and the addition to the letting value of his land arising from his improvements may therefore be treated as resulting only from his expenditure of capital and labour and may fairly be taken as the measure of the compensation which should be given to him in respect of such improvements, when he quits the land.

“Therefore, it appears to me that the principle laid down in section 11 as it stood is a right principle in regard to what I may describe as fully cultivated land, but I admit that the case of what may be broadly called reclamation differs very materially from that of the improvement of land already under full cultivation. In the case of the reclamation of land by a very small expenditure of capital and labour, a very great result may often in a few years be produced. The inherent qualities of the land are the principal factor; the outlay of the occupier is a much more limited factor, and the true mode of dealing with cases of that kind seems to me to be the adoption of what is called in England an improvement lease. The land should be let at a low rent of

should be assessed to revenue at a low rate for a certain number of years so that the cultivator may recoup himself for the operations which he carries on in order to bring the waste land under cultivation.

“ He should have ample time to fairly repay himself for that expenditure, and the rent or revenue, at first very low, should be gradually increased, until at length when the land has been brought into a state of cultivation, it becomes reasonable that the Government or the landowner should step in once for all and place upon the land the full ordinary rates of rent or revenue of similarly cultivated land in the neighbourhood:

“ After that has once been done, then any other improvements that the occupier of land may subsequently make ought to fall under the principle laid down in the first portion of section 11, and the person making the improvement should be entitled to reap the full and entire benefit of any addition that he may make to the letting value of the land. That appears to me to be a fair mode of dealing with the question of the reclamation of land, and from the information which I have received, I believe that the case of unirrigated land, especially in the Panjáb, and probably also in other parts of India, which is let at unirrigated rates, falls very much into the same category as that of unreclaimed land, because by a very small expenditure of money or labour on the part of the occupier of the soil a very large additional value may be given to the land. Consequently I am quite prepared to admit, as proposed by the amendment of Mr. Quinton, that ‘where the improvement consists of the reclamation of waste land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government with the approval of the Governor General in Council.’ My hon’ble friend, Sir Stuart Bayley, alluded to the difficulty which had been felt in drawing any such distinction as Mr. Crosthwaite originally proposed to draw between different descriptions of improvement. I admit the force of that remark as applied to the particular proposal made by Mr. Crosthwaite, but it appears to me that between improvements on land under full cultivation, and improvements made for the purpose of reclamation of waste land, or for the irrigation of land at present unirrigated, a line may be distinctly drawn which is, in itself, in this country and elsewhere, quite defensible upon grounds of principle. No line of this kind that you can draw can be absolutely satisfactory; there must always be border cases difficult to deal with; but it seems to me that such a line as I have described is easy and simple and rests upon clear and intelligible grounds.

“ Under these circumstances I readily agree to the adoption of the amendment which my hon’ble friend, Mr. Quinton, is about to move, and with that;

alteration it appears to me that section 11 will lay down an important and valuable principle which I hope to see in course of time much more widely adopted.

"I have no more to say at the present moment on this subject. I have every hope that the Bill will make an important improvement in the existing law, and it will afford me great satisfaction if it should be largely made use of by those for whose benefit it is intended."

The Motion was put and agreed to.

The Hon'ble Mr. QUINTON also moved that, for the proviso to section 11, the following be substituted, namely:—

"Provided as follows:—

"(1) Where the improvement consists of the reclamation of waste-land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government with the approval of the Governor General in Council.

"(2) Nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed."

He said that the observations which had fallen from His Excellency the President and from Sir Steuart Bayley on the subject of the amendment relieved him from the necessity of detaining the Council by urging anything in addition to what he had already said in his remarks on the previous motion and was glad that it had obtained such powerful support.

His Honour THE LIEUTENANT-GOVERNOR said that he had intended to offer a few remarks in support of the proposed amendment, but much of what he had to say had been anticipated by His Excellency the President and Sir Steuart Bayley. He fully agreed that the principle embodied in section 11 of the Bill as it left the hands of the Select Committee was applicable to districts which were fully developed, in which the margin of waste-land was small, and where the share in the assets of the land had come up to a fair level. But that was not the case in the Panjáb. In that province there were vast tracts of land which could be brought under cultivation at very small expense, and any proposal to relieve them from the higher assessment for all time would be a wanton sacrifice of the resources of the State. The whole of our revenue-system in the Panjáb had been built up upon the system of what His Excellency the President had described as improvement-leases. Wells, when sunk, were exempted for a period of longer or shorter duration from assessment. After the expiry of 20 years an assessment was taken, and it would never do now to exempt in future all new wells from the higher assessments, because that would

at once raise a great diversity of interest between persons who had in years past embarked their capital in the improvement of land and those who were to do so after the passing of this Act. The result would be that the past assessments, which were higher than those imposed on land improved under this Act, would have to be forced down to the level of assessments on unirrigated land. The consequence of that would be a loss probably of one-third of our assessment. His HONOUR could not therefore have supported clause 11 of the Bill as it stood, but the proposed amendment removed the objections which he entertained to it; it met the case of the Panjáb; it would enable the Panjáb to carry on its system as it had hitherto done; and for that reason he was quite prepared to give it his cordial support. But he wished at the same time to point out that, by adopting this provision in the present Bill, the Government was practically pledged in the future not only for improvements executed by loans taken from agricultural banks, but for improvements executed by loans taken from private individuals, and in the expectation that Government would in the future accord equal protection to improvements of both kinds he was prepared to support the present proposals.

* The Hon'ble MR. HOPE said that he wished to express his satisfaction that his hon'ble colleague Mr. Quinton had come forward and moved the amendment which stood in his name, because it appeared to him that that amendment embodied a principle of a most important character, which was indeed to be drawn from the words in which his hon'ble colleague had couched his first clause, but which appeared to him (MR. HOPE) to be even more clearly and satisfactorily stated in a portion of the extracts from the Bombay Land-revenue Code which his hon'ble colleague Sir Steuart Bayley had read out to the Council. The particular portion he referred to was that in which, after providing that no assessment should be levied with respect to any improvements made during the currency of a settlement, permission is given to take such improvements into consideration on its revision:—

“With reference to the value of any natural advantage, when the improvement effected from private capital and resources consists only of having created the means of utilising such advantage.”

Of course, under the Bombay system, the extent to which a revision should be carried, and the amount of assessment which ought to be imposed, under such circumstances was a question of fact, which would have to be determined in the several individual cases which arose. In some of the more fully cultivated districts, where population was dense and the assessment already heavy, it might even happen that, as the Hon'ble Mr. Quinton had suggested, it might even be judged not worth while to make any increase in the assessment at all, but the right to make such increase must nevertheless be stated in clear and definite terms in the law.

This principle of the assessability of improvements in view of the rights of the landowner was in accordance with the practice which existed throughout the whole of India under the old Native rulers. All civil officers who had had much to do with revenue-assessments were acquainted with hundreds, perhaps thousands, of cases in which they had found wells to have come under assessment, after they had been held, for a certain term of years, exempt from assessment under sanads and other orders by Native Governments—Governments who, he might say, were remarkably shrewd, and whose views in those matters were strikingly in accordance with modern principles of political economy. But this principle was not only in accordance with old custom in India. It was also sound in itself and in accordance with well-recognised principles of political economy. The case was not one of policy, but of mutual rights. If it was reasonable that the occupier of land, whoever he might be, should get a full and fair return for any capital which he might invest in improvements, it was equally reasonable to secure to the owner his rights for any natural advantages which his property might possess, and which had not already been discounted by the rent imposed upon the occupier. There were of course some cases in which the occupier could turn the land, or its mineral resources to other than ordinary uses contemplated in fixing his rent, as where dry crop land was converted by a well into irrigated; but such cases were exceptional, and when they occurred it was just as reasonable, as he had already remarked, that the one party should be protected as the other. It would be as unreasonable to contend that Government was under such circumstances precluded from raising the assessment at a revision, or that a private person was precluded from securing by the provisions of his lease the full advantage to which the mineral or other properties of his land entitled him, as it would be to contend that if a man possessed a building site upon which he did not choose to build a house, or a coal mine which he was unable or disinclined to work, he must therefore allow the free use of that land, or present the working of that coal mine to some one else, without charging ground rent in the one case or royalty in the other.

He had one more remark to make. It would appear that some persons were under an apprehension that a restriction or reservation of right such as that contemplated would act very materially in preventing people from investing their capital in improvements. All that he could say was that no such result had been found to follow from the principle, which was in force throughout the Bombay Presidency. That principle, although it had only lately been embodied in the Bombay Revenue Code, had been recognised in orders there throughout the whole of his period of thirty years' service in India, and he might very easily had come to the Council to-day armed with statistics to show the enormous

increase of wells and other improvements of a like nature, involving immense expenditure of money, which the tenants in Bombay under the thirty years' revenue settlements had effected notwithstanding. For his own part he did not feel the slightest apprehension that, if the proposed amendment were adopted by the Council, it would have any prejudicial effect upon the object of improving the land and attracting capital to it, which we all so greatly desired.

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.

PANJÁB DISTRICT BOARDS BILL.

The Hon'ble MR. BARKLEY moved that the Report of the Select Committee on the Bill to make better provision for Local Self-government in the Panjáb be taken into consideration. He said :—

“My Lord, when I moved for leave to introduce this Bill, I explained that it had been framed to give effect to the proposals of the Local Government for the further extension of local self-government in the Panjáb, but that it did not apply to municipalities; and that, as it had been decided in correspondence between the Panjáb Government and the Government of India that it was desirable to consolidate the local cesses levied on land in each district with the local rate imposed under Act V of 1878, and to amend that Act in other respects, it was proposed to repeal that Act and to re-enact its provisions with the necessary amendments.

“The members of the Select Committee, to which the Bill was referred, have considered the Bill, with the suggestions for its improvement made by the Local Government, and by the various officers and local authorities who were consulted by that Government and they have been able to accept a considerable number of those suggestions. The Local Government has been communicated with in regard to all changes of any importance proposed to be made in the Bill as introduced, and, as the measure is one relating to local administration, great weight has always been given to its views in determining whether proposed alterations should be adopted or not. As the changes, other than amendments in matters of minor detail, which have been made are fully set forth in the report of the Select Committee, which briefly explains the reasons for each, I propose to confine my remarks to those which are of most importance.

“Taking, first, the provisions relating to taxation, the powers of imposing taxes other than the local rate conferred by section 30 are given, subject

to the provisions of that and the following section, to all district boards, instead of to those only which are empowered to determine the incidence of the local rate, as these powers may sometimes be found useful in cases in which the Local Government may not wish to delegate the power of determining the incidence of the local rate to the district board. The proceeds of taxes so imposed will be credited in full to the district fund of the district, as the Local Government does not think it necessary to retain the provision, contained in the Bill as introduced, that the same proportion of these taxes as of the local rate should be carried to its own credit. In any case in which it may be found necessary to impose new taxes, the district in which they are levied will thus get the full benefit of them.

“ Power has also been given to the Local Government to direct that any portion of the net proceeds of the local rate which may be levied within the limits of a municipality or military cantonment should be made available for the purposes of the municipality or cantonment. Under the law hitherto in force, the proceeds of the local rate and cesses on land levied within municipal or cantonment limits were applicable to the purposes of the district as a whole, and were expended under the orders of the district committee. There are only a few cases in which the local rate or cesses are levied in military cantonments; but in some districts a considerable portion of the local rate is paid for lands within municipal limits. As the financial position of particular districts and municipalities must be considered in determining whether any change should be made in the existing appropriation of the local rate paid for lands in such localities, it was found impossible to lay down any general rule on the subject in the Bill, and the Local Government is therefore empowered to decide the question in each case.

“ In other respects there is no material change in the part of the Bill which relates to taxation.

“ Next, as regards the constitution of district and local boards the district boards to be established under the Act will take the place of the committees appointed under the Local Rates Acts previously in force. Unlike those committees, they will in all cases be corporations, with power to acquire and hold property, to contract, and to sue and be sued; but as in some districts it may not be at present possible to establish boards of this character, the Local Government is empowered by section 67 to except these from the provisions of this part of the Act, and section 68 provides for the constitution in these districts of a committee similar to those which now exist, unless where the Local Government for special reasons otherwise direct. This exception has been added to provide for cases like that of the Simla district, the most important part of which is comprised within the Simla municipality and the several hill canton-

ments, the remainder consisting only of the two small detached parganas of Kotgarh and Kotkhai, distant fifty miles or more from Simla. It has not been found convenient hitherto to maintain a district committee to control the expenditure of the insignificant local income of these two parganas.

“The district board will ordinarily have authority throughout the district for which it is established, with the exception only of the area of municipalities and military cantonments; but the Local Government may except portions of districts from this part of the Act. This power is required for hill tracts like portions of the Kangra and Hazara district, and may also be required for parts of some of the Trans-Indus districts, whenever district boards are established in those districts.

“Some change has been made in the Bill with respect to the relation of the local boards which may be formed within districts to the district board. As there is no present intention to declare any such boards independent of the district board, the provisions originally contained in the Bill for the case of local boards declared independent of the district board have been dropped, and it is now provided that all local boards shall act as the agents of, and be under the control of, the district board. The Local Government, however, may direct particular matters to be placed under the management of the local board, and may also make rules as to the apportionment of the district fund between the general purposes of the district and the purposes of particular parts of the district, and for determining the relations between district boards and local boards. Sections 21 to 23 and 41 of the Bill also contemplate the appropriation of specific funds to the purposes of the local boards, and the nature of the control which may be exercised by district boards is regulated by sections 22, 23 and 41. It will not, therefore, be possible for the district board if it were so disposed, to reduce the local boards subordinate to it to mere nonentities; and it will probably be found most convenient ordinarily to leave the administration of many matters in the hands of the local boards, which will be able to meet more frequently than the district board.

“Chairmen of district and local boards, whether elected or appointed by the Local Government, will be chosen from among the members of the board, and will hold office for such term, not exceeding three years, as the Local Government may fix. It has all along been intended that only members of boards should be eligible for election or appointment as chairmen, though this was not distinctly stated in the Bill as introduced.

“It has not been thought necessary to empower local boards to appoint joint committees in concurrence with other local boards or authorities, as the district board will discharge the functions of a joint committee for the local

boards within the district, and can appoint a joint committee in concurrence with other local bodies when this is desirable. But cantonment authorities have been added to the other local authorities who may concur in appointing joint committees, as this may sometimes be found useful in regard to matters in which district boards and residents in cantonments are jointly interested.

“As the district board is the corporate body, it has been empowered to employ such servants as are necessary for the purposes of the local boards subordinate to it, as well as such as are necessary for its own purposes. This will enable it to authorize a local board as its agent to employ necessary servants. The power given by the Bill as introduced to Deputy Commissioners to control appointments made by second class boards has been extended to all boards as recommended by the Local Government. As I mentioned on a recent occasion, the Delhi Municipal Committee, when consulted on the original draft of the Municipal Bill, thought it desirable that the Deputy Commissioner should have this power; and if it is exercised in such a way as to give dissatisfaction to the board, it will have an appeal to the Commissioner of the division.

“As respects finance, the effect of the provisions of sections 35 and 36 forming a district fund, and vesting that fund in the district board, and of the repeal of Act V of 1878 in districts in which the present measure is brought into force, will be to put an end to the power, which that Act gave to the Local Government, to withdraw from any district unexpended balances of the allotment made to it from the proceeds of the local rate. The district boards will, therefore, occupy a much more secure financial position than the Committees whose place they will take. They have also been empowered to invest their funds in approved securities, subject to such rules as may be made by the Governor General in Council in that behalf, and to the previous sanction of the Local Government. This condition will be a check upon money being hoarded when it might be spent with more advantage in meeting the immediate requirements of the district.

“Additional powers to make rules have been given to the Local Government for the purpose of regulating the language of the boards, the channel through which correspondence should pass, and the preparation and sanction of plans and estimates for works, and for the guidance of district boards in conducting litigation.

“With reference to the last point, as district committees were not hitherto empowered to sue nor liable to be sued, all suits relating to matters under their control having to be brought by or against Government, it is probable that district boards will require some instructions as to the course to be adopted when suits are brought against them, or when they have occasion to institute

suits; and it may be desirable that such cases should ordinarily be reported to the Local Government, in order that it may be in a position to give the boards any assistance or advice which may be required.

"The Bill originally contained a section, similar to that which is to be found in most Municipal Acts, requiring persons proposing to sue a district board, or any of its members, or officers, for compensation for any wrongful act done or purporting to be done under the Act, to give written notice at least a month before instituting the suit. It will be remembered that, on the occasion of the passing of the North-Western Provinces and Oudh Municipalities Act, I doubted the expediency of omitting the provision of this nature which was contained in the Act previously in force, and that my hon'ble friend Mr. Ilbert explained why it had not been considered necessary to retain it, and expressed an opinion that, if such a provision is really required, it ought to be embodied in a general Act, granting the necessary protection to all persons acting under statutory or other similar authority. I understood him to think that the protection was not more likely to be wanted in India than in England, where it had been found possible to dispense with it, and the prospect of its being given by a general Act therefore seemed to me to be somewhat faint; but, from what afterwards passed in committee on the present Bill, I gathered that, if Local Governments showed cause for considering that local authorities required such protection as would be afforded by notice of suits, there would be no objection to providing it. On this understanding I agreed to the omission of the section in question from the Bill; and I had the less difficulty in doing so because it could not be said in this case, as in that of a Municipal Bill, that by the omission we were depriving the boards of a protection which their predecessors had enjoyed under the law hitherto in force. District boards are perhaps less likely to be frequently engaged in litigation than municipal committees; but if suits for compensation for alleged wrongs are brought against them and it is found that inconvenience is caused by the want of sufficient notice before such suits are brought, steps will no doubt be taken to make this known to the Government of India, in order that the necessary legislation may be taken in hand.

"As the Bill does not now make the district boards a continuation of the committees previously in existence with larger powers than before, it has become necessary to make provision for their liability to discharge obligations incurred by those committees. We have therefore adopted the provisions of the Act recently passed for the North-Western Provinces and Oudh, saving contracts made on behalf of district committees, and providing for the continued employment of Government officers serving under them.

"Comparatively little use has been made in the Panjab of the provisions of Act XX of 1856, for the appointment and maintenance of police-chaukidars

in towns, and most places in which it was in force, other than military cantonments, have been constituted into municipalities and now raise the necessary taxation by other methods. In any towns which have not become municipalities, a tax can be imposed for the purpose of paying for watchmen under the provisions of the Panjáb Laws Act, as amended in 1878 and 1881. The Local Government, under these circumstances, did not consider it necessary that Act XX of 1856 should continue to apply to such towns; and, as that Act contains no provisions for withdrawing it from operation in any place to which it has been extended, we have provided in section 69 that, when a district board is established having authority in any place to which Act XX of 1856 applies, the Local Government may direct that that Act shall cease to be in force.

“The changes which have been made in the Bill have not altered what I pointed out in moving for leave to introduce it as one of its most marked features, namely, the extent to which it leaves details to be regulated by rules to be made by the Local Government. It was then explained that this was rendered necessary by the varying circumstances of different parts of the province, with regard to which the rules must be framed if much progress is to be effected.

“But wherever the provisions now to be found in the third chapter of the Bill can be made applicable, the district boards will enjoy a much greater measure of independence than the committees which have hitherto performed similar functions, and they will have a much more complete control over the administration of their funds. They will in most instances be relieved by local boards of such duties as can most suitably be discharged by smaller bodies, with local knowledge and with a real interest in local business; but these boards will be subordinate to the district board, and it will continue to manage all matters affecting the interests of the district as a whole. The constitution of these smaller bodies is a new step in the direction of local self-government and it may fairly be hoped that the interest which has hitherto been taken by members of district committees in the departments of administration entrusted to them will be still more largely manifested by the members of the local boards now to be constituted, who will be thoroughly acquainted with the wants and interests of the smaller areas over which their authority will extend, and who will be put to less inconvenience in attending meetings than the members of a committee assembled from all parts of the district to meet at its headquarters. The powers reserved to district officers by the Bill will enable them to give these boards the guidance, counsel and assistance which they must often require, and which could neither be so frequently nor so usefully supplied by the district board; and the relations which at present as a rule exist between the rural population and the district officer afford some guarantee that both district and local boards will be ready to be guided by his advice, and that he will

take a hearty interest in training them to make the best use of their powers, and in the success of their administration."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY said that he had now to ask His Excellency the President for leave to move two amendments of which he had not given notice. The amendments, he explained, were not of an important character.

His Excellency THE PRESIDENT said that he had been made acquainted with the nature of the two amendments which Mr. Barkley wished to propose, and the necessity for moving them now had arisen in consequence of the lateness at which the Report of the Select Committee was brought to the notice of the Lieutenant-Governor and himself. Under those circumstances, and as they did not involve any important points, he would give leave that the amendments be made.

The Hon'ble MR. BARKLEY said that the first amendment was as follows:—

That the proviso to the second sub-section of section 20 be omitted.

The matter which that amendment was intended to cover was already provided for by section 34 of the Bill, which required the Local Government, when services, the cost of which was hitherto borne by Government, were undertaken by a district board under section 20, to provide it with adequate funds for their maintenance in the same state of efficiency as before. That being so, it did not appear necessary to retain that proviso to section 20.

The Hon'ble MR. ILBERT remarked that the proviso was inserted for the purpose of making clear the mutual relations of section 20 and section 34 of the Bill, but as he understood that its retention in its present form might possibly lead to administrative difficulties and as the meaning of the Bill appeared to be reasonably clear without it, he would not offer any objection to its omission.

The amendment was put and agreed to.

The Hon'ble MR. BARKLEY also moved that to section 51 the following be added, namely:—

"but shall be immediately reported to the Governor General in Council and shall be subject to his orders."

He said that this course would no doubt always be adopted, but that it was better to provide for it in the Bill.

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that the Bill as amended be passed.

His Honour THE LIEUTENANT-GOVERNOR said :—“ This Bill is a younger son in a tolerably large family, and, as is the fate of younger sons in thrifty households, it has been made to wear the clothes of its elder brothers. The fit is, no doubt, in some respects excellent. But I am not sure that the child would not have run about more freely and grown more robust in the loose homespun in which it was first clothed by its nurse than in the elaborate and tight-fitting garments in which it now appears. Although the Bill has been greatly altered in its transit through Committee, I desire to express my thanks to the Council for the great consideration that has been given to the representations which I have on several occasions found it my duty to make in respect to the various changes from time to time proposed, and for the concessions that have been made to me. Above all, I am grateful that the distinctive features of the Bill have not been interfered with. As described in the Panjab Government letter of 24th April last, and by my hon'ble colleague Mr. Barkley, in his speech when introducing the Bill, this is an enabling rather than an enacting Bill. No doubt, this peculiarity of form makes large drafts upon the confidence of the Government of India, the legislature and the public. But in no other way can local self-government, in my judgment, be successfully developed in the Panjab. When municipal government was first attempted in this Province, almost everything was done by executive arrangement without any law at all. When the necessity for some law came to be felt, a more skeleton Act was passed. It enacted little, but permitted much. A few years later the law was revised and somewhat elaborated, but still left elastic. Now, after twenty years' experience, it is found practicable to reduce to positive enactment not only the leading principles but many of the details of municipal government, and a Bill for the purpose is now before this Council.

“ I should wish to proceed in a somewhat similar way in introducing local self-government in the districts—that is to say, progressively, but tentatively and cautiously. This is the explanation of the peculiar feature of the Bill. It is only in myth and fable that Athene springs at once full armed from the brain of Zeus. In nature and the work-a-day world, things proceed more slowly—first the blade, then the ear, then the full corn in the ear. The necessity for cautious advance and for diversity of arrangements to meet the varying requirements of different parts of the country has, notwithstanding all we have heard to the contrary, been from the first recognised and insisted upon both by the Supreme and Local Governments. In the Government of India resolution of 18th May, 1882, it was said that the Governor General in Council is quite aware of the absurdity of attempting to lay down any hard-and-fast rules which

shall be of universal application in a country so vast, and in its local circumstances so varied, as British India. And in the Local Government resolution of 7th September, 1882, diversity of arrangements was strongly insisted on as presumptive proof that the varying requirements of localities have not been disregarded. The policy of Government is to be found less in the Bill than in the published resolutions. The Bill, and the rules of general or local application to be found under it and to be modified from time to time as circumstances require, are the steps by which effect is gradually to be given to that policy in its integrity. Uniformity is impossible, and an Act rigid in its provisions and applicable to the whole province is altogether out of the question at the present stage. In no other way than by leaving large discretion to the Local Government to vary its arrangements when necessary district by district, and from time to time, can local self-government be successfully attempted in this Province. In no other way can we avoid, in this country of deep-rooted prejudices and hoary traditions, the evils that inevitably result from laws too far in advance of the social condition of the people.

“The policy of local self-government has often been assailed on the ground that we ought not to legislate in advance of social opinion. That is a proposition to which I for one cannot agree. In the countries of Europe and America it may be true: society there has inherent elements of progress, and, as Sir Henry Maine has forcibly remarked in his *Ancient Law*, page 24, social necessities and social opinion are in progressive societies always more or less in advance of law. Here in India the case is reversed. Society is inherently unprogressive. It is firmly rivetted to ancient custom and inveterate prejudice. The only true progress it has made for centuries has been forced upon it from without. Had our legislature waited upon Indian opinion; the fires of the suttee would not yet have been extinct; the Ganges would still have claimed her woman victims; crimes would still have been defined and punishments awarded with reference to the caste and rank of the offender; property would still have been forfeited for religious opinion; we should have had no free Press, no railways, no telegraphs, no post-offices, no municipal government; and the country would be a century behind its present state of development.

“There is no more plausible fallacy than the proposition that in India legislation ought not to be in advance of the social state of the people. From the nature of the case it must always be in advance. The real question is one of degree. Legislation that is too progressive may be a greater calamity to a people than legislation that lags behind the popular demand. But it is our duty, in the position in which we are placed, so to adjust both our legislative and our administrative measures as to create a higher and a better social opinion, and to give to the people gradually and progressively, as they are able

to receive it, an increasing share in the benefits flowing from political principles which England has secured for herself by centuries of struggle and at the cost of much of her best and noblest blood. Thus only, in my humble opinion, can we be faithful to our trust in India and true to the great traditions we have inherited.

“As regards particular sections of the Bill, I need say very little. The Bill differs from the Central Provinces Act, the North-Western Provinces Act, and all other Bills that I have seen, in requiring the Local Government, when transferring to district boards any works or services paid for from provincial revenues, to provide the boards with sufficient funds for the maintenance of those works and services. This is in accordance with the principles laid down by the Government of India. But the Panjáb Bill is the only one that contains such a provision or affords such a security to the district boards.

“The Bill is also singular in its provisions regarding taxation. The scope and object of the taxation-sections were explained by Mr. Barkley when the Bill was introduced. But it will perhaps not be considered out of place if I advert to the subject again. I cannot make it plainer than by quoting the following passage from a note on the Bill which was forwarded to the Government of India with the Panjáb letter of 24th April last :—

‘No system of local self-government will be complete which does not aim at the ultimate inclusion of all classes of the community within its scope. It has been matter of regret to Sir Charles Aitchison, in working out the scheme of local self-government, that a large section of the community will, for the present at all events, have no interest in the funds to be administered by rural boards, and will therefore be disqualified from representation at their sittings. The want which will be thus experienced will be partially met by a fuller development of the policy described in paragraph 21 of the Government of India Resolution of 18th May 1882. Should it hereafter be possible to make over the administration of the license-tax to the local boards, the object will, in a large measure, be attained. But, apart from this possibility, the Lieutenant-Governor is very desirous of providing the machinery for interesting all classes of the people residing in the rural districts in the great work of self-administration; and it is necessary that all should bear their burden of taxation, if they are to have a substantial interest in the proceedings of the boards. Moreover, it is an admitted defect in our systems of taxation that they usually fail to reach the classes who benefit most by British rule. The Lieutenant-Governor thinks that the local knowledge of Native communities should be brought practically to bear upon the solution of this problem. There are places where the local rates under the present Act may be heavier than is required by local circumstances; there are unquestionably other parts of the Province where no permissible amount of local taxation upon the classes now subject to it can really meet local needs, whilst, in the same localities, some other classes, benefited by local fund expenditure, altogether escape local burdens. The people themselves should come forward to redress these inequalities which with the advance of progress will be felt more and more. Section 18 (now section 30) will enable the people to do this, if they should so desire. Its operation, taken with that of section 12 (now section 5), will by no means of necessity involve any increase of taxation. On the contrary, the total amount of local tax-

ation in any given local area might be lowered; whilst at the same time the section might be used to redistribute the pressure of local imposts, to lessen the weight of taxation upon the labouring or cultivating classes who live by agriculture, and justly to lay an adequate amount of it upon the mercantile classes, who reap, with others, no small share of the benefits derived from local works and communications.'

"While therefore ample funds will be provided by the Provincial Government for all works and services paid from provincial finances which may be transferred to the control of district boards, taxation may be had recourse to either as a substitute for part of the local rate, so as thereby to reduce the taxation on the land or to provide additional funds wherewith to undertake new works and services or to extend and improve those already under their control. For such purposes provincial funds cannot be allotted to district boards. The boards must find their own funds either by husbanding their resources or by fresh taxation. The power of taxation, however, is sufficiently guarded by the provision of sections 30 to 32 of the Bill, and still more by the fact that all proposals for additional taxation must emanate from the boards themselves and not from the Government.

"In conclusion, I must once more express my cordial concurrence in the general policy to which this Bill is intended to give effect in the Panjāb. The policy itself is not new; it is rather an advance on lines laid down long ago. But it is a development of an old policy conceived in a spirit of generous sympathy with the people, and wise anticipation of their wants and legitimate aspirations. It has my most hearty support, and no effort will be wanting on my part to make it successful in the province which it is my privilege and my pride to govern."

His Excellency THE PRESIDENT said:—"I cannot let this Bill pass without expressing the great satisfaction which I feel that a measure intended to enable my hon'ble friend opposite, the Lieutenant-Governor of the Panjāb, fully and completely to carry out his Resolution of the 7th September 1882, should at last have been brought to completion, and should be about to become law. This measure has been so framed as to give the fullest possible effect to the Resolution to which I have just alluded, and that Resolution was drawn up in complete accordance with the views of the Government of India as laid down in their Resolution of the 13th May 1882. The Lieutenant-Governor has, from the commencement, formed the most just estimate of the views and intentions of the Government of India as set forth in that Resolution, and under this Bill he will be enabled, according to his judgment of the requirements of the various localities under his Government, to give to the principles which that Resolution embodied such development as he thinks most suitable to the circumstances of each locality.

" It has been said in criticism of this Bill that it is, as my hon'ble friend has just explained, an enabling, rather than an enacting, measure. No doubt that is the case; but it was essential that that should be the character of legislation upon this subject, if one of the most fundamental principles of the Resolution of the 18th May was to be carried out, the principle, namely, that the system sketched out in that Resolution was to be applied in different degrees to the different provinces of India and to the different districts of each province.

" One of the points most clearly explained in that Resolution was the very obvious one that in a country so diversified as India it was essentially necessary to vary the arrangements for local self-government according to the varying condition, not of each province, but almost of each district in each province; variety was contemplated by that Resolution, and I myself have always regarded it as an essential feature of the proposal of the Government. I have therefore been rather surprised that other Local Governments have not, as that of my hon'ble friend has done, reserved to themselves more complete powers of varying the modes of applying the system of local self-government, and that they have rather tied themselves down to a cut and dry system to be applied generally throughout the districts under their Government. It is however quite true that if there be any province which more than another requires the adoption of different arrangements in different districts, that province is the Panjáb. In the Panjáb we have every variety of social circumstances; every variety of development; great differences of race and of creed, from old settled districts like that of Delhi, to the border districts on the Afghan frontier, and to hill tracts, like those in which we are living at the present moment. It was, therefore, extremely natural that the Lieutenant-Governor should feel it necessary to take large powers, in order to enable him to give adequate elasticity to the schemes to be adopted in different parts of the province under his rule. Undoubtedly a measure of this kind makes a large demand upon public confidence; and it will depend very largely upon my hon'ble friend to what extent he carries out the principles of local self-government in the Panjáb. The Bill enables him to apply the principles sketched out in the Resolution of the 18th May to the fullest extent, but it will not compel him to do so. He has given to the public in his Resolution of the 7th September 1882 the fullest assurance as to the mode in which he intends to exercise the powers conferred upon him, and I have the most complete and entire confidence that, when this Bill becomes law, he will, without delay, apply the principles laid down for his guidance by the Government of India in such degree, in such manner, and to such extent, as he may feel to be most suitable to the various parts of the territory under his administration.

"When the boards to be established under this Bill have once been set up, the measure contains all due provision that they shall not be arbitrarily or rashly abolished; that, once established, they shall not be overthrown except in rare cases in which adequate reasons may exist for the change; and I hold, therefore, that the public may regard with complete satisfaction the passing of this Bill as assuring to the Panjáb a wide development of the system of local self-government.

"As Sir Charles Aitchison has said, that system is not a new one; the Government of India of the present day lay no claim to having in this matter struck out a novel policy; all that they have done is that they have endeavoured to make a large step in the direction of extending and developing the work which their predecessors commenced; and I am quite sure that that extension and development will nowhere be more thoroughly and fully carried into effect than in the Panjáb under the rule of my hon'ble friend.

"Sir Charles Aitchison has said something upon the taxing clauses in this Bill, and upon that subject I have one observation to make. The principle which the Government of India desire to see applied in respect to the matter of taxation is this: when any service is handed over to the new boards which are about to be established, there should be given to them at the same time an ample amount of funds out of existing taxation to enable them to maintain that service in its present state of efficiency. I should be exceedingly sorry if there should be any mistake on this subject, or if it should be supposed that the present extension of local self-government had been devised for the purpose of forcing additional taxation upon the people. That is not our intention; whatever duties the boards are required to undertake they will have funds given to them for the purpose of enabling them to discharge those duties upon the existing scale; if in future years they should desire to do more, of course they will provide for that at their own will under the taxing clauses of the Bill, but in regard to any services now provided for out of general or provincial funds which may be handed over to them means will be given to them at the same time for fulfilling those services without any increase of the total existing taxation.

"I have thought it desirable to make this point quite clear, because there has perhaps been some misapprehension upon it, and because the principle which I have just laid down is one to which the Government of India and the Secretary of State attach great importance.

"I have only in conclusion to congratulate my hon'ble friend the Lieutenant-Governor upon the passing of this Bill, and to express my entire confidence

that he will work it in complete accordance with the spirit of his Resolution of the 7th September 1882."

The Motion was put and agreed to.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble Mr. ILBERT introduced the Bill to amend the Indian Ports Act, 1875, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. Colvin, the Hon'ble Mr. Reynolds 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*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

MADRAS PARTITIONS DEEDS REGISTRATION BILL.

The Hon'ble Mr. ILBERT also moved for leave to introduce a Bill to give effect to certain unregistered instruments of partition relating to immoveable property in the Madras Presidency, and to remove doubts as to the titles conferred thereby. He said:—

"This is a Bill which has been prepared in pursuance of the request of the Madras High Court, who apprehend that an extra-judicial opinion expressed by the Court a good many years ago on one of the former Registration Acts, may cause some difficulties in connection with the titles to land in that Presidency.

"The subject is a highly technical one, and, in order to explain it, I shall be compelled to refer very shortly to some of the provisions of these Acts.

"This is how the case stands.

"Section 17 of the Registration Act XX of 1866 relates to instruments of which the registration is compulsory, and section 18 to instruments of which the registration is optional.

"Clause (7) of the latter section includes 'Instruments of Partition' among other instruments. The High Court at Madras, shortly after the passing of the Act, recorded an extra-judicial opinion that partition-deeds relating to immoveable property were governed by section 18 of the Act, and that their registration was therefore optional. This opinion was promulgated and acted upon.

"The Act of 1866 was repealed by the Registration Act VIII of 1871, which, however, reproduced clause (7), section 18 of the former Act; but the Act of 1871 was in turn repealed by the Registration Act III of 1877. Section 18 of this Act revised the list of documents the registration of which was optional, and partition-deeds have been omitted from the list.

"The Madras High Court now say that, of late, grave doubts have been entertained as to the correctness of the opinion to which I have referred, and recommend that, in view of the serious consequences to persons who may have acted on the opinion of the Court, and of the dissensions which may be excited in families by the disturbance of such arrangements, resort should be had to legislation to quiet titles. They have sent up the draft of a Bill which will in their opinion effect the objects which they desire, and the Bill which I am now asking leave to introduce is framed in accordance with that draft."

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 *Gazette of India* and in the *Fort St. George Gazette* in English and in such other languages as the Local Government might think fit.

The motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. ILBERT also moved that the Hon'ble Sir A. Colvin be added to the Select Committees on the following Bills:—

To amend the law relating to Court-fees.

To amend the law relating to certificates granted under Act XXVII of 1860 (*an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The Motion was put and agreed to.

The Council adjourned *sine die*.

D. FITZPATRICK,

SIMLA ;
The 19th October, 1883. }

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 7th December, 1883.

PRESENT :

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

The Hon'ble J. Gibbs, 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.

The Hon'ble Rájá Siva Prasád, C.S.I.

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

The Hon'ble Durgá Charan Láhá,

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.

The Hon'ble J. W. Quinton.

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

The Hon'ble B. Miller.

The Hon'ble Amír Ali.

NEW MEMBERS.

The Hon'ble MR. GIBBON, the Hon'ble MR. MILLER and the Hon'ble MR. AMÍR ALÍ took their seats as Additional Members.

BENGAL REGULATTON XIX OF 1810 REPEAL BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to repeal Bengal Regulation XIX of 1810 within the territories administered by the Lieutenant-Governor of the North-Western Provinces. He said :—

“The object of this Bill, which has been prepared on the recommendation of the Local Government, is to repeal Bengal Regulation XIX of 1810 (*for the due appropriation of the rents and produce of lands granted for the support*

of mosques, Hindú temples, colleges, and other purposes; for the maintenance and repair of bridges, saráis, kattas, and other public buildings; and for the custody and disposal of nazúl property or escheats) within the territories administered by the Lieutenant-Governor of the North-Western Provinces. So far as the Regulation vests the superintendence of saráis in the Board of Revenue, it is at variance with the existing practice, as saráis are now managed in the North-Western Provinces entirely by the executive authorities under the immediate orders of the Government, and the Local Government reports that the other provisions of the Regulation, which provide for the management of lands granted as charitable and educational endowments and the superintendence of escheats, are not required for the territories under its administration.

“Though the Regulation, in so far as it relates to saráis, is obsolete also in the Lower Provinces, it is still in active operation in those Provinces with regard to a few trusts and small endowments administered by the Board of Revenue, and still governs the procedure there with regard to escheats. Under these circumstances, it has been considered best to confine the Bill to the North-Western Provinces and to leave it to the Bengal Legislature to legislate for the Lower Provinces if it thinks necessary.”

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble Mr. ILBERT also moved for leave to introduce a Bill to amend the Burma Courts Act, 1875. He said:—

“The object of this Bill is to make certain amendments in the Burma Courts Act, 1875 (XVII of 1875), which experience has shown to be required.

“In the Act as it at present stands, the presiding officers of the Courts of the lowest grades are termed Extra Assistant Commissioners of the 1st, 2nd and 3rd class respectively. In 1882, the Subordinate Executive and Judicial Service in British Burma was reorganized, and the designations of the service were changed. The term Extra Assistant Commissioner was restricted to Extra Assistant Commissioners of the 1st and 2nd classes under the old system; and Extra Assistant Commissioners of the 3rd class were styled Myo-òks. The result is that the present designations of the Subordinate Judicial Officers do not correspond with the designations given to the Subordinate Civil Courts by the Act. This difficulty has hitherto been ignored. Now, however, the Judicial Commissioner, Mr. Jardine, is of opinion that, as the law stands, the nomencla-

ture used in the Courts Act should be adhered to as regards all officers of the Subordinate Judicial Service appointed to preside in Civil Courts. He advises the Chief Commissioner that questions of jurisdiction may arise and may cause inconvenience and loss to suitors ; and he reports that a case of the kind has already occurred. This being the view taken by the Judge of the highest Appellate Court, the Chief Commissioner has addressed the Government of India on the subject. He wishes that all doubt on the point should be removed by substituting the words 'Extra Assistant Commissioner' for the words 'Extra Assistant Commissioner of the 1st and 2nd class,' and the word 'Myo-òk' for the words 'Extra Assistant Commissioner of the 3rd class,' wherever they occur in the Courts Act. With this view section 3 of the Bill has been drafted. It gives the amendments made by the section retrospective effect from the 1st April, 1882, the date of the reorganization of the Subordinate Service.

"Further difficulties have also arisen from the provisions of sections 8 and 9 of the Act. Under recent orders, the Chief Commissioner has power to create additional Myo-òkships ; but, in consequence of the provisions of section 8 of the Act, additional Myo-òks appointed by the Chief Commissioner can do no civil work unless the sanction of the Government of India is first obtained to the creation of an additional Civil Court. Again, the duties performed by Extra Assistant Commissioners and those performed by Myo-òks are practically of the same description. The exigencies of the public service often render necessary the appointment of a Myo-òk to succeed an Extra Assistant Commissioner or of an Extra Assistant Commissioner to succeed a Myo-òk in the charge of a township ; and the result is that an officer who should preside in a Court of grade (a) is appointed to preside in a Court which has hitherto been a Court of grade (b), or *vice versa*. Such changes have from time to time been made by the Chief Commissioner. The Judicial Commissioner is of opinion that, having regard to the provisions of sections 8 and 9 of the Act, such an interchange cannot legally be effected except by, or with the previous sanction of, the Governor General in Council. The inconvenience which would arise if it were held to be necessary to submit a reference to the Government of India on every occasion such as those described is apparent. The administration of the province, and particularly the administration of civil justice, would be seriously hampered. Sections 4 and 5 of the Bill therefore re-enact sections 8 and 9 of the Act in such a form that the Local Government is empowered to vary the number of Courts of grades (a) and (b), and to vary the local limits of the jurisdiction of these Courts without the previous sanction of the Government of India, and section 6 legalizes the variations in the numbers, and limits of the local jurisdictions, of these Courts, which have heretofore from

time to time been made by the Chief Commissioner instead of by the Governor General in Council or by the Chief Commissioner without the previous sanction of the Governor General in Council.

“The Chief Commissioner states that the Deputy Commissioners in certain districts are overburdened by the pressure of civil appellate duties to the detriment of their executive work, and that, in order to increase their efficiency as executive officers, it is necessary to relieve them of some portion of their appellate jurisdiction. With this object, sections 7 and 8 of the Bill have been prepared. The latter section, which is based on the recommendation of the Chief Commissioner, gives him authority to invest an Assistant Commissioner with power to hear certain civil appeals which would ordinarily be heard by the Deputy Commissioner. The former section empowers the Chief Commissioner to transfer to Commissioners of Divisions all or any part of the appellate jurisdiction exercisable under the Act by Deputy Commissioners. It seems desirable to provide this second and additional mode of affording the proposed relief to Deputy Commissioners, as it is possible that the result of transferring civil appellate work from the Deputy Commissioner to the Assistant Commissioner may not always prove satisfactory.

“Lastly, under section 38 of the Act, the Chief Commissioner is only empowered to appoint and remove the presiding officers of the Court of the Extra Assistant Commissioner of the 3rd class (now styled the Myo-ôk). The presiding officers of all the other Courts under the Act must be appointed by the Governor General in Council. These provisions have been found to cause practical inconvenience, and the Government of India see no reason why the Chief Commissioner should not have, in regard to civil jurisdiction, like powers to those which the Criminal Procedure Code gives him in regard to criminal jurisdiction. Accordingly, section 9 of the Bill amends section 38 of the Act and confers power on the Chief Commissioner to appoint and remove the presiding officers of all the Courts mentioned in section 6 of the Act with the exception of the Court of the Judicial Commissioner; the power to appoint the presiding officer of that Court being reserved to the Governor General in Council.”

The Motion was put and agreed to.

INDIAN EMIGRATION BILL.

The Hon'ble MR. LEBERT also presented the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Natives of India.

RANGOON TRAMWAYS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to authorize the making, and to regulate the working, of Street Tramways in Rangoon.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Hon'ble Mr. Arif Ali be added to 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.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

His Excellency THE PRESIDENT said :—

“ I would now ask the members of this Council to remain for a short time, while I make a statement upon the important subject of the Bill, which is now before the Council, for the amendment of the Criminal Procedure Code. The course which I am taking upon this occasion is, no doubt, not provided for by the Rules of Business of this Council, but it is not without precedent, and it cannot be doubted that it is advantageous, upon special occasions, that the Viceroy should reserve to himself the right to make, upon behalf of the Government, a statement in this Council, although no question is technically before it, in reference to a matter of great public interest. And I am the more justified, as it seems to me, in taking this somewhat unusual course, because I have observed that complaints have been made in many quarters of the silence of the Government during the last two months upon the question to which I am about to refer, and that it has been said that they ought, before this, to have given some explanation to the public of the steps which they had been taking in regard to this matter. I, and I am sure all my colleagues, greatly regret that it should have been thought by any one that the Government of India have in any respect acted with a want of consideration for the feelings of the opponents of this measure, or with any want of courtesy to those who have addressed representations to the Government upon the subject. I can truly say that nothing could be further from our intention than any such want of courtesy or of consideration, and I hope I may be pardoned for saying that nothing could be further from my personal character and disposition than to treat those who are opposed to me on any public measure with any want of consideration or courtesy.

"The statement which I am now about to make will show, as it seems to me, conclusively, that this is the case in regard to the complaint of which I have just spoken, because that statement will establish clearly that the Government were not, until within the last few days, in a position to make any public declaration whatever on any part of their proceedings in reference to this matter. And even now what I have to say may be looked upon as somewhat premature, and must, in some respects, be incomplete, because in the absence of two important members of the Executive Council, who have not yet arrived in Calcutta,—His Excellency the Commander-in-Chief and General Wilson, without whose presence various matters connected with the measure itself, and the mode of proceeding in regard to it, ought not to be determined by the Government,—I am not yet, on some points, in a position to say more than that these points have still to be considered by the Executive Council. But, nevertheless, under the circumstances to which I have adverted, I have thought it right not to delay to state to this Council, at its first meeting here in Calcutta, what has been the action of the Government in regard to this Bill since the conclusion of the sittings of the Legislative Council in this city last March. But as there is no question before the Council at this moment, and as, therefore, this is not the occasion for discussion, I feel bound to abstain from anything like controversy or even argument, and to confine myself for the present as much as possible to a bare statement of facts.

"It will be in the recollection of all the members of this Council that the last step which was taken with respect to this Bill, on the 9th of March last, was to order that it should be referred, in the usual manner, to the Local Governments for their consideration and report. That reference was duly made, and in course of time the opinions of the Local Governments began to come in. As they came in, they were, of course, each of them carefully examined by the members of the Government. The last of these reports of Local Governments reached Simla on the 24th of July, and the Government then lost no time in carefully and deliberately considering the course which they thought ought to be pursued with respect to this measure, after the examination of the various opinions which had been offered upon it; and they were in a position to address the Secretary of State upon the subject on the 10th of August last.

"I do not think that any one will say, looking to the great importance of this question, and the necessity of proceeding with all due deliberation in regard to it, that any time was lost by the Government, if, having received the last of the opinions of Local Governments on the 24th July, they were ready to

lay their views before the Secretary of State in a despatch which left Simla on the 10th of August following.

"In that despatch, the Government of India, while expressing their opinion that the principles of policy upon which the Bill is founded ought not to be abandoned, proposed certain modifications of the measure, calculated, as they hoped and believed, to remove objections which had been urged against some of its proposals upon grounds which did not raise the question of principle. These modifications were the following :—They proposed that the jurisdiction to be conferred by the Bill upon Native Magistrates over European British subjects should be confined to District Magistrates and Sessions Judges *ex officio*. They proposed to leave unchanged the present powers of the Local Governments with respect to the appointment of Justices of the Peace; and they also proposed to adopt a suggestion of Sir Charles Turner, the Chief Justice of Madras, for amending section 526 of the Code of Criminal Procedure. That section enacts that 'whenever it is made to appear that a fair and impartial enquiry cannot be had in any Criminal Court; or that some question of law of unusual difficulty is likely to arise,' the High Court may transfer a case to another Court or to itself. Sir Charles Turner suggested that the High Court should be authorised to make the transfer in any case in which it should be made to appear that 'it was expedient for the ends of justice,' and that it would be desirable to supply what appeared to be a defect in the section by directing that in any case in which, before the commencement of the hearing, the Government, the complainant, or the accused should notify to the Court an intention to make an application for transfer, the Court should adjourn the hearing for such reasonable time as might be required to enable an application to be made and an order obtained upon it.

"These were the modifications which were suggested in our despatch of the 10th August to the Secretary of State. I, in accordance with what I have said just now, shall not upon the present occasion enter into any arguments on these points. Whenever an opportunity for debate arrives, the Government will be quite ready to state the grounds upon which they suggested those modifications, and the views which they entertain in respect to the effect which they will have upon the provisions of the Bill.

"That, in brief, was the nature of the proposals contained in the despatch. To make this statement complete, I ought to say that our hon'ble friend and colleague General Wilson, in regard to this despatch as to the former one, maintained the position which he had previously taken up of objecting to the measure altogether. The despatch, as I have said, went home on the 10th of

August; it was considered by Her Majesty's Government at home and by the Secretary of State in Council; and in a reply, dated the 8th of November last, the Secretary of State in Council expressed his concurrence in the proposals of the Government of India. That reply reached Calcutta last Saturday, the 1st of December, and this, consequently, is the earliest opportunity which has been afforded to me since that despatch came into the hands of the Government for making any statement with regard to this matter.

"There is also another question, connected not with the substance of this measure but with the manner of proceeding with it, to which I wish to refer on this the earliest opportunity. In the month of September last, the Government received a memorial from the Chairman of the Anglo-Indian Defence Association, which contained two requests. The first was that the papers which had been received from the Local Governments in connection with this Bill should be published at once; and the second was that further proceedings with regard to the Bill should be stayed until Parliament had had an opportunity of considering the Bill and expressing its opinion upon it. In the reply which was sent to that memorial the memorialists were informed that their first request had already been complied with, and that the papers relating to the matter had been published in the Gazette, where they appeared, I think, on the 8th of September. They were published at the earliest moment possible; we only waited until we had ascertained that the despatch we had sent home was in the hands of the Secretary of State, and until we were informed that he had no objection to the publication of the papers. The second request of the memorialists, namely, that any further proceedings with regard to the Bill should be put off until Parliament had had an opportunity of discussing the question and of pronouncing an opinion upon it, related to a matter which was essentially and entirely in the hands of Her Majesty's Government. Any question concerning proceedings in Parliament necessarily can only be determined by the Government at home. Such questions are altogether beyond the scope of the Government of India, and the Cabinet alone can decide what course should be taken upon any matter involving the proceedings of either House of Parliament. The memorial was forwarded by the next mail after it had been received to the Secretary of State, and his opinion on the subject of postponement was asked by the Government of India, who only said that the questions raised by the Bill ought in their judgment to be settled, one way or the other, before the end of the next sittings of the Legislative Council in Calcutta. In the same despatch in which the Secretary of State replied to our general proposals, he replied also to that particular request of the Anglo-Indian memorial, and he informed us that Her Majesty's Government do not see any good reason why a measure, which lies entirely within the competence of this Legislative Council and is already before

that body, should be postponed till Parliament meets, and they conclude therefore that the Bill will be taken up in the ordinary course of business, so that it may be disposed of during the usual session of the Legislative Council at Calcutta.

"I stated in the debate on the 9th March last as my personal opinion that, if the opponents of the Bill desired to appeal to the House of Commons, I should be the last person to object to such a course. I entertain the same feeling still, and I have made no concealment of it. It will be observed that the Secretary of State in his reply leaves a certain discretion to the Government of India as to the mode of proceeding with regard to this Bill within well-defined limits. I am not yet in a position, in consequence of the absence of the members of the Executive Council to whom I have referred just now, to say exactly when the next step with regard to this Bill will be taken. It is a subject which will be considered shortly by that Council. The next step, in the ordinary course of business, will be the reference of the Bill to a Select Committee, who will consider the Bill and any amendments which may be proposed in it, and due notice will of course be given to hon'ble members of this Council before any motion to refer the Bill to a Select Committee is brought before them.

"Such is the statement which I desire to make as to the action of the Government of India in respect to this Bill since March last. It shows clearly, as it seems to me, that, until last Saturday, when the despatch from the Secretary of State reached Calcutta, the Government here was not in a position to make any public declaration on the subject. The question was one which was originally referred to the Secretary of State, and the proposed proceedings of the Government of India received his sanction. It was one which, from the circumstances of the case, could not be dealt with by the Government of India, except in consultation with Her Majesty's Government; and one of the points, that relating to the proposal to postpone the Bill until after the meeting of Parliament, was wholly within the province of Her Majesty's Government at home, and could only be decided by them. Until, therefore, we were in possession of the views of Her Majesty's Government, we were debarred altogether from saying anything in public on the subject. I have, however, seen it said that, when Her Majesty's Government at home determined on the course which they were going to take, and the answer which they proposed to send, that course might have been communicated to the Government of India by telegram, and that, after having received that telegram, the Government of India might have made a statement to the public. Now, it appears to me, first, that it would have been inconsistent with ordinary practice, and

with official propriety, to make a public statement of this kind upon a telegram, unless Her Majesty's Government had directed that we should do so. But, further than that, I cannot think it would have been at all safe for the Government of India to have made any such statement upon a telegraphic communication. Suppose that that had been done, and suppose that when the despatch came, and had been made known to the public, it had been possible to say that there was any inconsistency between the statement made upon the telegraphic communication and the precise words of the despatch from the Secretary of State. I leave it to the members of this Council to consider whether that would not have produced a result very far from desirable.

"It seems to me that it was absolutely necessary, that I should be in a position to do what I have done to-day, namely, to use the precise language of the Secretary of State in explaining his views. Until the words in which those views were expressed were in my possession, I could not with any discretion have spoken in public upon the subject. Then I must also say that it appears to me that the proper place to make the first public declaration upon any proceedings connected with a measure which is before this Legislative Council is in this Legislative Council itself. I think that members of Council might have complained perhaps, if I, as the President of this Council, had made any such statement elsewhere. I am sure that most legislative bodies would undoubtedly have felt that in such a case some kind of slight had been cast upon them, although I have such confidence in the good feeling of the members of this body that I believe that, if I had been in a position to make such a statement, and had thought it right in the interest of the public to do so, some weeks ago, and at a time when this Council was not sitting, they would have overlooked any apparent discourtesy which might have been involved in such course; and, if an opportunity had been afforded me, I should probably not have hesitated to avail myself of it. But, as I have said before, the information was not in my possession until last Saturday, and this is the first public occasion on which a statement of that kind could have been made.

"I will say no more now. The immediate occasion is not, as I have said, one which admits of the introduction of any controversial matter, but I cannot conclude these few remarks without repeating that those who think that I or my colleagues have felt a cold indifference to the representations of those who are opposed to this Bill, are entirely in error. The silence we have maintained

till now has, as I have shown, been a necessary silence. Now that I have spoken, I earnestly trust that no word which has fallen from me will tend to add to the bitterness of the present controversy."

The Council adjourned to Friday, the 14th December, 1883.

FORT WILLIAM;
The 14th December, 1883. }

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 14th December, 1883.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., 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.

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

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

The Hon'ble Kristodás Pál, Ráj Bahádúr, C.I.E.

The Hon'ble Mahárájá Luchmessur Singh, Bahádúr, of Darbhanga.

The Hon'ble J. W. Quinton.

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

The Hon'ble R. Miller.

The Hon'ble Amír Alf.

BENGAL REGULATION XIX OF 1810 REPEAL BILL.

The Hon'ble MR. ILBERT introduced the Bill to repeal Bengal Regulation XIX of 1810 within the territories administered by the Lieutenant-Governor of the North-Western Provinces, and moved that it be circulated for the purpose of eliciting opinion thereon.

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 might think fit.

The Motion was put and agreed to.

INDIAN EMIGRATION.

BURMA COURTS BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the Burma Courts Act, 1875, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and 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 *British Burma Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

INDIAN EMIGRATION BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Natives of India be taken into consideration. He said :—

“This Bill proposes to re-enact, with numerous amendments, the existing Foreign Emigration Act (VII of 1871). It does not apply to the emigration which takes place from one part of British India to another, whether by sea, as from Madras to British Burma, or by land, as from Bengal and the North-Western Provinces to Assam. Emigration by sea to British Burma was until recently governed by a special Act, but that Act has been repealed by an Act of the present year, and that form of emigration is now entirely free. Emigration to Assam and the adjoining districts is, as the Council are aware, governed by Act I of 1882. With this form of emigration we are not concerned at all to-day. Accordingly, we are not called upon to consider the difficult, interesting and important questions which arise in connection with inland emigration, such as the conditions and restrictions which it may be necessary to impose on the emigration of labourers to, or on their employment in, such regions as Assam, or the mode and extent to which it may be practicable or desirable to regulate, to facilitate or promote that great movement of population from one part of the Empire to another which has, for centuries, been operating, and still operates, to fill up and bring under cultivation the waste places of India. The present measure deals only with emigration to places outside the limits of British India, and the term ‘emigration’ is defined by the Bill as meaning, for the purposes of the Act, the departure by sea out of British India of a Native of India under an agreement to labour for hire in some country beyond the limits of India other than the Island of Ceylon or the Straits Settlements. It will be observed that the measure does not affect

emigration to Ceylon or to the Straits Settlements. Ceylon may, for emigration purposes, be dealt with as if it were part of British India, and it is not necessary to place any special restrictions on emigration to that island. The Straits Settlements are in a very similar position. The Indian emigration to that colony takes place, I believe, exclusively from the Madras Presidency, and is at present regulated by a special Act (V of 1877) which applies only to that Presidency. We are now engaged in negotiations with the Government of the Straits Settlements, which will, I hope, before long enable us to repeal this Act, and to make emigration to that colony entirely free. But in the meantime, and as a temporary measure, we have thought it expedient to take power to extend the Act to other parts of British India in case it should be found necessary to regulate emigration from Calcutta to the Straits. I do not in the least anticipate that the Act will be found necessary, because I believe that no such emigration takes place, or is likely to take place.

“What we are concerned with, then, to-day, is the emigration which goes off from India to certain British and Foreign colonies in the West Indies and elsewhere, and which is, as I have said, at present regulated by an Act of 1871. Proposals for amending this Act have for many years been before the Government of India, and at last resulted in the preparation of the present Bill, which was introduced into this Council in the year 1881, was circulated for opinion in the ordinary way, and was sent to England for consideration both by the India Office and by the Colonial Office. A number of objections were raised by the Agents and other representatives of the colonies to various provisions of the Bill; and the Government of India was asked by Her Majesty's Government to suspend legislation until the opinions of the Colonial Governments, to whom the Bill had been sent, should be received. I mention this circumstance in order to explain the delay which has taken place between the introduction of the Bill and the presentation of the Committee's report. The delay has not been unfruitful of good results. The Government of India thought that it afforded an excellent opportunity for ascertaining by local inquiry the way in which the system of recruiting emigrants is actually carried on in India, the respects in which the present system is capable of improvement, the attitude of the people towards emigration, and the possibility of making it more popular. Accordingly, with the consent of the Government of the North-Western Provinces, Major Pitcher was directed to make an inquiry in those Provinces into the points to which I have referred; and a similar inquiry was subsequently made by Mr. Grierson in Bihár, at the wish of His Honour the Lieutenant-Governor of Bengal. To both those gentlemen—Major Pitcher and Mr. Grierson—we are deeply indebted for the admir-

able reports which they have sent in. Nothing is easier in this country than to collect opinions ; nothing is more difficult than to get at facts ; and it is as pictures of actual facts that these reports are so valuable. To quote the language of a Resolution which has been issued on the subject in the Revenue and Agricultural Department—

‘They show in the clearest light the obstacles in the way of emigration, the difficulties with which even the most honest recruiter has to contend, and the extent to which popular prejudice can be allayed, or is unconsciously fostered by District-officers. Of such information there was much need. On the one hand, the Magistracy has been repeatedly charged with being hostile to emigration ; on the other, grave accusations have been often brought against recruiters. Proposals, on the one hand, have been made to surround emigration with additional precautions, and have been objected to on the other as unnecessary and ruinously expensive. To arrive at the real condition of things was extremely difficult. Major Pitcher’s and Mr. Grierson’s reports have at least facilitated a decision. They show that the recruiter, though occasionally guilty of malpractices in the exercise of what is looked upon by a large number of people as a not very reputable calling, has to contend with many unnecessary difficulties ; that he is frequently impeded in most objectionable ways by the police and the underlings of the Courts ; that the registration of recruits is not unseldom perfunctorily performed ; that unnecessary restrictions are sometimes imposed ; and that generally a more friendly attitude on the part of the Government as represented by its local officers would lead to better results.’

“In addition to the inquiries made by these two officers, meetings were held in Calcutta in February, 1882, and in March last to consider the various suggestions which had been made for amending the emigration law. Mr. Buck, the Secretary of the Revenue and Agricultural Department, presided at these meetings, and they were attended by the local Agents for the different colonies. I believe I am right in saying that the proposals which we are now laying before the Council have, after careful examination, obtained the full approval of these gentlemen, as well as of the officers of the Indian Government who are charged with the care of emigrants. In fact, I may fairly say that few measures which have been laid before this Council have been made the subject of more minute and careful enquiries than the present Bill. It is essentially a measure of details, and we have every reason for hoping that the machinery will work smoothly and well.

“I have said that this is essentially a measure of details. There is, however, one important question of principle, which is discussed in the two reports to which I have referred, and about which, although it is not necessarily raised by the Bill, it may be as well to say a few words. It is this. What should be the attitude of the Government of India towards emigration to foreign countries ? Should they encourage it, discourage it, or remain neutral ? Both Mr. Grierson and Major Pitcher urge in forcible

language the expediency of the State taking a more active part than it has hitherto taken in the promotion of emigration. They consider that the people in the more closely populated districts should be encouraged to emigrate; that information about the colonies should be disseminated by Government officers; and that the advantages of emigration should be taught in village-schools. But Sir A. Lyall, the Lieutenant-Governor of the North-Western Provinces, whose opinion is entitled to the greatest weight, not only on personal grounds but because he is responsible for the government of the provinces from which the greatest flow of emigration takes place, is not prepared to go as far as this. He considers that measures such as have been suggested by Major Pitcher and Mr. Grierson might be misinterpreted, and he is doubtful whether emigration would benefit India as largely as is implied by their recommendations. He would, therefore, limit action for the present to removing all obstacles to emigration, to giving the people every facility to emigrate, and to strictly repressing the prejudiced opposition of the police and other Native subordinate officials. The question whether the one policy or the other should be adopted is not definitely raised by the present Bill, because it depends much less on the way in which the measure is framed than on the way in which it is worked; and this is a matter which the Government of India are disposed to leave very much to the discretion of the Local Government. My own opinion, I must confess, coincides rather with that of Sir A. Lyall than with that of the advocates of a more active policy. I think our attitude towards emigration should be an attitude of benevolent and watchful neutrality, and that our great object should be to secure fair play to both parties,—the employers on the one side, and the emigrants and their friends on the other,—to take care that the former are not hampered by unnecessary and vexatious restrictions, or impeded by unreasonable prejudices, and to protect the latter, so far as we can, against being entrapped or deluded into unfair bargains or carelessly or oppressively dealt with after they have left their homes. This appears, I may add, to have been the view taken by the Famine Commissioners. The present measure has been framed, if not in affirmation of, at least in complete accordance with, this policy; and, whilst carefully providing for the protection of the emigrant, we have been equally careful not to throw any needless obstacles in the way of his employer.

“In order to explain the purpose and object of the several provisions which we have introduced into the Bill with this view, I must say some thing about the parties to the contract which is entered into by the person who emigrates within the meaning of this Act, that is to say, who departs by sea from British India under an agreement to labour for hire, and about the

several stages in his progress from his home to his place of destination. The parties to the agreement are, of course, the employer on the one hand, and the emigrant or intending labourer on the other. But from the nature of the case, these two parties are not brought into immediate contact with each other at the stage with which alone our legislation is capable of dealing. The employer is represented by the Emigration Agent for the colonies and by the recruiters acting under him; the emigrant is assisted, and to some extent represented, by the officers of the Indian Government, who are specially charged with his protection against fraud, negligence or oppression. As to the employer's representative, it must, in the first place, be remembered that it is not every colony or foreign country that is permitted to receive emigrants from this country. Emigration within the meaning of the Bill is only allowed to certain countries, of which a list will be found specified in a schedule to the Bill, and to such other countries as the Government of India may choose to add to the list. The Government may not make any such addition unless it is satisfied that the Government of the country has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of emigrants to the colony during their residence there. Assuming that a colony is authorised to receive emigrants, it acts in this country through its Emigration Agent, who is appointed by the Government of the colony, but whose appointment is made subject to the approval of the Local Indian Government. Under the Bill as introduced, the Local Government was expressly empowered to revoke the approval; but this provision was strongly objected to by the Colonial Agents as derogatory to their position, and we have accordingly omitted it. Its insertion was perhaps due to excess of caution, for there is no reason to fear that any difficulty will arise from a Colonial Government insisting on the employment of an Agent whom our Government consider manifestly unfit to perform his duties.

“The Emigration Agent, then, is the principal official on the one side. The principal officials on the other are the Protector of Emigrants and the Medical Inspector of Emigrants, who are appointed by the Local Government and are stationed at the principal emigration-ports. The North-Western Provinces Government proposed that, with the view of securing uniformity of procedure in the various registering offices which are to be maintained under the Act, and of exercising a general supervision over recruiters, the Director General of Agriculture and Commerce and his assistants in these provinces should be appointed Sub-Protectors of Emigrants. We entirely concur in these proposals, but at the same time we do not think it is necessary to make a special provision in the Bill for such appointments. We think that

uniformity of procedure in the registering offices can be secured by executive order. We believe that the Director of Agriculture and Commerce and his assistants will be able to exercise the necessary supervision over the conduct of recruiters if they are invested—as a provision of the Bill enables them to be invested—with the powers of a Magistrate under the Act.

“Returning to the Emigration Agent. He conducts his local operations by means of persons called recruiters, who must on his application be licensed by the Protector of Emigrants. The license is good for a year, and, under the Bill as introduced, it restricted the operations of the recruiter to a particular specified area. This restriction has, however, been objected to by the Emigration Agents (whose objections are supported by the Secretary of State for the Colonies) as unnecessary, and as tending to increase seriously the cost of emigration. We admit the force of these objections, and, accordingly, under the Bill as it now stands, the recruiter's license extends to the whole area over which the Protector of Emigrants has authority, but it is not valid for any particular district until it has been countersigned by the Magistrate of the district. The Magistrate is empowered to refuse his countersignature if he has reason for believing that the recruiter is an unfit person, or that he has failed to perform any of the duties imposed on him under the Act. At the time when the Bill was prepared great complaints had been made of the malpractices of a class of persons who were described as sub-agents. We were informed that between the Emigration Agent and the recruiter there is almost always a third party, the sub-agent, who supervises the recruiter's operations, keeps his license, supplies him with funds, and generally keeps the depôt in the recruiting centre where the emigrants are collected together before being sent down to Calcutta. This person, we were told, was unknown to and unregulated by the law, and was sometimes of very doubtful character. Accordingly, in the first draft of the Bill, clauses were introduced specially providing for the appointment and remuneration of this sub-agent. However, when we went more closely into the matter, it appeared that these provisions were not really applicable to the facts as explained by Major Pitcher and Mr. Grierson. It turns out that the so-called sub-agent is not a recruiter of any distinct class at all, but is merely a head recruiter who sometimes recruits himself, and sometimes acts as an intermediate contractor between the Emigration Agent and the ordinary recruiters, and whose remuneration naturally takes the form of a commission. And the conclusion to which we came was that it would be impracticable to draw a legal distinction between these sub-agents and other recruiters, and that it would be preferable to continue treating them as recruiters, and to make them take out a recruiter's license. But we have added to the Bill a definition of ‘recruiter’ which

makes it clear that the term includes head recruiters and others who collect emigrants, as well as those who personally engage in recruiting.

“Such being the recruiter, we have to take great care that he does not enlist his emigrants on false pretences. Accordingly, we provide that he must get from the Emigration Agent on whose application he is licensed a written or printed statement, signed by the Agent and countersigned by the Protector of Emigrants, and stating the terms of agreement which the recruiter is authorized to offer on behalf of the Agent to intending emigrants. This statement must be both in English and in the Vernacular, and the recruiter is bound to show it to any person whom he invites to emigrate, and also to a Magistrate or officer in charge of a police-station, if called upon to do so.

“Having provisionally enlisted his recruits, the first thing that the recruiter does with them is to house them temporarily in a place which I referred to just now as a *depôt*, but which does not go by that name in the Bill. The fact is that the term ‘*depôt*’ is confined by the existing law to the *depôts* which are established at the port of departure; and, as we considered it inadvisable to disturb the existing nomenclature, we thought it better not to give any specific name to these up-country *depôts*, if I may so call them. You will find them referred to in section 27 of the Bill as places for the accommodation of emigrants pending their registration or removal to the port of embarkation. Many complaints had been made about the way in which some of these places are kept and managed; and accordingly we have armed District Magistrates and other officers with extensive powers for their supervision and inspection.

“The mention of registration brings me to the next stage in the emigrant’s career. Up to this point he is not under any contract binding him to emigrate. In order to become so bound, he must appear before a registering officer, have his name and certain particulars about him entered in a register, and then, and not till then, is he allowed to execute an agreement to emigrate. Until these formalities have been complied with, the recruiter is not allowed to carry him off to the port from which he is to emigrate. In the provisions relating to this branch of the subject, we have departed both from the existing law and from the proposals of the original Bill. Under the Bill as introduced, the work of registering had to be done by a Magistrate of a district or sub-division. The evidence collected by Major Pitcher and Mr. Grierson tends to show that these officers have not time to do the work thoroughly, and Major Pitcher has proposed Civil Surgeons, and Mr. Grierson the officers of the Registration Department, as appropriate registering officers. The Government of

Bengal have accepted Mr. Grierson's proposals, and the Government of the North-Western Provinces is willing to give Major Pitcher's suggestion a trial whenever the Civil Surgeon is competent to do the work. The Bill does not decide the question either way, but merely gives the Local Government a general power to appoint persons to be registering officers, and places them under the control of the District Magistrate, or of such other officer as the Local Government may appoint on their behalf. I may explain that the reference to this 'other officer' is intended to cover the officials whom the North-West Government wished to appoint Sub-Protectors of Emigrants. I understand that there will be no difficulty in adjusting, by means of executive arrangements, their relation to the District Magistrate.

"So much as to the officers who are to do the work. Next, as to the way in which the work is to be done. Mr. Grierson has told us in his report a great deal about the way in which the present system of registering emigrants works, or rather fails to work, and he has drawn up a statement showing, in two parallel columns, the difference between what may be called the theory and the practice of registration. This statement is so instructive and so illustrative of the kind of way in which administrative provisions are apt to break down, that I will take the liberty of reading it to the Council. The present system of registration, and the practice, are here given in parallel columns:—

*The system as ordained by law and by the
Bengal Rules.*

1. The intending emigrant shall appear before a Magistrate, as defined in sections 3 and 85 of the Act.

2. The Magistrate shall examine the emigrant, and satisfy himself on three points, and on no more—

- (1) that he is of age;
- (2) that he understands the nature of his contract;
- (3) that he is willing to fulfil it.

3. The Magistrate shall enter certain particulars in a *book* kept for the purpose.

The practice.

The registering officer is rarely empowered under section 85.

The registering officer frequently rejects recruits for other reasons, such as, for instance, that he has not been medically examined, or that he is telling lies about his address.

The Magistrate rarely, if ever, does so. The recruiter brings him an illegible, misspelt form, continually full of mistakes, which is kept in a bundle in the office. When, in rare instances, a book is kept, it is not kept "for that purpose," but inland and colonial registrations are kept mixed up together.

4. A copy of every registration, written on substantial paper, shall be furnished by the Magistrate to the emigrant registered.

A copy(?) is furnished, but it is not certified or compared. It is brought ready written by the recruiter, being frequently illegible, misspelt and full of mistakes. It is almost invariably on paper of the flimsiest description—the kind of paper used for cheap overland letters. In some cases the copy is not given to the coolie, but to the recruiter !!

5. *Authentic* copies of every such registration shall be *forthwith* forwarded by the Magistrate to the Emigration Agent.

This is hardly ever done. The recruiter brings another copy(?) similar to the above, which is signed by the Magistrate, but never compared. It is then usually returned to the recruiter.

6. And to the Protector of Emigrants.

Often not done. When it is, the copy (?) is another incorrect form filed by the recruiter.

7. A certain form of register is prescribed by the rules.

This form is sometimes not followed, and important columns, such as that for next-of-kin, are omitted.

8. Under the rules, monthly returns of emigration should be sent to the Protector.

In some cases these are not sent.

9. These returns should be correctly and intelligently filled up, as from them the figures for the Protector's annual report are drawn.

They are never correct. People are counted as emigrants who should not be counted, and *vice versa*: hence the Protector's and the district figures never agree, e.g., in Alipore, the district figures, quoted (I believe) in the Annual Administration Report, gave in one case 1,500 when the Protector's were only 700. The Protector's figures were correct.

“Now, I do not mean to say that our proposed system is certain to work quite smoothly and perfectly, nor can I feel sure that these, or indeed any other, legislative provisions will work precisely in the way in which we intend them to work. But at least we have done our best to take warning by what has been told us, and to devise a remedy for some of the most obvious defects in the existing system. In the first place, we propose to reverse the existing order of proceedings, and to make the registration come first and the execution of the emigrant's agreement afterwards. We think that there is a better chance of the agreement being accurate and satisfactory in form and substance if it is drawn out in the office of the Magistrate or other registering officer after the intending emigrant has been passed and registered, than if it is drawn up, as it is under the present practice, by some illiterate person beforehand. The course

of proceeding will be this. The recruiter will take his recruits before the registering officer, who in the Mufassal may or may not be the Magistrate of the district, and in the emigration-ports will be the Protector of Emigrants himself. The registering officer is to examine the recruit, apart from the recruiter, with reference to the agreement into which he proposes to enter, and is to satisfy himself that the recruit is competent and willing to enter into the agreement, that he understands its nature, that he has not been induced to enter by any coercion, undue influence, fraud, misrepresentation or mistake, that its terms are in conformity with law, that is to say, contain all the particulars which, as I shall presently explain, it is required by the Act or rules to embrace, and that it is in conformity with the statement which, as I have already explained, the recruiter is required to show the recruit. If he is satisfied on these points, he is to enter in a register-book the name of the recruit, and various particulars concerning him, including the name, sex, name of father, caste, occupation and age of the intending emigrant, and the name of the village or place of which he is a resident. It may be asked, what is the use of entering all these minute details? I will let Mr. Grierson answer.

‘The objects,’ he says, ‘of a system of registration, I take it, are two-fold. One is to keep a record of the transaction, just as the record of any other contract is kept. This is a minor consideration. The other and more important object is to afford a connecting link between the coolie in the colony and his relations at home. A coolie communicates with his relations at home by means of letters and by means of remittances. His relations communicate with him by letter. Under a perfect system of registration a coolie ought to be able to send a remittance home to his friends, through the Emigration Agent and the Magistrate of his district, with the certainty of its reaching its destination; and a relation should be able to go to the Magistrate of a district and say, “My son emigrated in such-and-such a year; how can I send a letter to him?”’

“That is what we are anxious to do, to devise some means by which a coolie may be enabled to emigrate without being cut off completely from his relations and his home. And to this end we are endeavouring to supplement the improved system of registration, by giving effect to various suggestions which have been made for promoting a greater interchange of letters between the emigrants in the colonies and their friends at home, suggestions to which, I need hardly say, full effect cannot be given without the co-operation of the Colonial Governments.

“When the intending emigrant has been duly registered, the next step is to execute the agreement, which is prepared in the office and executed both by the emigrant and the recruiter in the presence of the registering officer. It must contain on one side all necessary particulars as to the nature, duration and term of the emigrant’s service, and, on the other, the particu-

lars which have been already entered in the register. These will enable him to prove his identity if necessary. Three copies of the agreement are to be taken : one goes to the emigrant himself, the other to the recruiter, and the third is kept by the Protector of Emigrants. I need not follow in minute detail the subsequent movements of the emigrant. Suffice it to say that he is conducted to the emigration-depôt at the port of departure, which is supposed to be under the constant supervision and inspection of the Protector of Emigrants and Medical Inspector, and after a short stay there is duly shipped off in an emigrant-vessel. Every emigrant-vessel must be licensed, and the license must not be granted until the vessel has been surveyed and it has been ascertained that she is seaworthy, has proper and sufficient accommodation, is properly ventilated, has all the tackle, apparel and furniture requisite for her intended voyage, is properly manned and officered, and is, in fact, in all respects suitable for the carriage of emigrants. There is ample power to make rules as to the provisions, clothing, fuel and water which are to be supplied for the emigrants' use, and as to the staff of surgeons and attendants who are to be on board the vessel. And the Protector of Emigrants and the Medical Inspector are bound by the Act to see personally that these rules are complied with. The emigrant goes on board under their personal supervision, and the master of the vessel is required to execute a bond for the due performance during the voyage of the duties imposed on him by the Act. Thus every reasonable precaution is taken which our law can enforce that the emigrant shall be properly treated from the time when he leaves the place where he is recruited to the time when he lands in the colony for which he is bound. Further than this our law cannot follow him, and after this point we can only provide indirectly for his welfare by such influence as we can bring to bear on the Government of the country in which he has established himself. That influence is, however, of a very substantial kind, and may be enforced in extreme cases by the prohibition of emigration. There is a provision enabling the Governor General in Council to prohibit emigration to any particular country on certain grounds which are specified in the Bill and which are as follows :—

‘ (a) that the plague or any other epidemic disease dangerous to human life has broken out in the country ;

‘ (b) that the mortality among emigrants in the country is excessive ;

‘ (c) that proper measures have not been taken for the protection of emigrants immediately on their arrival in the country or during their residence therein ;

‘ (d) that the agreements made with emigrants, as such, before their departure from India are not duly enforced by the Government of the country ; and

‘ (e) that the Governor General in Council, having, either directly or through the Secretary of State for India in Council, addressed the Government of the country with a view to obtain

information regarding the condition or treatment of emigrants therein, has not within a reasonable time received the information asked for.

“Such are the general provisions of this measure. The differences between the first draft of the Bill and that which is now before the Council are very fully and minutely explained in the Report of the Select Committee, and I need not dwell on them further. It will be observed that the original draft of the Bill conferred on the Government extensive powers to make rules, and that we have in the present draft carried this power still further, by eliminating certain matters of detail from the Bill, and leaving them to be provided for by rule. I am sure that a measure of this kind, if it is to work well, must be made elastic, and that any attempt to fix and stereotype minute administrative details will probably produce either inconvenience or absurdities. Let me illustrate this from the English Emigration Law, of the working of which I happen to have some knowledge. The English Emigration Acts, or Passenger Acts as they are called, regulate with minute particularity the diet of the emigrant on board-ship, even condescending to prescribe the precise amount of pepper which is to be served out to each emigrant every day. They were framed in the days of sailing-ships, when a voyage across the Atlantic was a long business, for which a considerable supply of salt-meat and other like provisions had to be laid in. A few years ago it was accidentally discovered that the steamers of one of the principal Atlantic lines, the *Cunard*, I think, were in the habit of complying with the requirements of the law by taking so many junks of salt-beef on each voyage from Liverpool to New York—and back again. Of course, nobody wanted it, nobody ate it, but there it was to satisfy the law. It is matters of this kind that we wish to leave to be regulated by rules which can be easily changed on being found to be unnecessary or unsuitable. The new Act will not be brought into operation until the rules are ready, but I believe that this will not involve very long delay. I understand that Mr. Grierson, to whom I have so often referred, is now engaged, under the instructions of the Bengal Government, in the preparation of an Emigration Manual, which will contain, not only the revised rules and forms, but also such information as may be requisite for explaining the emigration-system to those who have to work it and those who are to be brought under it.”

The Motion was put and agreed to.

The Hon'ble KRISTODÁS PÁL said that the very full report of the Select Committee on this Bill, and the lucid statement made by the hon'ble member in charge of it, showed that it had received a careful revision at the hands of the Select Committee. It also evinced a benevolent solicitude on their part for the protection and welfare of the poor Native emigrant. The question of the

policy of emigration was not before the Council, and he would not, therefore, touch upon it. But it might be well asked whether, when large tracts of land lay unreclaimed and uncultivated in many parts of the country, undue encouragement should be given to emigration to foreign countries; but, as far as he understood the Bill, it would not give undue encouragement to such emigration. If he had understood his hon'ble friend correctly, he understood him to say that the Government occupied a position of neutrality, giving fair play to all parties who would come under the operation of the Bill. That, he thought, was a fair position, but all that he, as a Native of the country, wished to see was that the labourer who hired himself to go to foreign parts should on the one hand be treated as a free agent, and on the other should be protected from fraud, misrepresentation and oppression; and, if the Bill should attain that object, he thought the Council would have no reason to complain. Following the principle of the Bill, he ventured to propose, with His Excellency's permission, a few small amendments. Care had been taken in the Bill to provide for the proper explanation to the intending emigrant of the nature of the agreement which he would be called upon to execute. He thought it was highly desirable that, in the initial stage of the engagement, the emigrant should have a clear idea of the nature of the life he was about to enter upon. As far as he could judge from the detailed provisions of the Bill, great precautions had been taken to explain fully to the intending emigrant the nature of the engagement. But at the most important moment, when he had to make up his mind, he was left almost in the dark. Section 26 of the Bill provided—

“The recruiter shall produce the statement for the information of every person whom he invites to emigrate, or when called upon to do so by any Magistrate or officer in charge of a police-station.”

Now, it was well known to hon'ble members that the emigrant was often an ignorant, illiterate person, unable to read the statement produced before him, and, if he asked the recruiter to read it, that man, if he was inclined to deceive him, might read a version not contained in the statement itself. So that, at the most important moment, when an illiterate emigrant was called on to make up his mind, he would be almost entirely in the dark as to what the contents of the statement might be, as to the character of the agreement, and as to the nature of the life he would be called upon to lead. He thought that at this stage it was of the utmost importance that every facility should be given to him to understand the nature of his engagement; and in that view he proposed that the recruiter should be required to furnish the intending emigrant with a copy of the statement, so as to enable the emigrant to take it home to show to his friends and relatives, or the village-headmen, and

consult them about it before making up his mind. He would be then in a position to know what he should do, and to understand the nature of the service required of him. He (Ráf Kristodás Pál) had heard some objections taken to his proposal. In the first place, it had been said that it would impose extra cost on the Emigration Agent. He believed that the statement would be a printed paper and the additional cost would be a trifle: if a hundred copies of the statement were struck off, it would entail only the cost of the paper and printing. Then he was told that the recruiter would have to carry a heavy bag of paper. Now, he did not know the exact number of emigrants recruited in each district, or in each sub-division, nor had he any idea of the exact number of recruiters employed in each district; but he could not believe that a recruiter on the average engaged more than 100 recruits; and, supposing that he did engage 200, his bag would not be at all heavy if he had to carry some 200 papers of this kind. But, even if the recruiter was put to some slight inconvenience, he thought it a question for grave consideration whether the emigrant should not have a fair opportunity of considering the nature of the connection he was about to form at the very outset of his new career—and surely this was of far more importance than the question of a little heavier bag on the back of a recruiter. Then he was told that this provision was not necessary and would impose an obstacle in the way of emigration. He, for one, did not see how this would prove an obstacle in the way of emigration. The more intelligently and knowingly the emigrant acted, the better would it be for the cause of emigration. He was aware that in section 37 there was a provision that a copy of the agreement when executed should be furnished to the emigrant. Now, this was an after stage. After the agreement had been executed it would be too late for the emigrant to recede, supposing that he wanted to change his mind, and supposing that he came to know what he did not know before. He humbly conceived that the proposal which he had submitted to the Council was calculated to give the intending emigrant an opportunity to understand his real position before he made up his mind, and it was therefore of great practical importance. Upon these grounds, he would move that for sub-section (3) of section 26 the following sub-section be substituted:—

“(3) The recruiter shall give a true copy of the statement to every person whom he invites to emigrate, and shall produce the statement for the information of any Magistrate or officer in charge of a police-station when called upon to do so by the Magistrate or officer.”

The Hon'ble MR. QUINTON said:—“While altogether sympathising in the anxiety of my hon'ble friend Ráf Kristodás Pál Bahádúr that the intending emigrant, should have full information as to the offers which the recruiter is

authorised to make, and should not be led blindly into binding himself by a contract of such serious importance, I am unable to support the amendment.

“It appears to me that the provisions of the Bill are amply sufficient to secure the object we both have in view, and that the proposals of my hon’ble friend go far beyond what is reasonably required for that purpose.

“My hon’ble and learned friend Mr. Ilbert in his opening speech has pointed out that the recruiter under the Bill must be furnished with a written or printed statement, signed by the Emigration Agent and countersigned by the Protector of Emigrants, in English and in the Vernacular language of the local area to which the recruiter’s license extends, of the terms which the recruiters is authorised to offer on behalf of the Agent to intending emigrants, and is also bound to produce the statement for the information of every person whom he invites to emigrate, or when called upon to do so by any Magistrate or officer in charge of a police-station.

“My hon’ble friend Raí Kristodás Pál is not satisfied with the production so enjoined, but would compel the recruiter to give to each person invited to emigrate a copy of the statement. Now, considering that probably not one per cent. of the persons likely to be so invited can read, this seems a very unnecessary precaution. The intending emigrant can procure full information as to the recruiter’s offers, by having the statement read and explained to him when he reaches the depôt; and section 31, as we have heard, strictly enjoins on the Registering Officer the duty of examining the intending emigrant, apart from the recruiter, as to his competence and willingness to make the agreement, as to his comprehension of the nature of such agreement and as to his not having been induced to enter into it by unfair means. The Registering Officer must further draw up the agreement containing the particulars specified in the Bill, and furnish the emigrant with a copy of it. My hon’ble friend says that this will be too late; but, considering that the Registering Officer must ascertain from the emigrant that he understands and consents to the particulars contained in the agreement before it is drawn up, I do not see how this objection applies. He further urges that, if the man invited to emigrate gets a copy of the statement, he can take it home with him and consult the headman of his village; to which I would answer that so long as their present attitude towards emigration is maintained by zamíndárs, they are the last persons whom an intending emigrant would wish to consult.

“The story told by my hon’ble and learned friend of the salt beef carried from Liverpool to New York, and back again from New York to Liverpool, in order to comply with the English Passenger Acts, furnishes a warning against overloading our Bill with minute regulations. In my time I have registered, I suppose, several hundred emigrants, and the cases in which I have had to tell

one to stand aside, because he did not know where he was going or what he was to get, were quite exceptional.

“When reading and writing become more widely diffused, and broad sides and hand-bills are likely to prove effective, the agencies will no doubt in their own interests readily adopt the latter; but, as things are at present, it appears to me unfair to impose on Agents and recruiters an obligation attended with considerable trouble and expense and enforceable by legal penalties, which is of no practical use.

“I may add that I have consulted my friend Major Pitcher, whose thorough acquaintance with the working of the recruiting system renders his opinion of great value, and that he fully concurs in the views I have expressed.”

The Hon'ble MR. ILBERT said that, when the Hon'ble Rai Kristodás Pál first gave him private notice of this amendment, he expressed his entire sympathy with the object the hon'ble member had in view, namely, to give the fullest possible information to the intending emigrant of the kind of bargain he was about to enter into; and said that he would be willing to accept the amendment, unless it appeared that there was any objection to it on administrative grounds. On a question of this kind the opinions of a gentleman like Mr. Quinton, who had taken a practical part in the work of registering emigrants, and of Major Pitcher, were entitled to considerable weight; and he was bound to say, after having heard what his hon'ble friend Mr. Quinton had said, and after taking into consideration Major Pitcher's opinion, that his own view was that the amendment which had been proposed was on the whole likely to cause greater inconvenience than would be justified by any good which was likely to follow from it, and that the best way of giving an intending emigrant full information of the bargain he was about to make was to be found in that provision of the Bill which imposed on the registering officer the duty of ascertaining whether he really knew where he was going, and what was the kind of undertaking upon which he was about to enter. For these reasons only, MR. ILBERT personally should vote against the amendment.

The Motion being put, the Council divided:—

Ayes.

The Hon'ble Amír Ali.
The Hon'ble Mahárájá Luchmessur Singh,
Bahádúr, of Darbhanga.
The Hon'ble Kristodás Pál.
The Hon'ble H. S. Thomas.
The Hon'ble Durgá Charan Lábá.
The Hon'ble W. W. Hunter.
The Hon'ble T. C. Hope.
The Hon'ble Sir S. C. Bayley.
His Excellency the President.

Noes.

The Hon'ble R. Miller.
The Hon'ble T. M. Gibbon.
The Hon'ble J. W. Quinton.
The Hon'ble H. J. Reynolds.
The Hon'ble Sir A. Colvin.
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.

The numbers being equal, the President gave his casting vote with the ayes.

So the Motion was carried.

The Hon'ble RAJ KRISHNODÁS PÁL moved that in section 36, after the words "and term of service" the words "and the remuneration" be inserted. He said that his object in moving the amendment was this. When a man expatriated himself from his country for service in another country, he ought to know what he would earn there. The Bill gave him no information on that subject. It was true that the Bill provided for the passing of rules by Government, which, amongst other particulars, might include information as to the amount of wages; but he thought it was of the utmost importance that the Bill should specifically provide that the emigrant should be informed, even if approximately, of the wages he was to receive before he executed the agreement.

The Hon'ble MR. ILBERT said he was quite willing to accept this amendment. The Bill as originally drawn provided that the agreement should specify the daily or monthly wages the emigrant was to receive. But when the Select Committee came to consider how the form provided for the purpose should be filled up, they found great difficulty in cases in which the labourer was paid by the piece or the job, and accordingly they omitted the reference to wages, and merely provided that the agreement should provide the nature and terms of the service to be performed, and they intended that the information on this point should include, as far as possible, the remuneration he was to receive.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT said that, with the permission of the Council, he would ask leave to move a small amendment in section 71 of the Bill. As he had not given notice of the amendment, he was entirely in the hands of the Council as to whether or not he should move it. The amendment was this, that in section 71, for the word "proceeding" the words "embarking at that port" be substituted. The Bill was framed on the assumption that all the emigrants who were to go by a particular emigrant-vessel would be shipped at the same port; but it had been brought to the notice of the Government that it might be convenient in some cases for a vessel proceeding from Calcutta to stop at Madras and ship emigrants there. So far as he could judge, none of the provisions of the Bill would prevent this being done. The only difficulty which he thought might arise was in connection with some of the terms of the certificate to be given under the Act. Section 71 required a certificate from the Protector of Emigrants and the Emigration Agent for the country to which the

emigrants were to be conveyed, to the effect that they had, in respect of all the emigrants proceeding in the vessel, done all that was required by the provisions of the Act, or by the rules made under the Act, to be done by the Protector and Agent respectively; and a technical difficulty might arise as to compliance with this requirement of the law. Therefore, he proposed that the certificate should not be in respect of all the emigrants "proceeding in the vessel," but only in respect of the emigrants embarking at the port to which the Protector and Agent belonged.

The Motion was put and agreed to.

The Hon'ble RAÍ KRISTODÁS PÁL moved that for clause (b) of section 83 the following clause shall be substituted:—

"(b) fails to give a true copy of the statement with which he is provided under section twenty-six to any person whom he invites to emigrate".

He said that, as the first amendment imposed an obligation on the recruiter, it was necessary that there should be a penalty attached if the obligation was not fulfilled.

The Hon'ble MR. ILBERT observed that he thought this amendment was a necessary consequence of the amendment which had already been carried, and he had, therefore, no objection to offer.

The Motion was put and agreed to.

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

The Hon'ble MR. AMÍR ALÍ expressed the satisfaction which was felt among all classes of the Indian community with this measure. The hardships to which emigrants were subjected, and the false representations of which they were very frequently victims, made some such measure absolutely necessary; and he had no doubt that, when this measure was passed, it would be regarded as a great boon by the classes which it would affect. There was, however, one point regarding which he entertained considerable doubts, and these doubts, he should also add, were to some extent shared by some of the leading members of the Native community. The point to which he referred was as to the limit of age contained in section 39 of the Bill. He mentioned his views to the hon'ble and learned member in charge of the Bill, and he learned from him that the matter had received careful consideration in the Select Committee, and therefore he was constrained to come to the conclusion that he would not be justified in raising a discussion on it at the present stage of the Bill.

The Motion was put and agreed to.

RANGOON TRAMWAYS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to authorize the making, and to regulate the working, of Street Tramways in Rangoon be taken into consideration. He said that this Bill was prepared for the purpose of giving effect to an agreement entered into between the municipality of Rangoon and Mr. Darwood, for the purpose of making street tramways in the town of Rangoon, on the understanding that all the roads were situated within municipal limits. But the Government had since been informed that part of one of these roads lay not within municipal limits but within the military cantonment. The simplest way to meet the difficulty, the Committee considered, was to add a section to the Bill providing that all the roads specified as roads over which tramways were to be constructed should, for the purposes of the Act and of the agreement, be deemed to be situate within the municipality, and they had accordingly added a section to that effect. The other amendments made by the Committee in the Bill were of a very trifling nature, and he need not allude to them.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that, in section 16, for clauses (b) and (c), the following be substituted, namely:—

“(b) does anything in such a manner as to obstruct any carriage using any such tramway; or

“(c) abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (a) or clause (b).”

He explained that the amendment was of a merely formal character.

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.

SUNDRY BILLS.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Gibbs' name be substituted for Sir S. Bayley's as a member of the Select Committees on the following Bills:—

To amend the law relating to Local Self-government in British Burma.

To amend the Legal Practitioners' Act, 1879, and the Indian Stamp Act, 1879.

The Motion was put and agreed to.

SUCCESSION CERTIFICATES BILL.

The Hon'ble SIR A. COLVIN moved that the Hon'ble Mr. Gibbs' name be substituted for Sir S. Bayley's as a member of the Select Committee on the Bill to amend the law relating to certificates granted under Act XXVII of 1860 (*an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The Motion was put and agreed to.

The Council adjourned to Friday, the 21st December, 1883.

D. FITZPATRICK,

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

PORT WILLIAM; }
The 21st December, 1883. }

*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 21st December, 1833.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., 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.

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

The Hon'ble Durgá Charan Láhá.

The Hon'ble H. J. Reynolds.

The Hon'ble H. S. Thomas.

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

The Hon'ble Kristodás Pál, Bál Bahádúr, C.I.E.

The Hon'ble J. W. Quinton.

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

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

QUIETING OF TITLES (PANJÁB) BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill for the Quieting of Titles depending on Decisions passed on appeal by certain Settlement-officers in the Panjáb. He said that the object of the Bill was to remove doubts, which had been raised by a recent decision of the Panjáb Chief Court, as to whether certain Settlement-officers had been duly empowered to exercise appellate jurisdiction in suits and other proceedings relating to land-revenue.

The Motion was put and agreed to.

UNIVERSITIES HONORARY DEGREES BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to authorize the Universities of Calcutta, Madras and Bombay to grant certain honorary degrees.

The Council adjourned to Friday, the 4th January, 1884.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

FORT WILLIAM,

The 21st December, 1883.