

BENGAL TENANCY BILL.

RETURN to an Address of the Honourable The House of Commons,
dated 31 March 1884;—*for*,

“COPIES of REPORT of the COMMITTEE of the LEGISLATIVE COUNCIL of
INDIA upon the BENGAL TENANCY BILL:”

“And, of the AMENDED BILL.”

India Office, }
28 April 1884. }

J. K. CROSS,
Under Secretary of State for India.

(*Mr. Dalrymple.*)

Ordered, by The House of Commons, to be Printed,
23 June 1884.

LONDON:
PRINTED BY HENRY HANSARD AND SON,
PRINTERS TO THE HOUSE OF COMMONS.

To be purchased, either directly or through any Bookseller, from any of the following Agents, *viz.*
• Messrs. HANSARD, 13, Great Queen-street, W.C., and 32, Abingdon-street, Westminster;
Messrs. EYRE and SPOTTISWOODE, East Harding-street, Fleet-street, and
Sale Office, House of Lords;
Messrs. ADAM and CHARLES BLACK, of Edinburgh;
Messrs. ALEXANDER THOM and Co., of Messrs. HODGES, FIGGIS, and Co., of Dublin.

COPIES of REPORT of the COMMITTEE of the LEGISLATIVE COUNCIL of
INDIA upon the BENGAL TENANCY BILL; and of the AMENDED BILL.

THE following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th March 1884:—

We, the undersigned Members of the Select Committee to which the Bengal Tenancy Bill was referred, have considered the Bill and the Papers noted in the Schedule hereto annexed, and have the honour to submit this preliminary Report.

2. We have recast the Bill, and have embodied in the revised Bill such alterations as commend themselves to the majority of us, but there are various points on which we consider that further information is requisite, and we recommend that the Bill as altered by us should be republished for further criticism, in the interval that will elapse before we resume our labours in November.

3. The present Report being only a preliminary one, several members of the Committee wish it to be recorded that they postpone the expression of their opinions on particular points until the final Report is submitted to the Council. It must also be understood that generally in referring to the decisions of the Committee we state the views of the majority.

CHAPTER II.

CLASSES OF TENANTS.

4. This chapter has been introduced for the purpose of describing the different classes of tenants with which the Bill deals. It will be seen from it that raiyats at fixed rates are now treated as a distinct class instead of being, as in the original Bill, a sub-class of tenure-holders. It will further be observed that the term "non-occupancy-raiyats" has been substituted for "ordinary raiyats," which latter term has been justly objected to as a misnomer. Lastly, it will be seen that tenants of homestead or Bastu land, which is not part of an occupancy-holding, have no place in the revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class, but at present we have not before us the information requisite for dealing with the questions involved. It is clear that, owing to the various conditions which attach to the holdings of such tenants in different parts of the country, Chapter VII. of the original Bill would, if it were to be retained, need amendment in certain particulars. But we are unable to formulate this amendment, pending the receipt of further information, which we hope will be supplied by the Local Government.

5. In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognising the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove, difficulties.

CHAPTER III.

TENURE-HOLDERS.

6. The sections (14-17) of the original Bill relating to the right to hold at fixed rates have been removed to Chapter VIII. of the revised Bill, and will be more particularly referred to when we come to speak of that chapter. Section 20 of the original Bill, which contained a special provision relating to lands in temporarily-settled districts, has been transferred to the supplemental chapter.

7. We have made a considerable alteration in section 7, sub-section (3), which lays down the rules to be followed by the Court in enhancing the rent of a tenant in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than 10 per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the costs and risks of collection. We have left untouched the provisions that the enhanced rent should not be more than double the previous rent and that it should hold good for 10 years.

8. The special provisions of the original Bill relating to *patni* tenures, with the exception of the definition section (36), which has been transferred to the preliminary chapter, and the section (42) regarding summary sale, which has been placed in the chapter relating to that subject, have been included in this chapter.

9. Of the alterations we have made in the sub-division of this chapter relating to registration of transfers and successions, the following only seem to call for notice, namely:—

(1.) The addition to sub-section (1) of section 15 of a proviso allowing a landlord to refuse to register a transfer of a tenure if any rent is in arrear;

(2.) The abolition of the additional fee imposed by section 27 (2), clause (b), of the original Bill as a penalty for delay in applying for registration, and the insertion of a clause fixing the fee at 2 rupees where no rent is payable by the tenure-holder [section 15 (2)];

(3.) The addition to section 18 of a sub-section providing that a person becoming entitled to a tenure by transfer or succession shall not be entitled to recover rent by suit, distraint, or other proceeding until the transfer or succession has been registered or a notice of it has been served on the landlord; and,

(4.) The amendment of the section (now section 21) relating to the granting of copies of entries in the register, so that the fee for every copy granted shall be such amount, not less than one anna or more than one rupee, as the Local Government may fix.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

10. In the matters of transfer and succession we have assimilated the conditions of the settled-raiyat holding at fixed rates to those of tenure-holders. It was suggested that this class of raiyats should be sub-divided into (a) those holding under a registered lease or judicially declared title, and (b) those holding at fixed rates under the statutory presumption, the former being assimilated to tenure-holders and the latter to raiyats with a right of occupancy; but the majority of us were unable to accept this proposal.

CHAPTER V.

OCCUPANCY-RAIYATS.

11. The main lines of this chapter, so far as regards the acquisition of the status of a raiyat and the right of occupancy, remain unchanged, and we have only to mention such alterations in the details as appear to us to call for notice.

Our attention has been drawn to the inconvenience which may arise in certain exceptionally large estates, such as those of the Mahárájá of Burdwan and others, from the status of settled-raiyat holding good over the whole estate. We desire to learn if the Government of Bengal consider that in these exceptional estates any known fiscal or administrative area can be advantageously substituted for the area of an estate.

12. Another matter connected with the definition of "estate" for the special objects of this chapter, to which we desire to draw attention, is the provision in Section 27 (*b*) to the effect that where a partition has taken place "since the first day of January 1853" the parent estate shall, notwithstanding the partition, be regarded as a single estate. The date mentioned was chosen because it was understood that it might reasonably be expected that from about that time complete records of partitions would be forthcoming; but the particular point of time to which we should go back is of course open to further consideration, and accordingly we have directed that the words fixing it shall be shown in italics.

13. We have, at the instance of the Government of Bengal, inserted in Section 26 (definition of settled-raiyat) a sub-section (2) providing that when it is proved or admitted that a person holds land as a raiyat, it shall be, as between him and his landlord, presumed for the purpose of the section, until the contrary is shown, that he has for 12 years held the land or some part of it as a raiyat. Such a presumption appears to us to be warranted by the existing state of things in the Lower Provinces, and, while it tends to simplify litigation, it is one which the landlord ought to have no difficulty in rebutting in any case in which it does not hold good.

14. We have [section 26 (6)] retained in substance the provision of the original Bill under which a person does not lose his status as a settled-raiyat merely by the accident of his being out of possession of a holding in the village or estate for any time not exceeding one year, but have added to it a clause [sub-section (7)] to the effect that if he recovers possession of any land under Section 96 (as to which see *infra*, paragraph 66) he shall be deemed to have continued to be a settled-raiyat, notwithstanding his having been out of possession for more than a year.

15. The chapter relating to merger having been omitted from the Bill for reasons to be explained further on, we have thought it desirable, in order to prevent any misapprehension, to insert in this chapter a section (28), providing that, if the landlord of a raiyat having a right of occupancy acquires the interest of the raiyat by purchase or otherwise, the occupancy-right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person.

16. We have omitted Section 48 of the original Bill, which provided for the acquisition of the occupancy-right by grant, and have substituted for Section 49 of that Bill relating to the acquisition of the occupancy-right in lands of the classes comprised under the term *khámár* as there defined, a section (30) simply providing that nothing in the chapter shall confer a right of occupancy in lands of those classes where such lands are held under a lease for a term of years, or under a lease from year to year.

17. We have, in affirming that the raiyat may use the land in any manner that does not render it unfit for the purposes of the tenancy, added [Section 31, Clause (*a*)] that he shall not cut down trees thereon in contravention of any local custom.

18. In the division which relates to the landlord's right of pre-emption, and which is now headed "restrictions on transfer," we have [in Section 32 (4)] provided that the landlord, if he elects to purchase, must tender the price within one month from the date on which it is agreed on or fixed, and we have also inserted words to allow the raiyat, if his landlord claims to purchase, the option of keeping the land.

19. We have further inserted in the same section a sub-section (5) providing that if the raiyat attempts to sell in contravention of the provisions of the section the sale shall be void as against his landlord.

20. We have omitted Section 55 of the original Bill, which gave the landlord a right of pre-emption when the occupancy-right is bequeathed.

21. As regards gifts of the occupancy-right, we believe that the great majority of such gifts would be either of the nature of bequests or of merely fictitious transactions covering sales. It is only in the case of gifts of this latter class that the landlord seems to us to stand in need of any protection, and we think that sufficient protection will be afforded him by requiring that a gift must be made by a registered instrument, and that a copy of the instrument shall be forthwith served on the landlord, so as to give him an opportunity of questioning the transaction if he sees any ground for believing that it is not *bonâ fide*. We have, however, exempted from this requirement gifts by Muhammadans to persons within the prohibited degrees, as such gifts are usually substitutes for testamentary dispositions (Section 35).

22. Lastly, we have added a section (36) restricting the right of pre-emption to proprietors and permanent tenure-holders, and other tenure-holders authorised by them to exercise it, as it seems to us that the exercise of such a right by a temporary tenure-holder, otherwise than with the permission of a superior landlord having a permanent interest in the land, would give rise to difficulties and complications which it is desirable to avoid.

23. Great objection has been taken to Section 56 of the original Bill, which provided that when a landlord acquires the occupancy-right, any raiyat afterwards taking the land shall have an occupancy-right in it; this section we have omitted.

24. We have also omitted Section 57, which conferred the status of a settled raiyat on every person inheriting an occupancy-right in land. The object of this latter section seems to us to be sufficiently secured by Section 26 (4).

25. The next division of this chapter, headed "restrictions on sub-letting," is new. It is based on certain proposals put forward by the Government of Bengal, and having for their objects to discourage the purchase of the occupancy-right by non-agricultural speculators, and to protect the sub-lessee of a raiyat. This latter object, we may observe, could be only in part carried out by the provisions inserted here. Further provisions for securing it will be found in Chapter VII., relating to under-raiyats, of which we shall presently have to speak.

26. The main enactments in this sub-division of the chapter are—

1st. That if the portion of his holding sub let by an occupancy-raiyat exceeds half the holding, he shall, on being registered in a public register as a tenure-holder under an Act, which the Local Government propose to introduce into the Bengal Council for this purpose, be deemed to have become a tenure-holder, the result of which will be that his sub-lessees will become raiyats, with an actual or potential right of occupancy (Section 37).

2nd. That if a raiyat sub-lets his holding or any part of it, the sub-lease shall not be valid for a period exceeding seven years (Section 38).

These enactments are qualified by certain provisions, the most important of which are —

1st. That they shall not apply to the case of a raiyat who is compelled to sub-let by being disabled from cultivation by age, sex, disease, accident, or temporary absence from home in certain cases; and,

2nd. That

2nd. That when a raiyat is converted into a tenure-holder, as above mentioned, his rent shall be liable to enhancement on the same terms, and subject to the same conditions as if he were an occupancy-raiyat, and thus the position of his landlord will, in this respect, remain unaffected.

27. These provisions gave rise to considerable difference of opinion, and we are not insensible of the inconvenience arising from allowing a change to be created in the legal relations of a raiyat, both towards his landlord on the one hand, and towards his own sub-tenants on the other, as the result of his own acts; a change, moreover, which must be determined by an arbitrary line difficult to ascertain, and complicated by the numerous exceptions which the circumstances of the cultivators obviously demand. There seemed, however, to the majority of us to be no better way of placing restrictions on sub-letting (a practice which it is admittedly impossible to prohibit) than by rendering the sub-letting raiyat liable to the summary sale for arrears, which is to be made applicable to tenures, and at the same time enabling his sub-tenants to acquire rights of occupancy. These provisions illustrate the extreme difficulty of placing any substantial check on the practice of sub-letting, when it has once grown up. It will be observed that the converted tenure-holder, while liable to enhancement as an occupancy-raiyat, is in all other respects treated as a tenure-holder, and acquires with the liability to summary sale other incidents of tenure holders, such as exemption from the pre-emption clauses, but that none of these provisions will come into operation until such time as he is registered. It was felt that to throw on the Courts the duty of ascertaining in a simple rent suit all the complicated conditions, which are connoted by his conversion, would be intolerable, and that the difficulty could only be met by the Local Government ascertaining and registering them. This it has undertaken to do.

28. The alterations which we have made in the provisions relating to the enhancement of the rent of occupancy-raiyats are considerable, both as regards form and substance.

We have removed the provisions relating to enhancement by means of a table of rates to a separate chapter following that relating to the record-of-rights and settlement of rents, and deal here only with enhancement in the ordinary way by contract or by a suit in Court.

29. As the Bill now stands amended the rent of an occupancy-raiyat cannot be enhanced by contract unless the contract is registered, and the following rules will apply to every such contract (section 41):—

(1.) The rent must not be enhanced so as to exceed by more than four annas in the rupee (25 per cent.) the rent previously payable by the raiyat.

(2.) The contract must fix the rent for a term of at least seven years.

(3.) If the enhanced rent exceeds by more than two annas in the rupee ($12\frac{1}{2}$ per cent.) the previous rent, the contract must fix the rent for a term of at least 15 years.

(4.) The registering officer must, before registering a contract under this section, ascertain whether the contract is in accordance with the provisions of the Act, and that the raiyat entering into it acts as a free agent. It will be observed that under the revised section the registering officer, instead of being required to approve a contract and to satisfy himself that it is fair and equitable, is now merely required to satisfy himself that it is in accordance with the provisions of the Act.

30. Further, it is provided (section 42) that where land, which has been previously held by a tenant at a money-rent, is let to a settled-raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract, and that the rules just referred to shall apply to every such contract.

31. As regards enhancement by suit our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult inquiries, the necessity

for which has made the present enhancement law an almost useless instrument in the hands of the landlords.

With this view we have specified the grounds on which an enhancement suit can be instituted, as follows (section 43) :—

(a.) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity.

(b.) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(c.) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(d.) That the productive powers of the land held by the raiyat have been increased by fluvial action.

32. An inquiry had shown that an authoritative table of rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before the Courts the information with respect to productive powers of the land which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zemíndárs objected to the total elimination of this as a legal ground of enhancement, and as it was part of the old law it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of inquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years.

33. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price lists by the local government. It should be explained that the price lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 250 *et seq.* of Mr. Justice Field's Digest.

34. It has been urged that, in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are however content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancements, especially to Section 48, which provides that the Court shall not in any case decree an enhancement, which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism.

35. The difficulty which, as we have explained, stands in the way of enhancement on the ground of an increase in the productive powers of the land, applies with no less force to the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce. The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections have also been taken to the principle underlying that proposal. We have accordingly struck out the provision to the above effect contained in section 75 (d) of the original Bill. As a set-off against this we have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground mentioned above, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent.), and that when it is enhanced on the second or fourth of those grounds, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing, as above stated, that the Court shall not in any case decree an enhancement which

appears

appears under the circumstances of the case to be unfair or inequitable (section 48).

36. In connection with enhancement up to the prevailing rate payable by occupancy-raiyats of the same class, we have in section 44 introduced a clause [(c)], based on section 20 of the North-Western Provinces Tenancy Act, providing for cases in which local custom may make it necessary to take into consideration the caste of a raiyat.

37. As regards enhancement on the ground of an improvement made by the landlord, we have laid down no hard-and-fast rule, but have merely provided [section 46 (b)] that in determining the enhancement to be allowed the Court shall have regard to—

- (i.) The increase in the value of the produce caused by the improvement;
- (ii.) The cost of the improvement;
- (iii.) The cost of the cultivation required for utilising the improvement; and
- (iv.) The existing rent and the ability of the land to bear a higher rent.

And in order to avoid perplexing inquiries into matters long past, we have provided [section 46 (a)] that the Court shall not grant an enhancement unless the improvement has been registered, that is to say, registered in accordance with the rules which are laid down in Chapter IX., and which, as will be seen, are so framed as to secure that all requisite information will be duly placed on record.

38. The leading rule adopted by us for enhancement on the ground of increase of productive power arising from fluvial action is suggested by that proposed by the Rent Commission, and is to the effect that the landlord shall not have more than half the value of the net increase in the produce of the land [section 47 (c)].

39. Section 78 of the original Bill, which limited the right to bring successive enhancement suits, has now (section 50) been restricted to suits on the ground that the rent paid is below the prevailing rate, and suits on the ground of an increase of prices; but the restriction will now apply to cases in which a suit for enhancement has been dismissed on the merits as well as to cases in which enhancement has been decreed, and the period which must elapse between successive enhancements has been extended from 10 to 15 years.

40. The grounds on which a suit for reduction of rent may be brought are in the amended Bill (section 51) limited to the following:—

- (a.) That the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity, and
- (b.) That there has been a fall in the average prices of staple food crops in the locality.

In either case the Court is to direct such reduction of the rent as it thinks fair and equitable.

41. Section 52 of the amended Bill, which provides for the preparation of authoritative price-lists, differs from the corresponding section of the original Bill in certain particulars; but the only alteration which we need notice here is, that the new section empowers the Local Government to direct price-lists to be prepared for past years as well as for current years. Materials for such price-lists exist in the statements of prices published regularly by the Bengal Government during the past 12 years, and, if it be possible to correct these lists and render them a trustworthy record of local prices, the work of the Courts in enhancing rents on the ground of a rise in price will be greatly simplified.

42. Section 80 of the original Bill, which provided for the enhancement of the rent of pasture lands, has been omitted, as it is understood that the letting of

land to individual tenants for grazing purposes is so very rare that no special rules are needed to regulate it.

43. Section 81 of the original Bill, which prescribed a limit to the amount of the rent payable in kind by an occupancy-tenant or varying with the crop, has likewise been omitted, because it was found that local usage on the point was exceedingly complicated, large deductions being usually made from the crop for various purposes before dividing it, and that to draw a hard-and-fast line would very probably mislead the courts and have an injurious effect.

44. The section (53) providing for the commutation of rent payable in kind has been recast on the lines of section 16 of the Central Provinces Tenancy Act, 1883. As it now stands it admits of an application for commutation being made to certain officers, either by the landlord or the tenant, and empowers the officer to whom it is made to refuse it if it is opposed. Further, the new section allows a larger discretion than the original section in determining the amount of the money-rent to be paid. It merely provides that in making the determination the officer shall have regard to,--

(a.) The average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and

(b.) The average value of the rent actually received by the landlord during the preceding 10 years.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

45. Section 89 of the original Bill provided that the non-occupancy-raiyat, or, as he was termed in that Bill, the "ordinary raiyat," should pay such rent as might be from time to time agreed on between him and his landlord, but subject to the provisions of section 119, which made 5-16ths of the average annual value of gross produce the maximum of the rent. We now propose to abandon this maximum for the reasons which led us to abandon the corresponding maximum in the case of the enhancement of an occupancy-raiyat's rent, and the question accordingly arises whether any other restriction should be placed on contracts fixing the rent of the non-occupancy tenant. The majority of us are opposed to any such restriction, and accordingly the amended Bill leaves the parties free except in so far as it provides (section 57) that the rent shall not be enhanced after the raiyat has been admitted into occupation of the land, except by registered agreement or in the manner allowed by certain sections of the chapter to be presently noticed.

46. In section 58, which states the grounds on which a non-occupancy-raiyat is liable to be ejected, we have introduced a clause permitting him to be ejected when he has, for the first time, been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; but we have provided in the following section (59) that a suit for ejectment on this ground shall not be instituted unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

47. We have also decided to strike out the clause giving the non-occupancy-raiyat compensation for disturbance, but have provided in lieu thereof (section 60) that when an ejectment suit is brought against a non-occupancy-raiyat on the ground of his refusal to pay an enhanced rent, the Court shall fix a fair and equitable rent, and the raiyat shall have the option of holding on at that rent for a term of five years, after which he will be liable to be ejected on the same conditions as after the expiry of an initial lease, provided rights of occupancy have not accrued to him in the meantime.

CHAPTER VII.

UNDER-RAIYATS.

48. We have already (*supra*) paragraphs 26 and 27 referred to the new provision introduced into the Bill which, by converting an occupancy-raiyat who sub-lets half his land into a tenure-holder, confers upon his sub-lessees the status and advantages of raiyats. The chapter now under consideration provides a certain amount of protection to under-raiyats who are not entitled to the benefit of that provision.

Section 62 provides that the landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following per-centage of the same, namely:—

(a.) When the rent payable by the under-raiyat is payable under a registered lease or agreement—50 per cent.; and

(b.) In any other case—25 per cent.

And Section 63 provides that an under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

49. This chapter opens with the provisions relating to the right of tenure-holders and raiyats to hold at a fixed rent, which have been transferred from the opening of the original chapter relating to tenure-holders. The only change made in these provisions which seems to call for notice here is the addition of a clause to Sub-section (2) of Section 64, providing that, if an enactment should hereafter be passed requiring the registration of permanent tenures or of tenancies at fixed rates, the well-known presumption from 20 years' holding shall cease to apply to any tenancies which are not registered within the time fixed. The Local Government, we understand, propose shortly to introduce into the Bengal Council a Bill establishing a registration system of the nature just referred to, and, if that Bill becomes law, it will, we believe, with the aid of this clause, afford, so far at least as those classes of tenancies are concerned, the best remedy for the hardship which the landlords complain of as caused to them by the retention on the Statute Book of the presumption in question. The above presumption will also cease to apply when a record-of-rights has been prepared (see *infra*, para. 77).

50. In Section 66 (2), we have omitted the hard-and-fast rule laid down in the corresponding Section (96) of the original Bill, that in calculating the addition to be made to the rent of a tenure on account of an addition to the area comprised in it, 30 per cent. should be allowed for profits, risk and cost of collection; and have merely provided that the court shall have regard to the profits to which the tenure-holder is entitled in respect of the rent of his tenure.

51. In the Section (67) relating to instalments of rent we have omitted as unnecessary the somewhat complicated proviso appended to Section 98 of the original Bill.

52. We have in Section 68 inserted a clause empowering the Local Government to try the experiment of making rules authorising a tenant to pay his rent by postal money-order; a mode of payment which we think may in some cases be found convenient.

53. In Sections 70 and 71 we have, instead of stereotyping the contents of the receipts and accounts to be furnished to tenants, given forms of these

documents (in a schedule), and empowered the Local Government to alter them as convenience may require.

54. We have in Section 70 (4), relaxed the stringency of the corresponding provision [Section 100 (4)] of the original Bill, by providing that a receipt not containing substantially the required particulars shall merely be "presumed until the contrary is shown" (instead of "deemed") to be an acquittance in full of all demands up to date.

55. It has been suggested that we should provide for applications for the withdrawal of rent deposited being exempted from court fees. We think such an exemption desirable, but it is within the power of the executive authorities to arrange for its being made, and we prefer to leave the matter in their hands.

56. We have, in the Section (78) providing for ejectment from a non-transferable holding for arrears of rent, added a sub-section empowering the court for special reasons to extend the period allowed for the payment of the rent.

57. We have empowered the collector to depute an officer to divide or appraise the produce of a bhaoli holding, not only on the application of one of the parties concerned, but also in any case in which, in the opinion of the magistrate of the district or sub-division, such action would be likely to prevent a breach of the peace [Section 81 (2)].

58. We have further empowered the collector in all cases to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a civil court [Section 82 (4) and (5)]. This seems to us a simpler and more convenient procedure than leaving the parties to seek redress in the civil court in the first instance, as under the original Bill.

59. For Section 117 of the original Bill we have substituted a section (set out in the margin)* (*see foot-note*) dealing comprehensively with the rights and liabilities of the landlord and tenant as to possession of the crop in cases where rent is taken by appraisement or division of the produce.

The penal provision of Section 117 of the original Bill has not been reproduced here, as the matter is sufficiently provided for in the more general penalty clause now inserted in Chapter XIX. (Section 220.)

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

60. We have introduced a new Section (88) providing that when a raiyat holds at a fixed rent or fixed rate of rent, his landlord shall not be entitled to prevent him from making an improvement.

61. We have in Section (89) (3) empowered the collector to decide finally any question between an occupancy-raiyat and his landlord—

- (a.) As to the right of the raiyat to make an improvement, and
- (b.) As to whether a particular work is an improvement.

62. We have, in order to facilitate the decision of disputes regarding improvements, introduced a Section (92) based on Section 80 of the Central Provinces Tenancy

* Rights and liabilities as to possession of crop :—83. (1.) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2.) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(3.) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

(4.) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Tenancy Act, 1883, providing that a landlord or tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a revenue officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also, as intimated (*supra*, para. 37) introduced a Section (91) providing for the registration of improvements made by landlords.

63. Section 129 (4) of the Bill as introduced, provided that improvements made by a raiyat before the commencement of the Act should be deemed to have been made in accordance with the Act unless it was shown that the landlord forbade the raiyat to make the improvement, and was ready to make it himself. For this we have substituted a sub-section [Section 93 (4)], providing that improvements made by a raiyat between the 2nd day of March 1883 (the day on which the Bill was introduced) and the commencement of the Act, shall be deemed to have been made in accordance with the Act. This prevents the section from applying retrospectively to any improvements made before the introduction of the Bill.

64. We have in Section 94 somewhat enlarged the list of matters to be taken into consideration by the court in estimating the compensation to be allowed for an improvement, the most important additions being the condition of the improvement with reference to its duration, and that "in the case of a reclamation, or of the conversion of unirrigated into irrigated land," the court shall have regard "to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent."

65. We have re-drafted the Section (95) relating to surrender by a tenant, on the lines of Section 33 of the Central Provinces Tenancy Act, 1883, and, in order to remove a misapprehension which appears to exist in some quarters, have added a sub-section (5) expressly providing that when a raiyat has surrendered his holding, the landlord may enter on the holding, and either let it to another tenant, or take it into cultivation himself.

66. The difficulties which arise in cases where a raiyat to all appearance abandons his holding, but the landlord cannot be sure whether he can safely assume the holding to have been abandoned, and let it to another tenant, we have attempted to meet by the section set out in the margin* (*see foot-note*).

67. We have in section 99, which prohibits a landlord from measuring land more than once in 10 years without the consent of the tenant or the permission of the collector, allowed exceptions in the following cases, namely:—

(a.) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(b.) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(c.) Where the landlord is a purchaser otherwise than by voluntary transfer, and not more than two years have elapsed since the date of his entry under the purchase.

68. In section 101, relating to the standard of measurement, we have introduced a sub-section empowering the Local Government after local inquiry to make rules declaring for any local area the standard or standards of measurement in use, and have provided that every such declaration shall be presumed

10

* Abandonment:—96. (1.) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2.) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government, by rule, directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(3.) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

to be correct until the contrary is shown. This, we think, will render section 138 of the original Bill unnecessary, and we have accordingly omitted it. Other provisions connected with measurement will be found in the chapter (X.) concerning the record of rights.

69. In the division of this chapter relating to the appointment of a manager to act on behalf of co-owners of an estate or tenure, we have added a section (109), empowering the High Court to make rules defining the powers and duties of managers.

70. We have omitted the section relating to merger. It was in our opinion open to serious objection, not only from the particular point of view of the framers of the present Bill, inasmuch as it allowed of the occupancy right being retained in the hands of a landlord, his tenants being thus reduced to the position of under raiyats, but also from a more general point of view, inasmuch as it conferred on individuals a large and arbitrary power to introduce, without any sufficient reason, a serious complication into the law of property, and one moreover which would be likely to serve as a cloak for fraud.

The immediate requirements of this Bill are, we think, sufficiently met by the section (28), which we have introduced into the occupancy chapter, and to which we have already referred (*supra*, para. 15); and for the rest we are of opinion, after giving our best consideration to the views of the Honourable Mr. Justice Field, that the general question of merger is somewhat outside the proper scope of the present enactment.

CHAPTER X.

RECORD OF RIGHTS AND SETTLEMENT OF RENTS.

71. We have found it convenient to embody in a single chapter the two chapters of the original Bill relating to the above subjects, and to start with the record of rights, which is the simpler of the two.

72. The difficulty from the absence of a record occasionally felt, especially by a person who purchases an estate or tenure at a compulsory sale by auction, will, we think, be met by the new section (112), which admits, subject to certain conditions, of a record of rights being framed by a revenue officer on the application of a proprietor or tenure-holder.

73. As regards the procedure in framing a record-of-rights, it will be observed that an important change has been made. Under Chapter XII. of the original Bill the procedure was to be summary in all cases, whether there was or was not a dispute as to the entry which ought to be made in the record, and the result in all cases alike would have been merely an entry in the record, which would be *prima facie* presumed to be correct, but would be open to be impugned in a civil court. In the amended Bill, on the contrary, a fuller opportunity is allowed for raising objections by a preliminary publication of the record, and if any entry, which it is proposed to make or which has been made, is called in question, the revenue officer is to inquire into the dispute according to the regular procedure of a civil court, and his decision is to have the force of a decree, and to be appealable first to a special judge appointed to hear such appeals, and then, subject to the usual limitations of second appeals, to the High Court. Thus, in any case in which there is a dispute regarding an entry in the record, the question will be placed on the footing of a *res judicata*. Where, up to the time allowed after the preliminary publication of the record for preferring objections, no objection is made, the entry will be marked as undisputed, and, as proposed in the original Bill, will simply be presumed to be correct until the contrary is proved. We think that, having regard to the large scale on which those operations will be conducted, and to the impossibility of being sure that any sort of publication would bring home to every individual concerned the precise nature of the entries being made regarding him, we could not venture to give an undisputed entry any authority higher than that just mentioned.

74. The operation termed a "settlement of rents" includes, in addition to the preparation of a record-of-rights, the settlement of all such rents of occupancy-

pancy-tenants and tenure-holders holding otherwise than at fixed rents, as either the landlord or the tenant may apply to have settled.

The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local inquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it. The solution of this problem proposed in the original Bill will be seen on referring to Section 160 of that Bill. The modification above described in the record-of-rights procedure, and especially the introduction of the special judge, who will doubtless always be an officer possessing a familiarity with the local agricultural system, in addition to judicial qualifications, has opened the way to what appears to us to be a more satisfactory solution. What we propose is that when a rent, which has been settled or which it is proposed to settle, is disputed, the dispute shall be dealt with by the revenue officer in the same way as a dispute regarding an entry in the record-of-rights, that an appeal on the whole question shall then lie to the special judge, and that his decision shall be final unless, in a second appeal in respect of one of the record-of-rights entries with reference to which the rent has been settled, the High Court alters the decision of the special judge. In this case the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the special judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

75. We have, in Section 120, provided that, when a landlord is entitled under the foregoing sections to apply to have the rent of a holding settled, the rent of the holding, whether he applies and has it settled or it is merely ascertained, shall not be enhanced for 15 years, except on the ground of an improvement made by the landlord or of an increase of the area of the holding.

76. Section 121, providing for the payment of expenses, has now been made applicable to the preparation of a record-of-rights as well as to the settlement of rents.

77. The only other provision of this chapter which appears to call for notice is the new section (122) which enacts that when the particulars of a tenancy have been recorded under the chapter, the well-known presumption arising from 20 years' holding at a fixed rent shall cease to apply.

CHAPTER XI.

TABLES OF RATES.

78. We have been guided, in dealing with the subject of this chapter, by the views of the Government of Bengal. It appears from the inquiries that have been made that, owing to the great diversity of rates, it would in most parts of the country be impracticable to frame general tables of rates applicable to large tracts; but in special tracts the preparation of such tables may still, in the opinion of the Government of Bengal, be found a preferable alternative to the plan of a general settlement of rents by the revenue officer. In the latter case the revenue officer goes on the ground and himself decides all questions at issue.

In the former case the revenue officer merely ascertains and records general facts which will serve as a guide to the Courts, whose business it will be to apply them to the circumstances of particular disputes brought before them. We have, therefore, retained the procedure with only a few minor alterations, but it will no longer be so important a feature as it was in the original Bill.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

79. In dealing with the difficult question of khámár or zeraat land we have provided two alternative methods of procedure—

(a.) That of survey and registration of such land by a revenue officer, by order of the Local Government;

(b.) That of inquiry on the application of the individual landlord or tenant concerned.

The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Bihár, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the revenue officer to record certain lands as the proprietor's private land, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads. The section is reproduced below.

133. (1.) The revenue officer shall record as a proprietor's private land—

(a.) Land which is proved to have been cultivated as khámár, zeraat, sir, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for 12 continuous years immediately before the passing of this Act, and—

(b.) Cultivated land which is recognised by village-custom as proprietor's khámár, zeraat, sir, nij, nij-jot or kamat.

(2.) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd March 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(3.) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of revenue officers.

CHAPTER XIII.

DISTRAINT.

80. The only changes made in this chapter to which it seems to us necessary to direct attention are the following:—

(a.) Section 167 (2) of the original Bill, which made an application for distraint liable to the same Court fee as a suit for the arrear of rent, has been omitted.

(b.) Produce already stored has been exempted from distraint.

(c.) The Court is empowered [Section 141 (3) and (4)] to issue in certain cases an order prohibiting the removal of the produce pending the issue or execution of an order of distraint.

(d.) It has been made clear (Section 147) that crops which admit of being stored are not to be sold standing.

(e.) Section 186 of the original Bill, which under certain circumstances imposed a penalty on persons on whose behalf an offence under Section 185 is committed, has been omitted.

(f.) On

(f.) On the other hand, express provision has been made in the first section of Chapter XIX. for punishing abetment of the offences in question, and it has been made clear (Section 158) that a person, whose property is distrained under cover of this chapter, but in a case to which it does not properly apply, has his remedy by suit against those who put the Court in motion.

(g.) Section 187 of the original Bill, which empowered the Local Government to suspend the operation of the chapter, has been omitted.

CHAPTER XIV.

JUDICIAL PROCEDURE.

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

82. We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Court Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the code of civil procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

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

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

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

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

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

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

88. We have, in accordance with what we understand to be the desire of the landlords, maintained the provisions of the law relating to the sale of patni tenures, substantially intact, amending them only in matters of form and minor detail. The provisions so amended have now been transferred from the Schedules to the body of the Bill, and form the first division of this chapter.

89. The second division of it consists of a single section enacting that, if provision is made by law for the registration in a public register of any tenures other than patni tenures, the provisions of the chapter shall, subject to such modifications as the Local Government may by rule prescribe, apply to those tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

90. The important question as to the extent to which freedom of contract between landlord and tenant should be restricted has been disposed of, in so far as a few particular points are concerned, in the sections of the Bill relating to those points (*see e. g.* paras. 29, 30 and 48 *supra* on the subject of contracts fixing rent). But we have thought it convenient to collect in one section at the opening of this chapter most of the restrictions which, in the opinion of the majority of us, it is necessary to place on the power to contract out of the provisions of the law.

The matters which are thus placed beyond the reach of contract will be seen to be as follows :—

(a.) The acquisition of the status of settled-raiyat and of the occupancy-right (sections 24, 25, and 26).

(b.) The incidents of the occupancy-right specified in section 31.

(c.) The occupancy-raiyats right to demand a reduction of rent under section 51.

(d.) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.

(e.) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60, and 63).

(f.) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).

(g.) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90, and 93).

(h.) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

91. With a view to encouraging permanent mukarrari leases we have inserted in this chapter a new section (211) providing that nothing in the Act shall be deemed to prevent a landlord in a permanently settled estate from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

92. It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands, and lands taken under the customs known as *utbundi* and *hal-hasili* must be treated exceptionally, and the three following sections of this chapter are intended to make such special provision regarding them as appears to us to be necessary.

93. Section

93. Section 212 provides that nothing in the Act shall affect any contract for the reclamation of waste land.

94. Section 213 provides that raiyat holding chur or dearah land shall not acquire a right of occupancy in the land until he has held it for 12 continuous years, and that until he acquires a right of occupancy he shall be liable to pay whatever rent is agreed on between him and his landlord, but that the Court may upon the application of either party declare that the land has ceased to be chur or dearah land, and thereupon the provisions of the Act shall apply to it.

95. Lastly, section 214 enacts that nothing in the Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the *utbundi* and *hal-hasili* systems.

96. As already stated (paragraph 4) we have omitted Chapter VII. of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom.

CHAPTER XVIII.

LIMITATION.

97. We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by Section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred.

CHAPTER XIX.

SUPPLEMENTAL.

98. We have somewhat amplified the provisions of Section 221, which empowers a landlord to act through his agent, and in order to remove a misapprehension which notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we have added a Section (222) to make it clear that when two or more persons are joint landlords, they must act together or through an agent appointed by them jointly.

99. In the course of our discussion various points have been raised with which we felt that we were unable to deal adequately without further information than that contained in the papers before us. On some of these points we should be glad to receive the advice both of the Local Government and of the High Court.

The principal questions are as follows:—

(1.) Whether, with reference especially to landlord's improvements, it is desirable to empower revenue officers to arrange for the cutting of irrigation channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take.

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