

THE



# Bombay Government Gazette.

Published by Authority.

THURSDAY, 6TH FEBRUARY 1868.

Separate paging is given to this Part in order that it may be filed as a separate compilation.  
The paging of this Part commenced with the Number for January 1867.

## PART V.

### PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA.

*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 17th January 1868.

#### PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

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

The Honourable G. NOBLE TAYLOR.

The Right Honourable W. N. MASSEY.

The Honourable Major General Sir H. M. DURAND, C.B., K.C.S.I.

The Honourable Sir W. MUIR, K.C.S.I.

The Honourable E. L. BRANDRETH.

The Honourable M. J. SHAW STEWART.

The Honourable J. SKINNER.

The Honourable STEWART GLADSTONE.

The Honourable KHWAJA 'ABD-UL-GHANI.

The Honourable F. R. COCKERELL.

#### PEPPER DUTY (COCHIN) BILL.

The Right Honourable Mr. MASSEY presented the Report of the Select Committee on the Bill to amend Act No. III. of 1861 (to provide for the collection of Duty of Customs on Pepper exported by sea from the British port of Cochin).



## PANJÁB TENANCY BILL.

The Honourable Mr. BRANDRETH introduced the Bill to define and amend the law relating to the tenancy of land in the Panjáb, and moved that it be referred to a Select Committee with instructions to report in six weeks. It would not be necessary for him to say much about the reasons for introducing this Bill, by way of preface, before he proceeded to consider the particular contents of the Bill itself. Bengal and the North-Western Provinces had their Acts which provided for the fixing of rents and for the recognition of rights of occupancy among tenants. A Bill on the same subject for the province of Oudh had recently been introduced into this Council. There had been as yet no legislative enactment for the province of the Panjáb. The object of this Bill, therefore, was to make provision regarding these matters for the Panjáb in accordance with the special requirements and peculiar circumstances of that province. Whatever appeared applicable to the requirements of the Panjáb had been taken from the North-Western Provinces Acts and the Oudh Bill, but it would be perceived, notwithstanding, that there were very material differences in other matters between the provisions that had been made for these provinces and what was proposed for the Panjáb.

In rendering his account of this Bill he would not trouble the Council by entering into every detail. He intended to speak only of those provisions of the Bill which appeared to him more especially to require explanation, and particularly of those provisions which differed most from what had been enacted for other provinces. He was afraid, however, that in speaking of those provisions he should have to occupy the time of the Council considerably; but he trusted the great importance of the subject to so large a part of the empire as the Panjáb, and the great interest it had recently excited in that province, would be deemed a sufficient excuse for doing so. He passed over the first part, which was preliminary only, and came to the second part, which treated of the occupancy of tenants.

This subject of the occupancy rights of tenants was no doubt full of difficulty, but the difficulty was almost entirely of their own creation, from their Settlement Officers and Civil Courts having previously altogether ignored the rights of the landowners. The proceedings, however, of the Settlement Commissioner, Mr. Prinsep, rendered it impossible to ignore those rights any longer. The result of Mr. Prinsep's inquiries with reference to some ten thousand cases in one of the most important districts in the Panjáb, if correct, was that some three-fourths of those tenants who were formerly supposed to have rights of occupancy were properly mere tenants at will. Colonel Lake, the late Financial Commissioner, who visited those districts and tested some of Mr. Prinsep's proceedings, by no means indorsed the whole of Mr. Prinsep's conclusions; still it could not be possibly said that these conclusions were equally without foundation in regard to all classes of tenants. It was the duty of Settlement Officers in the Panjáb, besides measuring the land and fixing the assessment, to call upon the people, while their minds were calm and before disputes had actually arisen, to state what the village customs were upon all points likely to produce disputes among them. These customs were then recorded in what was termed the *shib-ül-arz*, or village administration paper, and this document was always regarded by the courts as containing the most valuable evidence with reference to all matters of which it treated. By the help of this document disputes of a more complicated nature than disputes relating to the rights of occupancy of tenants had frequently been satisfactorily decided. For instance, many matters connected with inheritance and with the disposition of landed property in villages were regulated, not by Hindú or Muhammadan law, but by local customs of a radically different nature, which were recorded in the administration paper; and in regard to all such customs the administration paper was usually received as valid evidence. Unfortunately the same pains was not taken to ascertain the village customs in regard to the rights of occupancy of tenants. No doubt the landowners themselves were backward in urging their claims when the settlements were first made. They were probably for the most part not in immediate want of the land held by their tenants, and they were not aware how valuable much of the land would become under the operation of a moderate assessment. His Excellency the President was aware, Mr. BRANDRETH found, at an early period, when he held the office of Chief Commissioner of the Panjáb, that by the custom of the Panjáb tenants could not acquire rights of occupancy by mere lapse of time; and Mr. BRANDRETH found that, in 1855 some instructions were issued by His Excellency for the guidance of Settlement Officers, to the effect that they ought to be aware that it was the nature quite as much as the length of occupancy that entitled a cultivator to privileges. Unfortunately the instructions thus issued by His Excellency did not appear to have met with the attention they deserved. The Panjáb was what was called a Non-Regulation Province; still it was generally understood that, as far as practicable, the spirit at least of the Rules and Regulations in force in the



North-Western Provinces and Bengal should be followed. Now, according to those Rules, it would appear that cultivators could not ordinarily be ejected so long as they paid the rates fixed on their fields. In the "Directions for Settlement Officers in the North-Western Provinces," which was the only guide-book which their first Settlement Officers in the Panjáb possessed, it was expressly laid down that "those cultivators who have for a course of years occupied the same field at the same or at equitable rates are held to possess the right of continued occupancy, while those whose tenure is not similarly sanctioned are considered tenants-at-will." In accordance with the spirit of these instructions, the Panjáb settlement officers appeared to have recorded all tenants who had cultivated their lands continuously for certain periods as possessing rights of occupancy, without at all regarding any other circumstances or conditions connected with their occupancy. The Civil Courts also had subsequently for the most part, except with regard to a limited class of cases, acted on the same principles.

With the view of ascertaining what power was formerly exercised by landowners in the Panjáb in regard to the ejection of tenants, the Local Government recently addressed some inquiries on the subject not only to its own officers, but to persons also who had held office under the Sikh government, or who were otherwise likely to be well acquainted with the extent to which the rights of landowners were recognised under that government. Mr. BRANDRETH had there a printed abstract of the replies to some of these inquiries. Unfortunately this evidence lost much of its value from its not sufficiently appearing to what parts of the country and to what classes of tenants it related, from what particular instances it had been obtained, and from its not being given with sufficient details and particulars to show that the subject of the inquiries had been fully understood. Thus, while from many of the replies it would appear that tenants of long standing were never evicted, from other replies again it might be gathered that tenants were evicted at the sole pleasure of the landowners, without any regard whatever to length of occupancy or other circumstances. From the whole of this evidence, however, as well as from other evidence which he had there also, and which was previously collected under the orders of the Financial Commissioner, he thought it might be inferred on the one hand that, in some parts of the country at all events, if not over the greater part of the Panjáb, the *kardárs* or officers of Government treated both landowners and tenants alike, allowed the so-called landowners no share at all in the rent paid by the tenants, and did not permit them to interfere in any way whatever with the tenants. Thus the possession of such tenants appeared to have been what was called *adverse* possession. Again, there were tenants who, from having sunk wells or improved the land in any other expensive manner, and from having shared in profits and losses with the landowners, or from having gone forth to fight the battles of their village with other villages, and in other ways also, were considered to have rights of occupancy; on the other hand, he thought it might be inferred from the same evidence that in other parts of the country there were landowners of more power and influence, who either held leases direct from the Sikh government, or, if the rent was collected in kind, appropriated to themselves a considerable portion of what was paid by the tenants, who, there was reason to believe, did what they pleased with the land cultivated by their tenants so long as they provided for its cultivation, or otherwise satisfied the claim of the Government. Tenants who were thus liable to be ejected were no doubt erroneously entered in the settlement records as having rights of occupancy on account of mere length of possession. He thought it might certainly be inferred from the evidence he had there both that rights of occupancy under certain circumstances were acquired independently of length of possession, while under other circumstances such rights should not be held to have accrued by mere length of occupancy.

They had to determine how this important question should now be dealt with. The claims of the landowners had no doubt in many instances been in abeyance during the whole period of the Sikh rule and up to the present time. Were these latent claims to be now revived, and, if so, to what extent? Some officers maintained that, even though some errors might have been committed in the preparation of the settlement records, these records were yet a sort of guarantee by the landowners of the rights of the tenants; that the decisions of the Courts had been ever since almost invariably in accordance with the settlement records; that the relationship between landowners and tenants had become settled, and engagements had been entered into in accordance with these records, and that any attempt to disturb them, after they had been acted on during so long a course of years, would be very impolitic, and detrimental to the best interests of the village communities. Other officers, again, appeared to think that if certain persons were admitted, even by the tenants themselves who cultivated the land, to be the owners of the land, it should be presumed that they had a complete title to the land until the contrary was proved, and that the burthen of



proof in this case should rest on the tenants who denied the completeness of the title. There appeared to be some degree of truth in both these views: the object of this part of the Bill was to mediate between these extreme opinions, or rather it was not so much an attempt to settle anything definitely as to open a way for the claims of the landowners being dealt with by the Settlement Officers or by the Civil Courts. No rights that were in abeyance during the Sikh rule would be recognised by this Bill. Landowners, however, would be permitted to revive claims to the land occupied by tenants which they had hitherto been prevented bringing, from the wrong notions that had been entertained during British rule of the merits of their claims; but subject to this condition, that those tenants who had hitherto been considered as tenants having rights of occupancy should be presumed to possess such rights until the contrary was proved, and that the burthen of proof should rest on the landowners who denied that the tenants had rights of occupancy. It would be observed—he referred to Section 4—that only on one condition had rights of occupancy been absolutely conferred on tenants—the condition of their having formerly possessed proprietary rights in the lands occupied by them. He believed it would nowhere be denied that such tenants had rights of occupancy. This class of tenants, however, was by no means a numerous class. It would no doubt be very useful for the guidance of the Courts and of the people if other conditions of occupancy could also be detailed; if it could be positively laid down that under certain circumstances tenants acquired a right of occupancy, or that under certain other circumstances tenants never could acquire rights of occupancy. Mr. Prinsep, he believed, considered that by village custom several classes of tenants had no rights of occupancy. Among Mr. Prinsep's conclusions on this subject he found the following enumerated in a memorandum which he had there by the late Financial Commissioner, Colonel Lake—*1st*, that no holder in a common property had a right to occupy as hereditary cultivator any portion of that common holding; *2nd*, that no shareholder cultivating the land of another shareholder of the same estate could be considered an hereditary cultivator; *3rd*, that non-resident tenants had no right to a privileged occupancy; *4th*, that village servants had no right to occupy as hereditary cultivators. It was to this first class of tenants, namely, those tenants who cultivated lands in which they had also joint proprietary rights with others who did not cultivate, that he (Mr. BRANDRETH) alluded when he said that the decisions of the Courts in regard to one class of cases had not been in accordance with the settlement records. It became evident in most cases of dispute about the division of the common land of a village that non-proprietary village-sharers had by the custom of the village any right to the hereditary right to the land; and the Courts therefore could not do otherwise than decide such disputes non-proprietary, and village custom: but one of the Native members of the Lahore Committee, first instance, when he moved for leave to introduce this Bill, pointed out that there was made between him even to this general custom; as, for instance, when a man who had had existed before: nor afterwards acquired a proprietary share in the land cultivated claim, in the early periods of our rule this gentleman did not consider that the tenant should be treated as a hereditary cultivator. The British Government only professed to be a tenant of the land as land revenue, and therefore afterwards it came to be considered, and had no doubt justly considered, that these cultivators, who admitted themselves to be only tenants, who entered into no engagement with the Government for the payment of the land revenue, who had no concern with the management of the village, and who had no transferable property in the land cultivated by them, ought not to be allowed to appropriate the whole of the remaining portion of the net produce, but that some share in this portion should be given to the acknowledged landowners. The maximum proportion of the net produce claimable from this class of tenants, however, had been fixed at ten per cent. less than the maximum claimable from other tenants, who had been in the habit of always paying rent at a higher rate than that of the land revenue. All other distinctions which it might be necessary to draw had been left to the discretion of the Courts in cases of dispute; nor was it, he thought, a discretion which they would find any difficulty in exercising. After a good deal of experience in such matters, he would say that the main points of disagreement between the landowner and tenant were that the tenant objected to being turned out of his holding, and that the landowner, if he had been in the habit of taking his rent in kind, objected to having that rent converted into a money rent; but it was a matter of comparative indifference to the tenant whether he had to pay a little more or a little less rent, especially if it was a money rent. Some hundreds of rent claims, he understood, had been settled with the utmost ease, and to the mutual satisfaction of the parties, by the Settlement Officers employed under Mr. Prinsep's orders. It had been provided further on, in Section 13, that no commutation of rent in kind into rent in money should in future take place without the consent of the landowner. Such commutations had ceased to be made, he believed, for some years; but they had taken place to a considerable extent during the early part of our administration of the Panjáb. These



be urged to flood the Courts with suits by over-zealous Settlement Officers. What Colonel Lake said in the memorandum to which he had already referred was worthy of notice as a caution against too much zeal in dealing with this tenant-right question, namely, that he had observed throughout, after visiting the districts over which Mr. Prinsep's operations had extended, that European officers appeared to be more interested in the question than the people themselves. It might be said, perhaps, that this Bill left the question of occupancy rights in a state of apparent uncertainty. He did not see how it could be otherwise, unless, as in Act X. of 1859, a tenant were allowed to claim a right of occupancy after cultivating his land for a certain period; but the whole object of this part of the Bill was to prevent any title being acquired in that way. The tenants ought to know of themselves perfectly well whether or not they were really entitled to rights of occupancy; or two or three suits here and there would settle the matter; or the general inquiries that had recently been made by their present Settlement Officers ought to make it sufficiently clear in most cases what classes of tenants had, and what classes of tenants had not, rights of occupancy in those districts that were under settlement. There was nothing in this Bill to prevent the Government, if it should think it worth while, making such inquiries in every district. It might be observed also that this Bill left the rights of occupancy no more uncertain than inheritance rights, life-interests, many other important rights in villages, with reference to which custom varied greatly, were left uncertain as regarded the passing of any Act for the purpose of settling them. It was assumed in the Panjáb Civil Code that the village administration paper would contain sufficient information for the guidance of the Courts in regard to all matters relative to village custom which it was not expedient to provide for by positive enactment. This Bill took away nothing from the tenant that he originally had, and gave instance nothing that he originally had not: all it did was to prevent these seventeen years that had elapsed since the annexation of the Panjáb, during which the tenant's occupancy had not been questioned, and the long course of the decisions of the Courts, from conclusively telling against, or being used as precedents against, the claims of the landowner, if he had really a good claim. Mr. Prinsep had another plan for settling all questions regarding rights of occupancy—or rather, as it seemed to him, it was a plan for taking away all rights of occupancy;—it was consequently a plan that he could not approve of. Mr. Prinsep did not let the matter alone until a disagreement arose between the parties which either party wished to have settled. But he compelled a dispute between them, by insisting on a reply on the spot to his inquiries regarding each individual tenant as to whether the landowner could turn out the tenant or that there ought owner usually replied that he could turn him out, and the tenant that he could not. In accordance with Mr. Prinsep's account of the procedure, quoted by the Committee in question at issue was decided by a village pancháyat, regarding which "their ideas of right, select the members at random from the crowd at the time (not before) for both land- for inquiring into the status of the tenants." Then, he whether it belonged should have to go into the matter that if these awards of the pancháyat were made, they thought, that ought never to be interfered with, unless upon such an urgent necessity as that of the land cultivated by the landowners themselves not being sufficient for their support, yet when such a necessity was shown the tenants would be more than sufficiently compensated for having to give up their land if its market value were paid to them.

The next section, 27, regarding the right of tenants to alienate, contained a provision intended more especially for the benefit of the tenant. The tenant might have hitherto paid no rent other than the Government revenue, his interest in the land cultivated by him might be much greater than that of the so-called landowner, yet by existing custom he was so bound to the land that, whatever his necessity might be, he had no right to transfer it to another; his simple right was to till his field himself, and if he attempted to do anything else his right of occupancy ceased. By this section, under certain circumstances, if there was no immediate prospect of the land lapsing to the landowner, the tenant would be allowed to alienate on payment of ten per cent. of the value to the landowner.

The effect of the two sections of which he had last been speaking might be in some slight degree to diminish the evil of the excessive subdivision of land which had already taken place in many villages, and which was continually increasing under the peaceful rule of the British Government. Subdivisions could not take place to the same extent under the Sikh administration, for the simple reason that so much smaller a share of the produce was left to the cultivators than they enjoyed under our lighter assessments; but it was evident that the people might become quite as poor by too minute subdivision under light assessment as they would under heavy assessment if the land were not so minutely subdivided. Some of their Settlement Officers, in their Reports, had recently remarked on the pressure of the



remained, as Mr. Prinsep proposed, and throw on the tenant the burthen of proving that the same record was correct, would, it appeared to him, be very unfair to the tenant. He certainly thought this twelve years' limitation rule ought to be repealed altogether; but such a repeal ought to be made the subject of separate legislation, as the rule applied to many other matters besides tenants' rights of occupancy. Under the circumstances he had stated, however, he could not conceive anything more unfair towards the tenants than Mr. Prinsep's plan would be, if he understood it aright. When tenants who were registered at a former settlement as having rights of occupancy were now summarily declared not to have such rights—if they had no direct quarrels with their landowner, and no present expectation of being turned out of their land, as was doubtless the case with the great majority of them—they might be quite sure that they never would, nor could it be reasonably expected that they should go into the Civil Courts within a year, at the present very high cost of suits, in the hope of having the settlement awards against them set aside, especially when in most cases Mr. Prinsep had taken away all motive for immediate action on the part of the tenants, by requiring the landowners to give them leases for periods generally extending much beyond the period of one year or even three years, within whichever period it might be proposed that the tenants must bring regular suits if they wished the settlement awards to be set aside. Mr. Prinsep was doubtless entitled to credit for insisting on the recognition of all rights claimed by the landowners which had hitherto, from mistaken notions, not been recognised, but in that plan he seemed to Mr. BRANDRETH to go into the other extreme of being unjust to the tenants.

The third part of the Bill related to rent. It would be seen, with regard to the enhancement of rent, that, by Section 8 of the Bill, the rent was not to be enhanced beyond certain limits there laid down. These limits were no doubt somewhat arbitrary; but unless some limits were fixed the rights of occupancy that had been provided for in the former part of the Bill might have no meaning. The rent might be enhanced to within twenty-five per cent. of the rackrent of the land, if the tenant had paid no rent hitherto to the landowner, or paid none previously to the regular settlement; it might be enhanced to within fifteen per cent. of the rackrent if the landowner previously enjoyed any share of the rent. It might be asked why, if the so-called landowners got no share formerly in the rent of the land cultivated by the so-called tenants, the landowners were now held to be entitled to a share in the rent; and he would give this explanation of the matter. In those parts of the country where the tenants got no share in the rent the reason of this was that the Sikh govern-

He had to take the net produce of the land from every cultivator, whether proprietary or to require explanation, thus left nothing which the landowner could take; and that, in the criticism; but he had the country became subject to the British government, no distinction occasion, even if he landowner and tenant as regarded the matter of assessment where none least had much better did the landowners themselves, so far as he was aware, make any to refer this Bill for that purpose, able, to rent under these circumstances from the tenants, ledge, but he did not in the least bind to take half the net produce of the land. He was quite open to advice on the subject, and would be glad to receive any good suggestions for the improvement of the Bill with which he might be favoured. The Settlement Commissioner, Mr. Prinsep, had promised some more papers; Mr. Roberts, the Financial Commissioner, was writing a Report; above all, the Lieutenant Governor, Sir Donald McLeod, had not yet expressed his views upon the Bill. No one knew more about the Panjáb than its present Lieutenant Governor, and he would doubtless direct attention to those matters in respect of which the Bill might require amendment. If Mr. BRANDRETH had waited until the Lieutenant Governor had seen his proposals he might have produced a better Bill in the first instance; but then he would not have been able to publish it in sufficient time before the conclusion of this session for its being well considered by the many experienced officers in the Panjáb, from some of whom he hoped to receive valuable suggestions. He would not think of asking the Council to pass the Bill until he learned the views of the Lieutenant Governor with regard to it, nor until he had seen the Reports promised by Mr. Roberts and Mr. Prinsep, nor until the Bill had been published for a sufficient time to allow all those who were interested in the subject treated of to express their opinions. He trusted the Council would now allow this Bill to be referred to a Select Committee.

HIS HONOUR THE LIEUTENANT GOVERNOR said that, in the absence of all the papers on the subject of this Bill—both those containing the correspondence which had already taken place in the Panjáb, and those which were expected to be received—it was clear that the Council was not in a position to form any accurate opinion in regard to the Bill which it was now introduced. Some of the provisions of the Bill were, he thought, open to question; and there was one, specially, regarding which he would like to receive an explanation from the Honourable Member. HIS HONOUR understood the Bill to be founded practically on the admission that mistakes



undoubtedly were the cause of much ill feeling, and in many cases utterly destroyed that common interest and kindly relation which formerly subsisted between landowners and tenants. This was another instance of the evil produced by too closely following what was done in the North-Western Provinces, without sufficiently considering whether it would suit the Panjáb. The present Lieutenant Governor of the Panjáb he believed—than whom no one probably knew better what the general feeling of the country was in regard to such matters—entirely disapproved of any compulsory alteration in the mode of paying rent. This payment in kind, or *ádhúddna* system as it was often called, from the gross produce being equally divided between the landowner and tenant, appeared to correspond both in name and nature to the *metayer* system of Italy and some other European countries. Whether the *metayer* of Italy could claim of right a conversion of his produce rent into a cash rent he was not aware, but he believed there was hardly any difference of opinion now in the Panjáb that such conversion should not be allowed merely on the application of the tenant against the wishes of the landowner.

The few next sections in the Bill, included under Part IV., treated of ejection, abandonment, relinquishment, and sub-leases, but he did not think he need detain the Council by any remarks on these sections, as their purport was perhaps sufficiently obvious without explanation.

The fifth part of the Bill related to certain disabilities which might be removed by payment of compensation. There were, no doubt, some novelties in the way of legislation in this part of this Bill. The 26th section, giving the landowner the power to appropriate the land of any tenant having a right of occupancy if the land in his own possession was not sufficient for the support both of himself and his household, had been adopted at the suggestion of the Lahore Committee. He had adopted their suggestion with some hesitation. It might be asked why, if after all the facilities which had been given to the landowner by a former part of this Bill for disproving the right of occupancy claimed by the tenant, the landowner was unable to disprove it, and the tenant's right of occupancy was fully recognised—why, under such circumstances, should the tenant be turned out of his holding? As regarded the market price of the land, which it was proposed that the tenant should receive, it might be said that sales of land in most parts of the country were so very uncommon, and the pecuniary value of land was so little understood, that the market price would be no equivalent for what the land was worth to the tenant. The Committee, however, though they understood a to be some such provision as that made in this section. The Native members in Orissa, in particular were unanimously in favour of such a provision. They maintained that it was quite opposed to the sense of the country, and to all that had been said to His Honour that when the land had become so subdivided that there was no longer any possibility of owners and tenants to cultivate, the landowners to whom the land was given should go into perpetual exile, while the tenants remained in possession of the land. The very immatured manner in which the Bill was introduced was not to be permitted; and though the Honorable Mover, Mr. Brandreth, he wishes it to be distinctly understood that its introduction in no way pledged him to support the Bill. The principles of a Bill were usually considered to be accepted when it was referred to a Committee; but in this instance his Honourable friend had brought the Bill before the Council with an avowal that he awaited Reports from the Lieutenant Governor of the Panjáb, from Mr. Roberts, Mr. Prinsep, and other functionaries, whose opinions on the Bill were more or less indispensable. That was an incomplete and somewhat unusual way of introducing a Bill of such importance; especially as there were many details in it which were open to much question and discussion. SIR H. DURAND would avoid now entering upon a consideration of various points which demanded attention, because at the present stage, in which Mr. Brandreth merely launched the Bill in a sort of tentative way, to court ventilation of the subject and general criticism from the Panjáb and elsewhere, it was desirable to await fuller information, and he guarded himself against being in any degree pledged to the various principles involved in the Bill. Therefore, until they were in possession of what the Honourable Mover himself awaited the reception of, and until discussion could be based on the deliberate opinions of the functionaries to whom he had referred, SIR H. DURAND held himself entirely free from any implied pledge or concurrence with the principles or details of the Bill by a simple assent to its introduction.

The Honourable SIR WILLIAM MUIR was disappointed to learn, from what had fallen from his Honourable friend the Mover of this Bill, that it had not yet received the sanction or approval of the Panjáb Government. He freely admitted that Mr. Brandreth himself was every way qualified by experience and acquaintance with the subject to take charge of the Bill; but it seemed to him that it was the province of the Local Government to originate such a measure. For the merits of the proposed law depended to a very great extent on points



assessment caused by there being so many mouths to feed, and from the land not being sufficient to support the cultivators in comfort. A landowner had no power whatever under existing law to restrict the subdivision of an ancestral estate after his death among his heirs-at-law, however numerous they might be. A few years ago the holders of jagirs or large revenue-free estates agreed, he believed, very generally to a proposal of the Supreme Government that such estates should devolve upon the eldest son only. He had reason for thinking that in some parts of the country the landowners would readily agree to any reasonable proposal for preventing future excessive subdivision in small revenue-paying estates. He would like to see power given to the Lieutenant Governor to restrict further subdivision in any village where the properties were already too small, and where he considered that such restrictions would not be opposed to the feelings of the people. A provision to that effect, however, would be beyond the scope of the present Bill, in which he professed to deal with the relations of landowners and tenants towards each other.

The 28th section of the Bill allowed the tenant with a right of occupancy to plant and cut down trees, on agreeing to pay reasonable compensation to the landowner. A tenant who paid in money was at liberty to sow what crops he pleased on his land; but a tree, according to the Panjáb Revenue Manual, which, he believed, correctly described the existing custom in many parts of the country, he could not cut down unless he required it for domestic use. He had consequently no inducement to plant trees, and, considering the scarcity and increasing price of wood in many parts of the country, it certainly seemed desirable that he should be able to get rid of this disability on payment of compensation to the landowner.

The sixth part of the Bill treated of compensation for tenants' improvements. The clear and comprehensive description of the word "improvements" in Section 33 had been adopted from the Oudh Bill. That Bill further, it appeared, allowed the tenant to make any improvement he pleased without reference to the landlord. Such a provision, however, would be opposed to the relation in this matter, in which the tenant was considered to stand with reference to the landowner in the Panjáb. It had therefore been provided in this Bill that the tenant-at-will should not receive compensation for improvements, unless they had been made with the permission of the landowner; nor should the tenant having a right of occupancy, unless the improvements had been made either with the permission of the landowner, or unless the tenant had first given the landowner the option of making them.

defined right; but noticed all the provisions of the Bill which appeared to him more especially to be by Mr. Brandrojon. He might have overlooked some matters which might provoke this class would be no doubt the Council would think that he had said quite enough for one again, there were had not already taxed its patience too far, and that all minor details as to draw any broad principle dealt with by the Select Committee, should be obtained permission very much into those of the <sup>case</sup>. He had prepared this Bill to the best of his present knowledge but only the share of the revenue of himself to defend every line of it to the <sup>best</sup> <sup>advantage</sup>, his privileges and profits being in this <sup>it</sup> would gladly adopt <sup>as</sup> those of the proprietors. Now this class had special claims on our consideration.

Such being the vague and undefined position of the interests and rights in the soil, our first settlement went far to fix and to create a title in the land. Its effect was to substitute for a vague and uncertain position a definite and legal right. The action of the Administration and of the Courts of Law during the last fifteen or twenty years had been also to strengthen the system of rights so recognised, and to create a just expectation of their permanence.

Such being the case, he fully approved the principle of this Bill, which took that settlement as the basis of rights in the Panjáb, but at the same time afforded fair opportunity of remedying any patent injustice which might have been committed. He did not, as his Honourable friend the Lieutenant Governor, read the Bill as based on the assumption that the original settlement was founded on a great misconception, which it was the object of the Bill to remedy. On the contrary, he looked on the Bill as establishing and confirming all rights recognised by the settlement, but with the reserve of power to question the decisions of that settlement where shown to have been clearly opposed to any well-formed usage or right. The settlement might have been right, or it might have been wrong, in its general principles and assumptions; that was not the question. The question was whether it did not supervene upon a vague and uncertain state of things, and whether, so coming and having been so long enforced as the universal standard of landed titles, it did not supply a basis of right which should now be supported, excepting where in individual cases it might be shown to have done injustice.

With these general remarks SIR WILLIAM MUIR would now beg permission to make some observations on certain provisions in the Bill. As Sir H. Durand had said, the details of



had been made and wrong done on the occasion of the original settlement in the Panjáb, but that it was considered—looking to all the circumstances of the case, to the fact that tenants had enjoyed rights which were so erroneously bestowed on them now for a long series of years, and also, as stated by Mr. Brandreth, that, to a certain extent, landowners were themselves remiss at that time in following up their claims—that it was on the whole fair that the onus of proof should now be put on landowners to show that tenants who were in the enjoyment of rights ought not to continue to enjoy them. That was the principle on which His Honour understood the fifth section to be based. But after that there came the 6th section, which appeared to him to be somewhat strange. After saying that every tenant whose name appeared on the records of a regular settlement sanctioned by the Local Government, as having a right of occupancy in land which he had continuously occupied from the date of entering his name in such settlement, should be presumed to have a right of occupancy in the land so occupied, Section 6 went on to say that any tenant who was not recorded as having a right of occupancy should, if there was reason for believing that he would have been so recorded if he had preferred his claim at the settlement, have the same rights and be subject to the same liabilities as other tenants who were recorded in the same settlement as having rights of occupancy. That struck His Honour at first sight as a strange provision; because the Bill, as he understood it, starting with the admission that such rights were in many instances wrongly given by the Settlement Officers, provided in Section 6 that any tenants who had not been recorded as having rights of occupancy, but who, if they had claimed such rights at the time of settlement, would have been so recorded under the erroneous view which then prevailed, should now be considered to have been recorded as possessing such rights. His Honour could not understand the justice of a provision of that sort. It would require careful consideration before the Bill was passed.

Section 12 appeared to have been taken from the Oudh Bill, and provided that in an ordinary suit for arrears of rent the Court might allow a diminution of rent under certain circumstances, as, for instance, if the tenant could show that the produce of the land had been diminished by drought or hail or other calamity beyond the control of the tenant. The Court might then make a decree for arrears, with such remissions as it might think equitable. His Honour could not help doubting whether a provision of that sort was suited to an everyday transaction between a landlord and his tenant. Such a provision would, he thought, lead to much litigation, and it would also be very difficult for the Courts to decide whether a tenant had suffered from drought, hail, or any other calamity. His Honour could not see the provision of that sort being suitable to an extraordinary occasion, such as the case of the Government had, to a great extent, remitted the revenue on the lands of landlords should themselves remit the rents of their tenants. But it seemed doubtful whether a provision of that sort was applicable to ordinary cases.

The Honourable Major General Sir H. M. DURAND said that the Bill was introduced by its Hon. the Mover, and that his assent to the Bill was given on the ground that the exchange was made in satisfaction of some title or right, whether they were voluntarily accepted or not.

To the principle involved in Section 6, after what he (Sir WILLIAM MUIR) had said on the Bill generally, he need not add that he did not share in the objection raised by the Lieutenant Governor of Bengal. If a cultivator could prove that at the original settlement he ought to have been recorded as having a right of occupancy, but for any reason was not so recorded, it was fair in theory that he should now be allowed to assert his position, subject to rebutment on the grounds indicated in Section 5. But he agreed with the Lieutenant Governor that the section was not very clearly expressed. His chief objection to the provision was that it would be practically inoperative. It would be almost impossible now to go back to the old state of things existing at the original settlement, and say what would have been the decision then. If it could be done, of course it was right that the record should be so amended. But practically he did not think that they could arrive at any satisfactory result by the attempt.

He now came to the part of the Bill connected with enhancement of rent. The first case, that relating to ordinary occupancy ryots, provided that the rent should not be raised above eighty-five per cent. of the net produce. It did not say that in any cases the enhancement should be less, and he concluded therefore that the rents of all such ryots could be raised to within fifteen per cent. of such full standard. He did not object to this: it was to the standard itself of "net produce" that he took exception. But much of his objection had been anticipated by the Mover of the Bill having in his speech used the term "rackrent" as



of local usage and right, of local history and administration, which were familiar to those at the head of the province, but must be imperfectly known to this Council. Further, it appeared to him to be an advantage that the responsibility of measures of this kind should as far as possible be thrown upon the Local Government. It was hardly possible for this Council to take the initiative in special enactments depending so entirely on the peculiar habits and circumstances of distant provinces. He therefore thought that this belonged to a class of measures for which local legislation was specially suitable; or, if the Local Government did not possess that power, then at the least that the Bill should be promoted by the Lieutenant Governor himself. He might notice another peculiarity on the present occasion which rendered this the more necessary; the subject of the Bill was one on which extreme opinions were liable to be held on both sides, and in point of fact extreme opinions, as might have been expected, were maintained on both sides in the Panjáb. Those of his friend Mr. Edward Prinsep, the Settlement Commissioner, had been alluded to; and, while he had a very high estimation of that officer's zeal and ability, it must be admitted that his views on the present topic had an extreme tinge. As already stated by Mr. Brandreth, Colonel Lake had found, on local inquiry, that far greater interest and intensity of feeling were displayed by the officers of Government on this matter than by the people themselves. These, as elsewhere, were indifferent on the subject, and so long as their present rights were not actually touched by ejection or other immediate ground of complaint were content. Now, as had been explained by Mr. Brandreth, on the inquiries and measures of Mr. Prinsep, which had for their object a radical change in the former settlement, the present position of the ryots had been secured by leases which would prevent their being ousted for some time to come. There was a danger, therefore, that officers holding one class of views should assume an absence of complaint really owing to indifference, to be a confirmation of the equity and justice of their principles. A danger of this kind being incident to inquiries prosecuted by officers holding decided views on either class of opinions on the present question seemed to him an additional reason why the Government should have interposed its authority as moderator, and itself laid down the principle to be followed, and proposed such legislation as might be necessary.

The history of the rights in question was peculiar. Before our occupation of the Panjáb the respective positions of the proprietor and the tenant were vague and unsettled. The former seemed to have possessed no such thing as an absolute right of property in our sense of the term; he was liable to constant interference. And so also with the ryot: he had no very definite improvement in point of fact he was rarely interfered with, and the Committee referred to the proprietor, both had given it as their opinion that if now declared to be tenants-at-will responsibility on the absolutely worse off than they were under the Sikh government. Then true, and he should large classes of cultivators between whom and the proprietors it was difficult allowed to participate in practical distinction: the position and rights of the one seemed to merge impart to him an interest in the other; for the cultivator paid no rent in our sense of the word, and in aiding in a variety of ways, demanded of Government which fell upon his hold might not be reducible to a money estimate very much the same thing important to the ryot; whereas if he were held to have no share in the improvements not effected by himself, it tended to make him obstructive, and throw hindrances in the ryot's path, which he could do in a thousand ways to the detriment of the occupant.

The 13th section related to commutation of rents in kind. Rents in kind belonging to a backward state of society, it was quite right to provide that they should not be reverted to where money rents were already paid, without the consent both of the landlord and the tenant. He was not so certain of the equity of the first part of the section, which enacted that rent in kind should not be commuted into rent in money without the consent of the landlord. Looking to the great advantages of money rents under ordinary circumstances, it might have been worthy of consideration whether commutation into money might not have been enforced at the instance of either party, had the feeling against such a course not been so strong in the Panjáb as was represented by Mr. Brandreth. There were, moreover, particular localities where the crops were very uncertain, or where, as in jungle lands, they were exposed to ravages of wild beasts, or other causes of great fluctuation; and under these circumstances no doubt rents in kind were peculiarly suitable. Care should be taken specially to exempt those from any pressure in the direction of commutation into money; and this might perhaps be done by reserving a power of exception to the executive Government.

Passing on to the chapter on ejection, it was provided, under Section 17, that tenants-at-will should receive a notice of the landlord's intention to eject on or before the first of May; but no length of notice was stated. By Section 19 a ryot might be ejected any time between



the Bill would be the subject for future inquiry; but at the same time he felt that the observations made in this Council would go forth to those who would have to consider the details; and he felt it therefore incumbent on him to state his opinion on certain points, some of which were, it was true, points of detail, but still detail founded on important principle.

The first point he would call attention to was Section 4, which provided for a right of occupancy in favour of ex-proprietors who had lost their proprietary right otherwise than by forfeiture to Government. He approved the general principle here laid down, but he was not sure of the exact bearing of the words "forfeiture to Government." Would it cover the case of purchase by Government for arrears of revenue? In other parts of the country the right of occupancy was not extinguished by sale for arrears of revenue; but it was extinguished by the sale of the rights and interests of a proprietor in execution of a decree. Now, the term here used would permit of the maintenance of the occupancy right where possession was continued after private sale, or sale by the Courts. It was true that sale under decree was not a process at present in vogue in the Panjáb, but they must look to the time when the practice there would be assimilated with that in other parts of the country. He did not at all object to the principle of maintaining the occupancy right after sale under decree; for it might be fairly held that what was sold was simply the proprietary right, and in point of fact the ex-proprietor was generally allowed to continue as a cultivator. But there was something to be said on both sides; and as the principle would be to some extent different from what was followed elsewhere, it was a point which should receive careful consideration.

In the first part of the 5th section, which recognised the right of occupancy where recorded at the original settlement, after what he had submitted on the general principle of the Bill, he need not say he fully concurred with the provisions for rebutment reserved to the proprietor. The second test of occupancy for twelve years antecedent to 1849, viz., up to 1837, or more than thirty years ago, it would be almost beyond the power of any ryot, with the imperfect records existing under Sikh rule, to prove, and he thought that this provision would be practically nugatory.

The grounds of rebutment seemed to him on the whole to be far enough; but the adverse test in the third clause, namely, that ten of the same class had been ordinarily ejected at will, might be difficult to reduce to a consistent rule. Of course isolated cases of ejection, the mere occasional exercise of proprietary power, if not in the sense of the people would hardly constitute an adverse usage. He would therefore had no suggest anything more precise, but it was for consideration whether some not be framed.

In the "Explanation" it was provided that voluntary exchange of rights, or the ryot's title. It might be questioned whether their notions as to their own no harm in allowing a trade in the question. The fact of an upon them. There was certainly object or if he silently acquiesced, any provision of law which should permit of this taking place would be unobjectionable.

Section 28 gave power to the ryot to cut down timber under certain circumstances. SIR WILLIAM MUIR was not sure that this was not an unjust infringement of the right of the proprietor. If the custom of the Panjáb was against the exercise of such a power, he did not think that any sufficient case had been made out for now conferring it.

He came lastly to the sixth chapter, on compensation for improvements. Section 29 recognised the tenant's right to effect improvements if not prohibited by the proprietor; and this he thought sufficient. The following section proposed the novel condition, that any occupancy ryot might call upon his landlord to make an improvement, or permit him to make it, or otherwise to go into Court for permission. This seemed to SIR WILLIAM MUIR quite unnecessary. The provision in the previous section was quite enough. It was for the proprietor's interest that improvements should be made; at least it would be so if the principal he had before advocated, namely, the right of the proprietor to share in the benefits of an improvement, were admitted; and that would be quite a sufficient motive for his not interfering with the ryot, if indeed it did not lead him actively to assist.

In section 31 it was laid down that tenants if ejected should receive compensation for improvements effected by them within the last twenty years. This limitation of twenty years appeared wrong to him principle. A ryot might have sunk a costly well, expecting to have



synonymous. Now he (SIR WILLIAM MOIR) took the word "net produce" to mean that portion of the gross produce which remained after deducting therefrom the wages of labour, profit of capital, and other such charges. But it appeared to him that, if this were allowed, it would be going on an entirely wrong estimate of the nature of rent; for rent was a thing which adjusted itself on a great variety of considerations between the owner and the occupant. The only safe and just standard was therefore the rent actually paid by occupants at will for similar lands in the neighbourhood, with any percentage of reduction that might be thought right in recognition of the privileged nature of the tenure.

The second case provided that for those occupants who had hitherto paid no more than their share of the revenue demand of Government the rent should not exceed seventy-five per cent. of the net produce; and with the same reservation, he approved the principle. These might be looked on as having a sort of quasi-proprietary claim, and it seemed fair that they should be allowed to continue in the enjoyment of a larger share of the profits than ordinary occupancy ryots; the arrangement being in fact that of the standard rackrent the privileged occupant should have twenty-five per cent. and the proprietor twenty-five per cent., the remainder going to Government. But if this were enacted care should be taken that the benefit was not conferred on those who had no proper title to it; and he was afraid that, as the provision now ran, it might include others. It was not sufficient that before the institution of the suit the occupant had not paid at a higher rate than the land revenue, for that might have been merely as a matter of favour, and not of right or in pursuance of a recognised usage. He thought that the ryots entitled to the privilege should be more carefully defined, so as not to go beyond the class of tenants fairly entitled to it. Referring now to Section 9, it was proposed in the third clause to enact that no enhancement should take place within three years of a decree, unless, amongst other reasons, on account of improvements made at the sole expense of the landowner. If the improvement were made at the sole cost of the cultivator, it was presumed that the entire enhancement of value would be enjoyed by him; and this was the principle followed elsewhere. But SIR WILLIAM MOIR was inclined to think that they had hitherto gone on a wrong principle in not recognising the right of the proprietor to share in the enhanced value of his land, even if the improvements had not been effected at his cost. It was the improveable nature of the land which had rendered the work of improvement possible, and the proprietor had an interest in that improveable element as well as the ryot. Of course, when the general improvements were effected solely at his cost, the entire enhancement of value should go to him; but when they were effected with such deduction as might seem adequate for increased labour, risk, or other expenses with those which he had introduced into the cultivator's part. But it did not follow that the converse was equally what was held to have been the case in some degree in the fruit of improvements, however effected, it would be glad to see the point further considered. If the proprietor were who had cultivated for a long time, in permitting and even stimulating ryots to make improvements, provisions of the Bill which, without such as allowing the use of tillage materials, which he should be inclined to ask was, whether it was, but yet might be itself, and the leading administrators of the Province, were satisfied that any such measure was required? Had it been carefully ascertained and established beyond a doubt that legislation in this direction was really wanted? Had Native opinion been appealed to in a matter upon which the people, through their representative men, were so eminently qualified to judge for themselves? And, again, he would ask, was this Bill simply declaratory of well-known existing rights, or did it, in any of its sections, create new rights which the people neither appreciated nor desired; or, on the other hand, destroy old rights which were valued and cherished by any section of the community? He must repeat what he had urged in somewhat similar terms elsewhere on a former occasion. He contended that the Government were right to legislate for the general good of the people even in matters affecting private rights; but such legislation ought, in his opinion, to be carefully directed to clear up whatever was doubtful in the existing law or definition of rights, to remedy needless restrictions upon real and substantial interests in land, in view to their development for the public good, and to commute and settle for ever all dormant and mischievous claims. But to create new kinds of tenures, and to confer new rights, irrespective of the existing state of things, without consulting the wishes of the people and satisfying themselves that action was really wanted, would be a measure of legislation both unsound in theory and dangerous as a precedent.

His Excellency THE COMMANDER-IN-CHIEF said that, with the present amount of information before the Council, it appeared to him extremely doubtful whether the measure should be allowed to go into Committee. Sir Henry Durand had stated that he would not pledge



first May and fifteenth June. Apparently, therefore, notice might be served on the first May, and ejectment be carried out immediately after. Now it was important that an ample term should be provided, say of a couple of months, before the opening of the new agricultural season, to admit of the ryots making arrangements for a holding elsewhere.

Similarly, under section 23, the proprietor should have ample notice of the ryot's intention to quit, in order that he might make timely arrangements for the cultivation of the holding about to be abandoned: and he (SIR WILLIAM MUIR) was not sure that the fifteenth of May was early enough for this purpose. He would also observe that the section provided for the tenant "continuing liable for the rent of the land occupied by him." Now it was not for land occupied, but for land relinquished, that the tenant should be held liable unless he gave timely notice to the landlord.

On the subject of sub-leases, he would remark that whatever was in accordance with the custom of the country in this respect should be legalized. In section 25 it was laid down that, notwithstanding the right of the cultivator to sub-let, if for three years he received no portion of the produce, his right was forfeited. Now, if this was in conformity with the usage, it was not to be objected to. But otherwise it might occasion hardship and injustice, where, for special reasons, the ryot might be forced for a time, as for example, by going on military or civil duty or other such cause, to absent himself, and commit his fields to the care of another for a longer period.

He came now to the provision in the 26th section, that if a landlord should prove that the quantity of land in his possession was insufficient for the support of his household, he could oust a tenant on payment of the market value of so much land as he required. He presumed that this meant that the proprietor's own holding and the rents receivable from his ryots were both insufficient for his support, which would imply a state of destitution on the proprietor's part hardly compatible with the idea of his having capital to buy up the ryot's holding. As to the provision itself, it was a very novel one, and its embodiment in the law could only be justified on its being clearly the existing practice. The main issue, namely, the sufficiency of a share in a village for the support of a family, was vague, and involved considerations which it would be difficult either to prove or disprove. Moreover, it might work harshly. For example it would apply to the class of quasi-proprietors, now to be fixed as occupant ryots with special privileges. These, in common with all other ryots, would be placed in a very insecure position, and might be ousted under conditions difficult to anticipate. The "market value" was also an unsuitable term under present circumstances. The ryot's tenure had not in most parts of the country been saleable; and legislation.

The next section (27), it was true, provided for the right of alienation on the subject of ryot. This was a new provision; but he did not think it unfair, or occupancy in favour of the ryot inconsistent with the state of feeling among the people, and applied by him, had lost his proprietary rights. Otherwise he would not force such a provision, and continuously, or of a tenant whose right of occupancy transferred right to growers of a regular settlement sanctioned by Government previous to the passing of this Bill into law.

In support of these provisions, reference had been made to the somewhat analogous conditions of Act X. of 1859, and the Oudh Rent Bill, which had not yet become law, in regard to rights of occupancy.

There was perhaps no provision in the Act referred to, the equitable character or expediency of which had been so much questioned, as the clause which denied the title of the landlord to re-enter upon land which he had suffered to remain in the unconditional occupancy of the tenant beyond the arbitrarily prescribed period of twelve years. Moreover this provision of the Act was framed for application to that part of the Indian empire which had long been under our rule, and in which a more clearly defined and long established usage gave some sort of sanction to the principle which it involved; whilst in the case of the Oudh Rent Bill, the creation or affirmation of the existence of rights of occupancy on the part of the tenant was based on the assent of the landlord; and although he ventured to doubt the equity of the recognition of the right of proprietors to fetter the interests of their posterity in this manner, in a country where the law which governed ordinary dealings with immovable property jealously guarded the rights of the natural heir, by the restrictions which it imposed on the power of the owner for the time, in the exercise of his rights of ownership in the dealing with such property; yet in that case there was a semblance of authority for the action which had been taken, such as appeared to be wholly wanting in the present case. On what considerations could it be reasonably declared that the mere fact of a quondam proprietary interest



a permanent return for the investment of his capital. It appeared wrong in such a case to fix any limit of time. Cultivators should be compensated for all unexhausted improvements for which they had not already received a full equivalent. It should be left to the Courts to determine on the merits of each case what was an unexhausted and uncompensated improvement without arbitrarily laying down a period.

In the definition of improvements perhaps "fencing" and "enclosing" might with advantage be added.

SIR WILLIAM MUIR apologized for having detained the Council so long. But the Bill was one that closely affected the largest and most important class of an extensive Province in their dearest rights, and he felt bound, therefore, to give his opinion on the leading provisions of a measure which would have so great an influence upon their well-being.

The Honourable MR. TAYLOR said that His Honourable friends Sir H. Durand and Sir William Muir had anticipated much that he had to say in regard to the unusual and imperfect form in which this Bill had been introduced. As to the general principle of the Bill, so far as it recognised the existing status of occupancy-rights, he entirely concurred with Sir William Muir, and he also agreed in many of his remarks on the several sections of the Bill. But it seemed to MR. TAYLOR that his Honourable friend Mr. Brandreth had disarmed any close criticism of details at this stage of his Bill, by the proposal to publish it for a period sufficient to admit of their receiving opinions, and a judgment on its merits, from the most experienced officers of the Panjáb before it went to Committee. When moving for leave to introduce the Bill, his Honourable friend stated that most of its provisions had either been approved or suggested by a Committee appointed to consider the question of tenant-right in the Panjáb; but beyond this statement there was nothing before them to show that his opinions were shared by the other authorities of the Province he represented, or that he did not in fact stand alone in the views he had expressed. He (MR. TAYLOR) had heard indeed from several quarters during a recent visit to the Panjáb, and His Excellency the President and his colleagues in the Executive Council would remember, in support of the fact, the voluminous proceedings on the subject which were under discussion a year and a half ago, that there were very material differences of opinion on this question of tenant-right among those who were most competent to judge; and he believed he was right when he said that those differences were by no means reconciled in the Lahore Council to which his Honourable friend had alluded, and of which he was President. It might not be admitted, *prima facie*, that what was good for the North-Western Provinces, might also be good for the Panjáb; but Mr. Brandreth had himself told

Here then the circumstances of the Panjáb were different, and to meet these differences, in the administration, the present Bill provisions which were at variance in some material respect which it proposed to have been made for the other Provinces. He had avoided, for instance, inequitable. It was the mistake of Act X. of 1859, giving rights of occupancy to tenants, to prove the contrary, to ascertain an arbitrarily fixed period: but there were other points and other, that shared by several of the local circumstances of the Panjáb were considered, might, subject it was incumbent on this Council to however, entering into these details, the Bill which related ere it committed itself to the approval of the Panjáb Government, present shape to a Select Committee. For, so far as they had the means of coming to any conclusion in regard to the main condition of the declaration of a right of occupancy being vested in the tenant, that status rested solely upon the test of the arbitrarily fixed period laid down in the provisions of Act X. of 1859, and derived no support from the results of any careful and detailed examination of the pre-existing relations between landlord and tenant in respect of the matter in the Panjáb by which the question of the equity of this test could be satisfactorily determined. Entertaining these objections in regard to the principle of the fundamental provisions of the Bill it seemed unnecessary for him to comment on its details. He would only remark that the provisions in section 26, by which, in certain circumstances, a right of re-entry was conceded to the landlord upon land occupied by his tenant, under conditions by which an absolute right of occupancy adverse to this landlord was declared to be vested in him involved an apparent inconsistency of principle which was of doubtful expediency; and that the matter of section 27 seemed also to be objectionable. If a tenure in which the tenant's permanent interest was limited to a right of occupancy at an equitable rate of rent was, under the prevailing local usage, either not transferable by sale or otherwise, or transferable only with the expressed consent of the landlord, then he (MR. COCKERELL) would observe that no valid reasons had been assigned for the proposed reversal of such usage.

For the reasons which he had stated above if the Honourable Mover pressed his Motion to a division, he should feel obliged to vote against the Bill going into Committee in its present shape.



himself to any of the principles of the Bill, and considered the introduction of it merely a tentative measure. Mr. Taylor had great doubts whether there should at present be any legislation at all; and although Sir William Muir appeared to be in favour of legislating, still, he seemed to be actuated by some of the considerations brought forward by Mr. Taylor, and to think that the Council had not before them sufficient information, and that the Bill should have been introduced with the authority of the Local Government. Without attempting to give any opinion on the Bill, or the various principles it embodied, it seemed to His EXCELLENCY that they were not as yet in a position to take up the Bill, or consider it so that the results of their deliberation would be of any use in guiding the Committee to which it was proposed to be referred. As he understood the constitution and practice of the Council, if the Bill were so referred, the Committee would hold that the principle—or rather principles, for there were many—of the Bill had received a general sanction from the Council; but if they referred the Bill to a Select Committee with the intention of afterwards throwing it out, or of altering it altogether in principle, it seemed to His EXCELLENCY that such a course was not suited to the dignity of the Council. He would therefore wish that the consideration of the Bill should be deferred till they were favoured with the reports which had been promised by Mr. Brandreth, and then they would be better able to judge of the propriety of proceeding with it according to form.

The Honourable Mr. COCKERELL said he shared fully the general impression set forth in the speeches of the Honourable Members who had addressed the Council, as to the insufficiency of the information upon which they were called upon to assent to the principle of a Bill which had for its object the introduction of most important changes in the relations of landlord and tenant in the Panjáb, and he concurred in the conclusion expressed by the last speaker (His Excellency the Commander-in-Chief) as to the doubtful expediency of assenting to a Bill, the principles of which they were not in a position to affirm, being referred to a Select Committee.

The proposed measure would seem to have been brought before the Council with unnecessary precipitancy. It was well known that some of the most important provisions of the Bill had for some time past been the subject of much discussion in the Panjáb, yet not a single paper had, up to the present time, been laid before the Council to show how far the conclusions upon which the Bill was founded were in accord with the views of those officers whose local experience entitled their opinion on the very difficult question of the relative rights of landlord and tenant to the greatest weight, nor in what way and to what extent the existing relations between those classes in the Panjáb called for the remedy of special settlements, which

The provisions of this Bill which, in the absence of further information stated, the Courts appeared to be most open to objection, were contained in Part II. of the Bill, which related to the number of persons in the Panjáb and effect of the Bill, he They purported to create a presumption of the existence of persons most interested—the tenant who, having been himself the proprietor of the land, had gone most further at present. They interested in, but retained his occupancy of, the land, to doubt if the people of the Panjáb themselves required any legislation, which the members of this Council admitted of it, he would be glad to see the question before them postponed until the reports of the Lieutenant Governor of the Panjáb and the financial officers there were laid before them.

HIS HONOUR the LIEUTENANT GOVERNOR would, with His Excellency the President's permission, say a few words before Mr. Brandreth made his reply. His Honour thought it very much to be regretted that the correspondence on the subject of the Bill, which had already been carried on in the Panjáb, had not been printed and communicated to the Council when the Bill itself was circulated. His Honour could not help thinking that, if that had been done, the Bill would have received the support of the Council, instead of, as was likely to happen, being altogether postponed. The two main objects of the Bill were to give landholders the opportunity of upsetting some of the rights of occupancy which were almost unanimously admitted in the Panjáb as having been established on too large a scale at the time of the first settlement. That, His Honour thought, might be said to be the object of the Bill; and then the opportunity was taken of defining the general rights of landlords, and of tenants having a right of occupancy. There was not the slightest doubt that some legislation on the subject was required. His Honour did not believe that any one with a sense of justice, who read the reports that Mr. Prinsep had submitted, would deny that some legislation was required to meet the cases mentioned in those reports. His Honour would therefore extremely regret that His Excellency the Commander-in-Chief's proposed motion should be carried. Every object would be gained if Mr. Brandreth would alter his Motion and refer the Bill to Committee for two months instead of six weeks, and if the Government would publish the correspondence which lately taken place in the Panjáb, and



on the part of the occupier, no matter how it was originally acquired or how (save in the exceptional cases specified in the Bill) it had lapsed, enhanced the value of his subsequent tenancy interest? What security was there for the equitable declaration of the validity of a title to occupancy—and he apprehended that this proposed rule was likely to govern the vast majority of cases—resting merely upon the record of a right of occupancy in a regular settlement approved by Government? Sir W. Muir considered, for the reasons stated in his speech, if he rightly understood him, that such record did afford a trustworthy ground for the affirmation of the tenant's right; but the Honourable Mover of this Bill admitted that the former settlement records were in this respect of more than doubtful validity, and although he added that the revised settlements then progressing were bringing to light and rectifying the errors of the past, he would remind the Council that the Bill as it now stood by implication excluded the records of settlements not completed and sanctioned by Government ere it became law.

As against the conclusions of the Honourable Member above referred to (Sir W. Muir) in regard to the value of the settlement papers as the basis of rights of occupancy, he might quote the statements of an officer to whom reference had been frequently made by the Honourable Mover of this Bill in his introductory speech, and whose assertions and opinions in a matter of this kind, from his long practical experience of settlements in the Panjáb (he alluded to Mr. Prinsep) seemed to be entitled to the utmost consideration. With the permission of the President he would read portions of a letter addressed by this gentleman to a late Honourable Member of this Council upon the subject of this Bill. In regard to the provisions to which his remarks had been particularly directed, Mr. Prinsep wrote, "It comes out that there were no such proceedings as established the existing status in the record. The village accountants, when they drew up the records, filled in *merely on the period of occupancy test*. There was no inquiry, no confronting, no declaration made by the settlement officer" \* \* \* "In Guzerat alone and north of the Chenab was there such a real inquiry" \* \* \* "In five other districts there were no such papers showing a formal inquiry. The entries were made merely by the Patwáris" \* \* \* As to the affirmation of these rights by decisions of the Courts, Mr. Prinsep said, "What are these decisions? 300 or 400 contested suits at most in each last settlement. Look into them, and you will find the same ruling principle, that the Courts looked to twelve years and twenty years, and nothing else, for no other reason gave the privileged status. This is a fact, and it is totally contrary to all that agrees with *our notions of equity, common sense, and village customs.*"

His Honour has the deliberate conviction of one of the most experienced officers engaged he suppose, that Sir Prinsep. All His Honour had been a right of occupancy to be vested in the tenant was unsound and to discredit the opinion when the moreover—and in the absence of the publication of any papers to

The Hon'ble Mr. Prinsep is justified in accepting the statement—that this conviction was itself, about which several of the officers of the Panjáb. Such being the case, he submitted that advert to the supposition of His Honour pause and await some further information on this subject were in opposition to the proposals of the principle of those provisions already at Lahore for the purpose of considering the different ~~in its~~ in its tenant right which required legislation. He did not know where his Hon'ble friend obtained his information on this subject, but what he stated when he moved for leave to introduce the Bill, that most of its provisions had been either approved or suggested by the Lahore Committee, was substantially correct. He had there a copy of the suggestions for a Draft Bill made by the Lahore Committee, and signed by the different members, which his Hon'ble friend could compare with the present Bill if he thought proper. His Hon'ble friend, Sir W. Muir, also had concluded that this Bill had been introduced without the Lieutenant Governor of the Panjáb having expressed any opinion on the subject. When Mr. BRANDRETH stated that the Lieutenant Governor had not yet expressed his views upon the Bill, all he meant to say was, that a copy of the Bill as then introduced had not been seen by the Lieutenant Governor; but he was justified in stating that the Lieutenant Governor was strongly in favour of legislation on these subjects, and he trusted it would be found that many of the provisions of this Bill were in accordance with his views. He had there a letter from the Secretary to the Government of the Panjáb, dated 8th November 1867, to his address, in which he was informed, with reference to a Draft Bill which was before the Lieutenant Governor at Murree, many of the provisions of which resembled those of the present Bill, that His Honour generally approved of the provisions of that Draft Bill, but reserved to himself the right of expressing his views on the subject more fully thereafter. The Bill as it at present stood was introduced entirely on his own responsibility, though in accordance, he thought, with the justifiable supposition that he was not introducing a Bill which would be disapproved of by the Lieutenant Governor; and he informed the Council that the only reason why he had not



The Honourable Mr. STEWART GLADSTONE had not intended to say anything on the subject of the Bill before the Council, because he must admit that it was a subject of which he was very ignorant. He thought, however, that it was a good rule not to disturb any arrangement that had worked well, unless dissatisfaction was clearly expressed regarding it by persons able to speak with authority, or something was otherwise shown to necessitate legislation on the point. He agreed with His Excellency the Commander-in-Chief that, at the present stage of the measure, no such cause appeared to have been shown, and that the consideration of the measure should therefore be postponed till the receipt of the reports that had been alluded to by the Honourable Member in charge of the Bill.

The Honourable Mr. SHAW STEWART said that when they considered the great interest that now attached to the question of tenant-rights and property in land in Ireland, in India, and throughout many portions of Her Majesty's dominions, it would have been surprising if a measure like the Bill before them could have been introduced into any assemblage of Englishmen entrusted with legislative functions without obtaining the attention and consideration evinced by this debate. Though, like the Honourable gentleman who spoke last, he had come unprepared to discuss the Bill on this occasion, yet several points had been stated in debate to which he would like to refer in a few words. His Honourable friend, Sir William Muir, appeared to have understood the Bill to be founded on the principle of upholding the settlements made in the Panjáb fifteen or twenty years ago. Now he must confess that he had formed a different idea of the Bill, and one which agreed with that of His Honour the Lieutenant Governor. He thought all they had heard from the Honourable Mover showed that this Bill proceeded on the assumption that the settlements were made on erroneous principles, and was intended to offer to persons affected by those settlements an opportunity of upsetting them of which they had hitherto been deprived. Looking at the Bill in this light, he would observe that from several years' experience in the province of Sind, whose revenue institutions and usages were not dissimilar to the Panjáb, he was able to confirm much of what his Honourable friend the Mover said as to the difficulty of dealing with this question. In Sind they had many classes of tenants—some absolutely tenants-at-will, some with occupancy-rights but liable to enhancement of their rent, some with occupancy-rights and free from liability to enhancement, in fact nearly proprietors, and some with no defined rights at all. He could also confirm his Honourable friend's opinion as to the necessity of recording these rights at the time of settlement, and that no settlement could be really efficient or popular where this record was not made. But at the same time, with reference to the Panjáb, he had grave doubts as to the propriety of altering by force of law these settlements, which had been in force for many years, by which, as his Honourable friend had stated, the Panjáb had been guided, and by which the interests of an indefinite number of persons would be seriously affected. As he regarded this to be the scope and effect of the Bill, he could not, in the absence of any expression of opinion on the part of the Honourable Mover, approve of this Bill. He had a different meaning in his mind when he alluded to this section from the word "net produce," especially as he adopted the word from an edition of the "Directions to officers in the North-Western Provinces," edited by his Honourable friend himself, where the word was defined as meaning the ryot or produce rent paid by labourers raising their wages from the soil. Rent, in fact, as used by political economists, meant the same thing as net produce; but he could not use the word rent in this section as identical in meaning with net produce, because, for the special purposes of this Bill, a different and more restricted meaning had been attached to the word "rent" in the interpretation-clause of the Bill. He trusted also that his Honourable friend was not quite correct in his use of the term rack-rent, when he spoke of it as the rent paid by tenants in places adjacent to the land of the tenant whose rent it was proposed to enhance. With regard to the remarks made by his Honourable friend upon clause 3 of section 9, when he said that by this Bill no benefit was allowed to the landowner in the increased rent yielded from improvements made by the tenant, he admitted there was some weight due to his Honourable friend's remarks, and that they well deserved the attentive consideration of the Select Committee to which he hoped this Bill might be referred; but it seemed to him on the whole that, if the option of making the improvements was first given to the landowner, and he did not avail himself of it, it was not necessary to give him any share in the increased rent obtained solely from the improvements effected by the tenant under such circumstances. Then, as to the period of twenty years which his Honourable friend objected to, as the rent payable by tenants having rights of occupancy was limited to a certain proportion



only of the net produce, the remainder of which they were permitted to keep for themselves in satisfaction of their rights of occupancy, it was evident that they must necessarily derive great benefits from any improvements they might have made, after the expiration of twenty years from the date of the improvements being made, though no special provision to that effect, giving them greater benefit than they would thus necessarily obtain, had been made in the Bill or considered requisite by him. Sir William Muir remarked regarding the 25th, 27th, and 28th sections of the Bill, that he would not object to them if they were in accordance with the well-recognized custom of the country; that was, however, just what they were not; if they had been, there would probably have been no necessity for giving them a place in this Bill. The reason for the 25th section was that, as a tenant could not alienate his land, it seemed reasonable to infer, as regarded a cultivator who had not the ownership of the land, that he had alienated it, if he had derived no benefit from it for three years, and that it should in that case lapse to the landowner. As regarded the other two sections, the question for the Council to consider was, whether the disabilities there referred to were of an injurious and unreasonable character; if they were, then, whether they ought to be removed on payment by the tenant of compensation to the landowner. His Honourable friend had noticed some other points, but perhaps the consideration of them might suitably be left to the Select Committee to which he trusted the Bill would now be referred.

The Honourable Mr. TAYLOR would also ask His Excellency's permission to correct a misapprehension of the tenor of his previous remarks on the part of his Honourable friend Mr. Brandreth. He need scarcely assure the Honourable Member that nothing could be further from his wish than to give expression to an opinion that his Honourable friend was not in every respect qualified, by his long experience of the Province and by his ability, to deal satisfactorily with the question of tenant-right, and to carry a measure through the Council which would fully meet the requirements of the country. All that was desired was that, as considerable difference of opinion was known to prevail, the Council should be in possession of the views of other authorities, especially those of the Lieutenant Governor, and of the members of the recent Lahore Committee, whose opinions as to the necessity of legislation in the form of the Bill as introduced were not, he (Mr. TAYLOR) was led to believe, in complete accord with those of his Honourable friend.

HIS EXCELLENCY THE PRESIDENT said, he hoped Honourable Members would consent to the Bill being referred to a Select Committee. A strong argument in favour of that course was that, if the Bill was not referred to a Committee for consideration and report, much valuable time which had been occupied in the discussion of the Bill, and which could ill be spared, would be lost. There could not be the shadow of a doubt that not only the Lieutenant Governor of the Panjáb, but Mr. Prinsep himself, was in favour of legislation on the subject. So long as two years ago (it was about July or August 1866), Mr. Prinsep himself (who, HIS EXCELLENCY again says in passing, was an old friend of his, and whose ability and capacity HIS EXCELLENCY highly estimated) wrote to him (THE PRESIDENT) that he was going on at a great pace, inquiring into, scrutinizing, and even deciding, those questions of tenant-right, during the progress of the settlement which he was empowered to make in various parts of the Panjáb. He added that he was in almost a disagreeable position in consequence of there being no distinct law on the subject. HIS EXCELLENCY's reply to Mr. Prinsep was that he should consult the Lieutenant Governor of the Panjáb and take his orders. Mr. Prinsep did so, and wrote again to him (THE PRESIDENT) and said that, with the consent and approbation of the Lieutenant Governor, he would like to come up to Simla and go into the subject. Mr. Prinsep came accordingly, and HIS EXCELLENCY then looked through all the papers which Mr. Prinsep had brought with him, and came to the conclusion, not only that there had been errors committed to a certain extent in the settlement of the Panjáb, but also that they were bound in justice to allow a reconsideration of the subject. There were certain points, however, on which HIS EXCELLENCY differed with Mr. Prinsep. HIS EXCELLENCY thought that perhaps Mr. Prinsep went too far in favour of landholders, and did not sufficiently take into consideration the circumstances under which, practically, tenants in the Panjáb had under the Sikh Rule, acquired rights and interests antagonistic to those of the land-owners: nevertheless in many points HIS EXCELLENCY agreed to what Mr. Prinsep desired. HIS EXCELLENCY then drew up a Note on the subject which was circulated amongst the Members of the Government. Mr. Prinsep returned to the Panjáb with the understanding that the matter would be then sifted and considered, and a reference made to the Government of India in view to legislation on the subject. Since then nearly two years had elapsed and further inquiries had been made. A Committee had been appointed by the Lieutenant Governor to consider the matter, and the result was that Mr.



Brandreth was authorized by the Lieutenant Governor to take up the subject, and, with his entire consent, had come down to Calcutta and introduced the Bill. HIS EXCELLENCY thought that, under those circumstances, Honourable Members should not hesitate to allow the Bill to go into Committee, on the understanding, of course, that no final report was made on certain points until the Lieutenant Governor's detailed opinions on the Bill itself, and those of any other gentlemen in the Panjáb, official or non-official, who might like to make their reports, should be before the Committee. But there were many points on which there would be no difference of opinion; and these—some of them of considerable importance—might in the meantime be settled by the Committee. On such points the grounds of legislation would be clear, and only those points would be kept in reserve on which there might be reasonable and fair doubts. As to the question of tenant-right, every body knew that, not only in the East, but in the West, there was the strongest difference of opinion. Some authorities were in favour of the landlord holding adversely to the tenant; to others the converse appeared to be equally clear. But HIS EXCELLENCY thought that what was really wanted was to have such a compromise as would secure the just and fair interests of both parties; that was, that the landlord should not be overborne, that he should have what was reasonable and fair, and that, on the other hand, the prescriptive advantages that tenants had in the Panjáb should be secured. That being done, a definite settlement would be arrived at and be enforced by legal enactment. Nothing could be worse for the interests of the landlord and the tenant—for all interests—than to leave such things in a state of doubt or conflict, which invariably gave rise to the greatest antagonism amongst the people. It was common to find on one side of the Panjáb, and even in different parts of the same district, that the landlords were powerful, and that they oppressed their tenants; and in other parts you found tenants powerful from various causes, and that they denied the just rights of landlords. All this was very bad. In his (THE PRESIDENT'S) mind, one of the great arguments in favour of the British Government of India was the way in which they had tried to put, not only the land-revenue of the country on a fair and stable footing—to reduce the demands of Government to a fair proportion of the produce of the soil—but simultaneously, or nearly so, to define all rights and interests in the land. HIS EXCELLENCY was one of those who had always thought that there was a real and true proprietary interest in the soil, though he believed there were many persons, from different parts of the country, who maintained that there was no such thing as a proprietary right in land. In many parts of India it was a received maxim that there was no such right. HIS EXCELLENCY admitted that in many places where the Mahráthas and Pindáris overran the country, the population was destroyed, landlords and their descendants were swept away, and their proof of proprietorship in the land had to a great extent disappeared; but even in those parts there were designations of tenures which showed that there must at one time have been an hereditary proprietorship in the soil. There was no doubt also in his (THE PRESIDENT'S) mind, that in many respects the tenures of the Panjáb and the North-Western Provinces were identical, and that where there was a considerable difference it had arisen from the action of different rulers during late years. In the Panjáb, where a real and true proprietary right existed, the value of that right had almost sunk to zero under the Sikh rule: in parts of the country, many of the landed proprietors were almost in the same position as their tenants; for the Government took almost as much from the proprietor as the rent of his land, and where any rent was in reality retained by the landlord, it was in the proportion of one or two per cent. of the rent, three per cent. being considered a large proportion for him to receive. Under such circumstances, the landlord had little on which to found his right of proprietorship, and it was only his attachment to the soil that led him to wait and hope for better times, and maintain his assertion that the land belonged to him. But another circumstance must be considered: that the value of the land being so small, the landlord was only too glad to get cultivators to remain in his village, and in some cases the landlord bore a larger proportion of taxation than the cultivator himself, and was satisfied if the cultivator recognised the right of the landlord theoretically, and gave him some trifle, something at a marriage or festival. It would not be reasonable, after such a state of things had grown up, to turn round and say that, because the Government had reduced the land-tax and revived interests practically in abeyance, you should therefore sweep away the tenants' rights. HIS EXCELLENCY was convinced that a satisfactory compromise could be made. If our officers only held fairly the balance between the two parties, he had no doubt they would come to an agreement amongst themselves. The settlement officer would only have to act as mediator, and things would almost adjust themselves; but without that action on the part of our officers, things would remain in their old state of conflict. HIS EXCELLENCY did not want to dilate on these matters: he could say a good deal more on the subject; but having expressed those opinions, he did hope that the Council would allow the Bill to go into



Committee, with the understanding that under no circumstances should the Committee report till they had all the information they required before them. While His EXCELLENCY would not desire to fix so long a period as two months—and he hoped all the information would be available within six weeks—it could be clearly understood that, until then, no report would be made.

There were one or two points in the Bill on which it might be well for him to say a few words. On the question raised by His Honour the Lieutenant Governor, as to section 6, His EXCELLENCY thought His Honour's remarks were just. It struck him (THE PRESIDENT) that the latter provisions of the section under notice were not well worded. What His EXCELLENCY presumed was intended was this, that inasmuch as you proposed by the fifth section to give the proprietor the right of asserting his claim, the converse was intended to be provided by the following section, viz. that where the cultivator had not brought forward his claim during the settlement, you would give him an opportunity of proving any right that he possessed but had failed to assert at the time of the settlement. But as the sections now stood, it appeared that, as you told the tenant "under the old rules you would have been recorded as a tenant with a right of occupancy," and then told the landlord "I now give you the right to show that the tenant should be turned out again," there appeared to be an inconsistency in that. This, however, could be set to rights by some verbal alteration.

To another point raised by His Honour the Lieutenant Governor, the Honourable Mr. Brandreth had already replied, viz. the objection to give a reduction in certain cases of calamity. It struck him (THE PRESIDENT) that that provision—it was in section 12—was not an unfair one, because, in the case of calamities of the kind contemplated by that section, it had always been the custom in those Provinces that were not permanently settled to give the landlord a remission of revenue. Now, if landlords came to the Government and asked for relief of this kind, they should deal in like manner with their tenants. When the landowners of Orissa asked the Government to suspend the collection of their revenue instalment, the Government agreed to do so, provided the landholders did the same with their tenants. That, His EXCELLENCY thought, was the kind of case intended. What probably led His Honour the Lieutenant Governor to allude to the matter was that, in Bengal, the assessment of revenue was <sup>weight</sup> ~~very~~ light, and reductions or suspensions of the Government demand were seldom allowed, but <sup>had</sup> in Provinces such as that to which the Bill would apply, the assessment had always been ~~high~~.

With regard to section 13, on the point of commutation. The section seemed to him (THE PRESIDENT) on the whole fair, but it might be made still more so by the option being left to the tenant on exactly equal terms; that was to say, that rent in money should not be turned into rent in kind, nor rent in kind turned into rent in money, without the consent of the tenant. As the section stood, no commutation of rent in kind into rent in money would take place without the consent of the landowner; but no commutation of rent in money into rent in kind could be made without the consent of both the landowner and the tenant. The remarks which Sir William Muir had made on this subject <sup>seemed</sup> ~~appeared~~ to be fair. In parts of the country it was of advantage to proprietors to receive payment of rent in kind, but there were other parts where it was to the advantage of the tenant to pay in kind. Where the people, landlords and tenants, were of the same race, they generally came to an understanding. There were, however, some localities where there was a strong antagonism between landlord and tenant from some cause, and in those cases constant disagreements went on, and great injury to the common interest arose, from the circumstance of rents being paid in kind. It was almost impossible to adjust those differences, and it was to the common interest to have the rent made payable in money.

There was one point raised by Mr. Cockerell to which Mr. Brandreth had not adverted in his reply. It appeared to His EXCELLENCY that there was no provision in the Bill whereby the right of occupancy was given by the lapse of a certain number of years; on the contrary, section 7 provided that no tenant-at-will should be deemed to acquire a right of occupancy by more lapse of time.

His Excellency the COMMANDER-IN-CHIEF had listened to His Excellency the President's remarks with the greatest respect and deference, but as several Honourable Members had testified their wish to support his (THE COMMANDER-IN-CHIEF'S) views with regard to its being expedient to defer the further consideration of the Bill till the receipt of the expected reports, it seemed necessary to take the sense of the Council. He had no wish to offer opposition to the measure at this stage as regarded its ultimate progress. His EXCELLENCY would therefore ask leave to move as an amendment—



That, in the present motion, for the words "that it be referred to a Select Committee with instructions to report in six weeks," the following words be substituted—"that the consideration of the Bill be postponed till further reports are received from the Panjáb.

HIS EXCELLENCY did not desire to refer to the former debate, which would be irregular, but he would take the opportunity of saying that, whilst the debate had been proceeding he had had an opportunity of referring to the opinions written by the members of the Executive Government about a year and a half ago. While abstaining from quoting the opinions of the other members of the Government, HIS EXCELLENCY might say that, on the very voluminous papers then referred to him, he had not formed an opinion favourable to legislation on the matter. Seeing that HIS EXCELLENCY had not received any further information, and that no further opportunity of considering the subject had been afforded to him, he was as yet bound by the opinion he then expressed. Wherefore HIS EXCELLENCY hoped that that would be taken as an excuse for his wishing to be further instructed by the reports of the Lieutenant Governor of the Panjáb and other authorities qualified to give an opinion on the subject, so that HIS EXCELLENCY might, through the debate that would take place on those reports, be in a better position than he was now in, to reconsider the opinion he had formed on this subject. Such a debate would certainly be of great use to the Select Committee, which would then have some guidance as to the real views of the Council. HIS EXCELLENCY would repeat that he was confirmed in the position he had taken by the opinion of those Members who had sided with him, and that this motion was not intended as one of opposition to the measure.

The Honourable Mr. SHAW STEWART said that, with every deference to His Excellency the President's views, he would suggest to his Honourable friend the Mover that, instead of dividing the Council, he should adjourn his Motion to refer the Bill to a Select Committee.

The Honourable Mr. BRANDRETH said, from what had fallen from Honourable Members, it seemed to be expected that there would be some further reports. He wished, however, to guard himself from any misunderstanding, and to point out that what the Lieutenant Governor of the Panjáb had said was that he would defer making any remarks on the subject until the Bill had been introduced.

HIS EXCELLENCY THE PRESIDENT said that the Lieutenant Governor of the Panjáb had written to him that he desired legislation on the subject, and asked how the Bill was to be published if it were not introduced into Council.

The Honourable Major General SIR H. M. DURAND said, that HIS EXCELLENCY the Commander-in-Chief's amendment seemed to him somewhat misapprehended. It raised no objection to Mr. Brandreth's Motion "to introduce the Bill to define and amend the law relating to the tenancy of land in the Panjáb." It merely would supersede the latter clause, which referred the Bill to a Select Committee, with instructions to report in six weeks or two months, as altered by the President. The amendment offered a difficulty, therefore, to the introduction and publication of the Bill; it only affected, temporarily, the proposed immediate reference of the Bill to a Select Committee.

HIS EXCELLENCY the COMMANDER-IN-CHIEF signified his assent to this view of his amendment.

The Right Honourable Mr. MASSEY said, if His Excellency the Commander-in-Chief would agree to withdraw his amendment, he would propose that the debate be adjourned for a month.

HIS EXCELLENCY the PRESIDENT thought the result of such an adjournment would be to prevent legislation on the subject during the present session.

The Right Hon'ble Mr. MASSEY continued—With due deference to His Excellency the President, he did not think that that would be the inevitable consequence of the postponement of the discussion. With the information they should receive, the labours of the Committee would be greatly facilitated, and a satisfactory decision on the subject would be materially promoted. On the other hand, if this Bill went into Committee now, without the information that was desired, Mr. MASSEY did not see at what conclusion the Committee could arrive.

HIS HONOUR the LIEUTENANT GOVERNOR believed there were already voluminous papers which might be put before the Select Committee. If, however, the debate were postponed for one month, the chances were strong that there would be no legislation at all on the subject during the present session. His own opinion was that legislation was urgently required, and that the expected reports could easily be laid before the Committee, if the time for the consideration of the Bill were extended to two months.



His Excellency THE PRESIDENT said that inquiries were then going on in half the districts of the Panjáb, and there was no legal authority for such inquiries and for the decision of the points that were constantly arising.

His Excellency THE COMMANDER-IN-CHIEF's amendment was then put.

The Honourable SIR WILLIAM MUIR wished to state the reasons which should induce him to vote against this Motion. From the explanation furnished by his Honourable friend the Mover of the Bill, he was now satisfied that the measure had in a general way the approval and concurrence of Sir Donald McLeod. And that, taken in connection with the full and elaborate discussion which had been referred to by his Honourable friend the Lieutenant Governor of Bengal, and which he (SIR WILLIAM MUIR) had had the opportunity of carefully perusing on a former occasion, persuaded him that there did exist ground for referring the Bill to a Select Committee. Ample opportunity would still be given to opinions from the Government and others in the Panjáb, on the Bill being published. He deprecated the delay which would ensue if an opposite course were followed, as settlement operations were being pushed forward in the Panjáb, and therefore the question pressed for early solution, and it was of the deepest importance that the uncertainty at present prevailing should be set at rest.

The Council then divided—

AYES.

NOES.

His Excellency the Commander-in-Chief.  
Honourable Mr. Taylor.  
Right Honourable Mr. Massey.  
Honourable Major General Sir H. Durand.

The President.  
His Honour the Lieutenant Governor.  
Honourable Sir W. Muir.  
Mr. Brandreth.

„ Mr. Shaw Stewart.  
„ Mr. Skinner.  
„ Mr. Steuart Gladstone.  
„ Khwája 'Abd-ul-ghani.  
„ Mr. Cockerell.

So the amendment was carried.

### COTTON FRAUDS' BILL.

The Honourable Mr. Shaw Stewart presented the Report of the Select Committee on the Bill for the suppression of Frauds in the Cotton Trade, and moved that the Report and the Bill as amended in Committee be published in the *Gazette of India*.

The Motion was put and agreed to.

### CRIMINAL PROCEDURE BILL.

The Honourable Mr. SHAW STEWART asked leave to postpone the motion which stood next on the List of Business, for leave to introduce a Bill to amend and consolidate the Law of Procedure in the Courts of Criminal Judicature not established by Royal Charter.

Leave was granted.

The Right Honourable Mr. MASSEY moved that the Honourable Mr. Cockerell be added to the Select Committee on the Bill to consolidate and amend the law relating to Principal Sadr Amins, Sadr Amins, and Munsifs, and for other purposes.

The Motion was put and agreed to.

The Council adjourned till the 24th January 1868.

(Signed) WHITLEY STOKES,

Asst. Secy. to the Govt. of India,  
Home Department (Legislative).

CALCUTTA,  
The 17th January 1868. }