COUNCIL OF GOVERNOR GENERAL

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

The Council met at Simla on Wednesday, the 17th July, 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir George Yule, C. B., K. C. S. I.
The Hon'ble John Strachey.

CHIEF COMMISSIONERS' POWERS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to enable the Governor General of India in Council to delagate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor General of India in Council, be taken into consideration. The Committee had made no changes.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed. He had previously explained that the object of the Bill was to supply a clause, which was inserted as a matter of course in all recent enactments, but which in earlier enactments was wanting. It was certainly absurd that, when the Council applied a law to the whole of India, in Bengal, for instance, the law came into operation at once, whereas in Oudh a previous reference and orders passed thereon were necessary—orders which could only be of one kind. With reference to the distinction between a Lieutenant Governor and Chief Commissioner, MR. MAINE would observe that far the largest number of the functions of a Lieutenant Governor were exercised under the authority of the Act of Parliament which gave him the executive government of his territories, and not under any Act of the Indian legislature, and it would probably be beyond the power of this Council to grant a Chief Commissioner the full powers of a Lieutenant Governor.

The Hon'ble MR. STRACHEY thought it was hardly necessary to add anything to what Mr. Maine had said; but as he himself was one of the Chief Commissioners whom the Bill would affect, he was bound to express his opinion that it would be extremely useful. He thought it desirable to guard against any possible misconception of its effects. The additional powers which the Bill, if it became law, would confer, were comparatively small. He had looked through all the Acts conferring powers on a Local Government, and he found that, even if the Government of India exercised to the utmost the right of delegation which the Bill proposed to entrust to the Governor General in Council, the actual increase of power given to the Chief Commissioners would not be great. The utility of the proposed measure would appear, not so much in matters of real and exceptional importance, as in details of every-day routine; and it would have the effect of saving the Government of India and the Chief Commissioners from a great amount of useless correspondence. It surely was little better than absurd that the Chief Commissioner of Oudh (he quoted that Chief Commissioner because he, MR. STRACHEY, knew more of him than of the others), who possessed, under orders which had the force of law, "plenary authority and power of control in all departments," who could pardon a murderer condemned to death, or commute his sentence, should not be able to move a man sentenced to imprisonment for ten days from one jail to another, nor order the confinement of a criminal lunatic in a lunatic aslyum, without a previous reference to the Government of India. It was anomalies of this kind that the Bill would remove.

The Motion was put and agreed to.

SALPETRE ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY, in moving that the Report of the Select Committee on the Bill to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof) be taken into consideration, said that the Bill consisted of a single clause, and that the Committee had made no alteration therein.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

MADRAS SALT ACT.

The Hon'ble MR. MAINE introduced the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable, and moved that it be referred to a Select Committee with instructions to report

in a week. He said that he had explanied at their last meeting that the Bill was merely intended to remove a technical obstruction in the way of the Madras Council, which had been empowered by His Excellenty the Governor General to legislate on the subject of Salt Excise.

The Motion was put and agreed to.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate succession thereto. He said :—

" Sir,—In introducing this Bill, I feel that I am undertaking a difficult task. It is difficult, not only from the nature of the subjects of which I shall have to speak, but for other reasons also. There have been few questions of Indian politics which, of late years, have created so much public interest as the questions connected with the history of Oudh since its annexation by the British Government and no Indian questions have been discussed with greater warmth, and, I may add, with greater acrimony. I cannot now omit refering to the past, but so far as it may be practicable, I shall endeavour to avoid re-opening questions which have, as we may hope, been closed.

The main object which I have in view in asking for permission to introduce this Bill is a very simple one. That object is to confirm by law the arrangements affecting the rights of Talukdárs and others in Oudh, which were made under the orders of Lord Canning after the re-occupation of the province in 1858. Those orders have placed the Talukdárs of Oudh in an altogether peculiar position. They hold their estates upon a tenure unknown in any other part of India, and rights have been created by the British Government which it is now necessary to protect by law. Although, Sir, this main object of the Bill is sufficiently simple. I must endeavour to explain the circumstances under which such legislation seems now to be called for, and this I can hardly do satisfactorily, unless I give a sketch of the principal features of the policy which the Government has, of late years, followed in Oudh, and under which these peculiar rights of the Talukdárs have grown up.

Early in 1856, in consequence of the atrocious misgovernment of the country, the British Government determined upon the annexation of Oudh. The instructions issued to the Chief Commissioner by the Governor General in Council, laid down in detail the principles upon which the administration was to be conducted,

My only concern now is with that part of those instructions which referred to the settlement of the Land Revenue.

"The settlement," it was ordered, "should be made village by village, with the parties actually in possession, but without any recognition, either formal or indirect, of their proprietary right. * * It must be borne in mind, as a leading principle, that the desire and intention of the Government is to deal with the actuals occupants of the soil, that is, with village zamindars, or with the proprietory coparcenaries which are believed to exist in Oudh, and not to suffer the interposition of middle men, as Taluqdárs, farmers of the revenue, and such like: the claims of these, if they have any tenable claims, may be more conveniently considered at a future period, or brought judicially before the Courts competent to investigate and decide upon them."

These orders were based upon the assumption that the Talukdárs of Oudh were, ordinarily at least, not proprietors but middlemen for the connection of the revenue between the village proprietors and the Government. There can, I think, be now no doubt that this was a mistake. There were doubtless exceptions; but, speaking generally, the Talukdárs of Oudh constituted an old landed aristocracy possessing undoubted rights of property in the soil, and even when their estates had been acquired in modern times, and perhaps by acts of spoliation and violence, they were in no sense middlemen for the collection of the revenues of the Government. They were in possession of their estates as proprietors, even though that possession may have been wrongful. I do not mean to say that they were the only persons with rights of property in the soil. They were proprietors in the Indian, not in the English sense of the term. When we annexed Oudh two-thirds of the province were in the possession of these Talukdárs.

For the first season after our assumption of the Government, the estates of the Talukdárs were left with them undisturbed; but in 1856-57, another settlement was made upon a totally different principle. The assumption that Talukdárs were interlopers with no rights of property, was acted upon in the extremest manner. It has been said that the principles which were carried out in Oudh, were merely those which had been carried out in the North-Western Provinces. I shall not now attempt to go into that question, but I believe the truth to be quite otherwise. It is the fashion now-a-days to find fault with the principles on which the settlement of the North-Western Provinces was made. For my part, although I should be sorry to say that no injustice was ever done, or that no mistakes were committed. I believe that the settlement of the North-Western Provinces was based upon principles that were wise and just; and in spite of all that has happened, I believe that it is in a great measure to the application of those principles that the North-Western Provinces have owed and still owe their

almost unexampled state of prosperity. I cannot say the same for the settlement that was made in Oudh in 1856-57. That settlement, although professedly in accordance with the system that had been followed in the North-Western Provinces, was, as it appears to me, made in absolute contradiction to one of the fundamental principles on which the settlement of the North-Western Provinces was based. That principle was thus described by Mr. Thomason,—

"The system," he said, "can be introduced into any part of the country, and adapted to the existing state of property, whatever that may be. One of its chief features is that it professes to alter nothing, but only to maintain and place on record what it finds to exist. Rights which are held undisputed, are confirmed; those which are ambiguous, are defined and rendered certain; those which are contested, are authoritatively fixed and placed in the possession of the party which is considered best entitled."

This was always insisted upon by Mr. Thomason; and although in an operation of such magnitude as the settlement of the North-Western Provinces, many errors may have been, and undoubtedly were, committed, the principle laid down was this, that no new rights were to be created, and that no change was to be made in existing rights, or in the mode of their exercise, without the full concurrence of those whose interests were affected. If this principle had been acted upon in Oudh in 1856, justice would have been done to all classes. But, in practice, if a man bore the title of Talukdár, I fear that this was very commonly held to dispense with the necessity for any further inquiry into the facts. He and his ancestors might have held undisputed proprietary possession of an estate for generations, but he was a Talukdár, and therefore a mere middleman with no valid claims to consideration.

At the first summary settlement made on the annexation of the province, for a single season, the revenue paid by the Talukdárs to the Government amounted to about 66 lakhs of Rupees, and they were in possession of 23,500 villages. At the settlement of 1856-57 they were summarily dispossessed from about one-half of this property. In many cases they lost very much more than this. We found, for example, Mahárájá Mán Singh in possession of 577 villages, paying to Government more than two lakhs of Rupees a year. The settlements of 1856-57 left him with six villages paying Rupees 2,900. What the private income may have been of which he was thus deprived, I cannot say; but I suppose that I shall not be exaggerating if I say that his income of £20,000 was suddenly reduced to £300 a year. This, it is true, was not an old ancestral estate, but many of the oldest families in the province were treated in the same manner. In one ancient estate, out of 378 villages, 266 were taken away. In another very ancient estate, out of 204 villages, 155 were taken away. In the estate of Rájá Hanwant

Singh, consisting of 322 villages, paying between seventy and eighty thousand Rupees a year as Government revenues, 200 villages, which had been in the undisputed possession of his family for many generations, were taken from him. In this last case, the officers who had made the settlement took refuge, on the outbreak of the rebellion, in the Rájá's fort, and while they were there, they saw the men with whom the settlement had been made come in and tender their allegiance to the Rájá.

"Without making any boast of it," writes Colonel Barrow, "he daily pointed out to me men who had been under him and his ancestors for generations, voluntarily retiring from the position in which we had placed them, and again, ready to take engagements from him on his own terms. There can be no doubt that the mutual understanding between the parties was such that it should never have been disturbed by us."

I do not mean to say that many of these settlements which were made with the old proprietors of the soil, to the exclusion of the Talukdárs, were not substantially just; but, speaking generally, I believe that the sweeping injustice of the settlement of 1856-57 in Oudh could hardly be over-stated. It practically amounted, without, in my opinion, any reasons to render it necessary or even expedient, to the confiscation of property worth several millions sterling. This is of course said upon the assumption that the main features of this settlement would have remained unaltered; but it is true that, when the mutinies of 1857 commenced, the settlement operations were incomplete, and it is probable that much of this injustice might have been remedied. But all that was then apparent was that a Talukdár who was ousted from the settlement would get nothing. In the North-Western Provinces, under similar circumstances, a considerable portion of the rental was always assigned to the Talukdár. In Oudh he received nothing at all, beyond a general intimation that, if he had any claims to make, they would be heard at some future time. However this might have turned out ultimately, the Talukdárs had, at the time, good reasons for believing that the maintenance of the British Government signified to them the loss of the greater portion of the property which they had formerly possessed, and the consequence was that, with a few exceptions, they gave their whole influence to help the overthrow of our power. Thus, since the people everywhere followed the Taluqdárs, it happened that, in Oudh alone, among all the provinces of our Indian Empire, the mutiny of the army led to a general rebellion of the people.

Lucknow was re-captured in March 1858, and it was then that Lord Canning issued his famous proclamation confiscating to the British Government, with certain exceptions, the proprietary right in the whole soil of Oudh.

The Council will remember the discussions regarding this proclamation which took place, not only in India, but in the English Parliament, and how this matter became for a time one of imperial interest, involving the fate of an English Government. This proclamation has altogether a strange history. When it was first issued, there is not a doubt that it was intended as a measure of coercion and of punishment, and especially as a measure of punishment to the rebellious Talukdárs. It would have seemed incredible in March 1858, that this proclamation should come to be looked upon by the Talukdárs as the Magna Charta on which all their rights depend.

During the rebellion I believe that, as a matter of fact, hardly anybody to whom the proclamation was addressed ever saw it, and it was supposed for some time to have been virtually a dead letter. This belief was entertained by the Secretary of State, Lord Stanley, nine months after the issue of the proclamation and after he had recieved the explanations of the Governor General regarding it.

"I observe with satisfaction," Lord Stanley wrote, "that the policy indicated in the document adverted to, as regards the claims of the Taluqdárs and other proprietors in Oudh, has not in practice been adopted by you, and is declared, on your own authority, never to have been intended to have been carried into effect. However indiscriminate and unsparing may have been the sentence of confiscation which your proclamation pronounced that sentence has not been put in force; and the issuing it would appear to have been merely a menace, designed to strike awe into the minds of those still arrayed in arms against the British Government."

In truth, however, this proclamation, although it was never carried into effect according to the intention with which it was issued, turned out to be something very different from a menace. It became the means of rewarding and benefiting the very men, the Talukdárs, whom Lord Canning had originally desired to punish, and of placing them in a far better position than that which they had held under the Native Government. This was the result of the measures taken by the Chief Commissioner, Sir Robert Montgomery, for the pacification of the province. To those measures I must now refer.

In the beginning of 1858, the great object of the Government was that peace should be restored with the least possible delay, and with the least possible sacrifice of British soldiers. Lucknow was captured in March 1858, but there were no means of re-occupying the province, the whole of which from one end to the other was in open rebellion.

"Thus," writes Colonel Barrow, "Sir Robert Montgomery found himself at the head of a newly constituted Commission without the means of giving his officers the slightest aid to

assume their functions. There was the general distrust to overcome, besides a host of large landholders protected in their forts, with countless dependents to defend them, and no sufficient force to coerce the rebellious. We might, it is true, have remained passively in possession of what he had, until the army was prepared to assist the civil power; but this course little suited the Chief Commissioner, who, with the large staff of officers at his disposal, determined to and did overcome all difficulties."

The proclamation confiscating the whole of Oudh, of which I have just spoken, gave to Sir Robert Montgomery the means of carrying out his policy of pacification. The whole province was at his disposal, and he was soon assured that his measures would receive the fullest support from the Governor General. Having no army to work with, he came to the conclusion that it was only with the assistance of the great Talukdárs that he could bring about the peace that was so much desired. But so long as the Talukdárs believe that the restoration of our Government signified the re-establishment of a system such as that which had been put in force a year before, and which deprived them of the greater portion of their estates, it was hopeless to expect anything but opposition from them. The first condition of peace seemed, therefore, to Sir Robert Montgomery, to be the total abandonment of the policy of the settlement of 1856-57, and the restoration to the Talukdárs of all, and of more than all, that they had formerly possessed. The Talukdárs were invited by a notification issued by the Chief Commissioner's orders in June 1858, to come to Lucknow and make their submission, and they were told that, on their arrival, they would be informed of the terms upon which they would be secured in possession of the estates which they had held under the Native Government. Passes were sent to them, permitting them to come unmolested to Lucknow, and they were told that, if they did not like the terms that were offered, they would be allowed to return. Thus, as Sir Charles Wingfield has observed, the Talukdárs were "regarded more in the light of belligerents than rebels, and they were invited to come to Lucknow under a safe-conduct to hear the terms of peace rather than the conditions of pardon." The result of these negociations was that, before the army took the field in Oudh at the end of 1858, and before the publication of the Queen's amnesty, two-thirds of the Talukdárs had tendered their allegiance, and estates paying to Government 52 lákhs of Rupees a year, or half the revenue of the province, had been settled with them.

The political engagements thus entered into with the Talukdárs formed the basis of the subsequent policy of Lord Canning, and I think that these engagements really possess as much importance as the formal sanads themselves, which were afterwards granted to the Talukdárs. A distinguished officer, thoroughly

acquainted with all the history of those times, once said to me that these engagements with the Talukdárs ought to find a place in Mr. Aitchison's Collection of Treaties, and in saying this, is it seems to me, he really hardly went beyond the truth. I entirely agree with Sir Charles Wingfield, who said that, in deciding questions of the rights of Talukdárs and others in Oudh, it must always be remembered that the revenue law and precedents of other provinces are not the only things to be looked to, nor even considerations of abstract justice and expediency, but that the public honour and good faith of the Government are also deeply involved.

The nature, Sir, of the engagements actually entered into with the Talukdárs may be easily stated.

In October 1858, Lord Canning, fully adopting the principles on which Sir Robert Montgomery had acted, issued the following orders :—

" Recent events," it was stated, "have very much shaken the Governor General's faith in the stability of the village system, even in our older provinces, and his Lordship is therefore all the more disposed to abandon it in a province to which it was unknown before our rule was introduced in 1856. The Governor General is well aware that, in some of the districts of the North-Western Provinces, the holders of villages belonging to Taluqdárs, which had been broken up at the settlement, acknowledged the suzerainty of the Taluqdár as soon as our authority was subverted. They acted, in fact, as though they regarded the arrangement made at the settlement as valid, and to be maintained, just so long as British rule lasted, and no longer ; and as though they wished the Taluqdár to re-assert his former rights and resume his ancient position over them at the first opportunity. Their conduct amounts almost to an admission that their own rights, whatever these may be, are subordinate to those of the Talukdár ; that they do not value the recognition of those rights by the ruling authority ; and that the taluqdári system is the ancient indigenous and cherished system of the country. If such be the case in our older provinces, where our system of government has been established for more than half a century, during twenty years of which we have done our best to uphold the interest of the village occupant against the interest and influence of the Taluqdár, much more will the same feeling prevail in the province of Oudh, where village occupancy, independent and free from subordination to the Talukdárs, has been unknown. Our endeavour to better, as we thought the village occupants in Oudh, has not been appreciated by them. It may be true, as stated in the memorandum, that these men had 'not influence and weight enough to aid us in restoring order,' but they had *numbers*, and it can hardly be doubted that, if they had valued their restored rights, they would have shown some signs of a willingness to support the Government which revived those rights. But they have done nothing of the kind. The Governor General is, therefore, of opinion that these village occupants, as such, deserve little consideration from us. In these grounds, as well as because the Taluqdárs, if they will, can materially assist in the re-establishment of our authority and the restoration of tranquillity, the Governor General has establishment of our authority and the restoration of tranquility, the Governor General has determined that a taluqdári settlement shall be made. His Lordship desires that it may be so

framed as to secure the village occupants from extortion; that the Taluqdárs should, on no account be invested with any police authority; that the tenures should be declared to be contingent on a certain specified service to be rendered; and that the assessment should be so moderate as to leave an ample margin for all expenses incidental to performance of such service. The Taluqdárs may then be legitimately expected to aid the authorities of the Government by their personal influence, and their own active co-operation; and they may be required, under penalties, to undertake all the duties and responsibilities which, by the Regulations of the Government, properly appertain to landholders. These duties and responsibilities should be rigidly exacted and enforced. With the declaration of these general principles, the Governor General leaves the elaboration of the details to your judgment."

These orders of the Governor General were, in reality, as much the confirmation of what had been done already, as instructions for the future, and when they were received, nearly the whole of Oudh had been recovered. Sir Robert Montgomery then proceeded to carry out, by a formal settlement with the Taluqdárs, the principles upon which he had been acting.

The conditions of this "revenue settlement made upon the battle-field," as it was happily termed by Colonel Barrow, through whom almost everything was done, were subsequently amplified and explained from time to time by the Chief Commissioner and by the Government, and they were confirmed in the following year by the sanads which were granted to the Taluqdárs. The main features of these arrangements were the following:—

The Taluqdárs were confirmed in the possession of everything that they had held at the annexation of the province in February 1856, and the rights of the subordinate proprietors were confined to whatever they had actually enjoyed at the same period. The settlement was made with the Talukdárs, and to them were given all the great advantages, constituting, in fact, a new and valuable property, created by the limitation of the demand of our Government to one-half of the gross rental of the land. The under-proprietors thus retained only that share of the profits which they formerly enjoyed. Sir, it is no part of my duty either to defend or discuss the propriety of these arrangements. They often, in my opinion, bear very hardly upon the ancient proprietors of the soil, whose rights had been overborne by the Taluqdárs. I have condemned the settlement of 1856-57, under which the rights of the Talukdárs were so greatly curtailed; but the arrangements made in 1858, judged by the light of strict justice, must be pronounced to err, not less widely, in the other direction. Practically, the Taluqdárs have gained everything, and the holders of subordinate rights of property have gained nothing, by the establishment of the British Government in Oudh, beyond the general advantage to life and property derived from the cessa-

tion of a state of things often bordering upon anarchy. But to discuss this subject now seems to me to be useless. The political engagements entered into by the Government have rendered it impossible to alter materially the position of the subordinate holders of property. It is true that the interference of you Excellency's Government during the last three years has removed some of the worst of the hardships that had been suffered by them; but, in essential respects, the arrangements inaugurated, for reasons of political necessity, by Sir Robert Montgomery in 1858, and confirmed and extended by the sanads, remain, and must continue to remain, unaltered.

Having said this much regarding the position of under-proprietors in Oudh, I may remind the Council that various questions affecting them were last year disposed of by the Government, and that the arrangements which were then made received the force of law from Act XXVI of 1866. It will be understood from what I have now said that I should be sorry to undertake the defence of all the provisions of that Act. I can, however, say this much in their favour, that while they have been agreed to by the Taluqdárs they have placed the under-proprietors generally in a better position than any which could otherwise have been assigned to them by the Government. I may fitly quote, in regard to this subject, the remarks which were recorded last year by the Hon'ble Mr. Grey, and which were concurred in by the Hon'ble Sir Henry Durand, and (if I understand rightly by the whole of your Excellency's Council :—

"There can be no question," Mr. Grey wrote, "that since 1858, we have a considerable extent modified, in favour of the under-proprietors, the policy that was then acted upon, and the settlement which has now been effected is a step in the same direction. I think that the Taluqdárs are entitled to the very greatest credit for the concessions which they have consented to make in favour of the under-proprietors; for, in my judgment, the Government could not have enforced all that the Taluqdárs have assented to in respect of the under-proprietors without incurring the imputation of having held out expectations to the Taluqdárs in 1858, in order to induce their submission, which afterwards it was found inconvenient to fulfil. * * I hold that, in the settlement now come to between the Taluqdárs and the under-proprietors, the latter have clearly received a greater amount of consideration than it was contemplated by Lord Canning that they should receive when he issued the orders of October 1858, and than was actually conceded to them in the settlement made under Sir Robert Montgomery's orders."

To return, Sir, from this digression :—After the summary settlement had been made with the Taluqdárs under the orders of Sir Robert Montgomery, on the principles that I have described, it appeared to the Chief Commissioner that no

class of the population had any confidence in the permanence of the arrangements that had been made. The Taluqdárs suspected that their estates had only been restored for a time to purchase their submission and that they might be deprived of these again at the next settlement, and the village proprietors, on the strength of the measures that had been adopted on the first annexation of the province, hoped the same. The consequence was a spirit of antagonism, and an unsettled state of public opinion. In order to remove these "apprehensions and illusions," Sir Charles Wingfield represented to the Government the necessity of declaring formally that, in respect to the proprietary right in the soil, the settlement that had been made with the Taluqdárs was final. This view was approved by the Government, and the result was the issue to the Taluqdárs of those sanads of which we have all heard so much.

I must now say something of the rights which were conferred by these sanads on the Taluqdárs.

The orders of the Governor General in Council, dated the 10th October 1859, in accordance with which the sanads were issued declared that—

"Every Taluqdár with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietory right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa. This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamindárs and village occupants from extortion, and of upholding their rights in the soil in subordination to the Taluqdárs."

The sanads were issued by Sir Charles Wingfield, who had succeeded Sir Robert Montgomery as Chief Commissioner, in accordance with these orders. The form in which they were granted was sanctioned by the Governor General on the 19th October 1859, and at the same time orders were sent to the Chief Commissioner explaining the intentions of the Government.

It is admitted, I believe, on all hands that the orders of the Governor General, in accordance with which the sanads were granted, have received from the Indian Councils' Act the force of law. There has been a good deal of discussion as to what particular orders are and are not to be looked upon as law; but there is not really much difference in the conclusions that have been arrived at by the highest authorities. We may, I believe, consider that the orders of the 10th and 19th October 1859, and the sanads themselves, constitute together the law upon this subject.

With these sanads, Sir, there commenced, in my opinion, a new phase of Oudh politics. Up to that time, and for some little time afterwards, the principle that had always been insisted upon was this,—that the intention of every act of the Government was to return, so far as rights in the land were concerned, to the condition of things which existed before the annexation of the province.

"As regards the Taluqdárs"—I am quoting from orders of the Government issued in 1860—"the intention of the proclamation of 1858, and of the declarations made and measures taken in October 1859 and subsequently, were, *first*, that in replacing them in possession of their old estates, or in conferring upon them new estates (as the case might be), they should step into such possession, carrying with them the rights and authority which the Taluqdárs of those estates respectively held before annexation, and which the action of our officers in 1856 had impaired; and also carrying with them a new title derived from the Government, from whom alone, as their possession had been confiscated, any titles could be derived; *secondly*, that the Taluqdárs should, by certain obligations imposed upon them, be restained from the abuse of those rights and that authority."

Up to the time when the sanads were issued I find no sign of the theory which soon afterwards began to take a tangible shape, that the rights conferred upon the Taluqdárs were totally different in their nature and in their extent to the rights which the Taluqdárs had enjoyed under the Native Government.

This theory, if I may so call it, seems to have arisen out of the literal interpretation that was put upon the sanads. Nor, looking at the matter from a purely legal point of view, can I say that it was wrong. The sanads, and the orders under which they were granted, constituting a law, that law must be interpreted by the light which it throws upon itself. There can, I think, be no doubt that, according to this view, the Taluqdár who holds the sanad from the British Government has a strictly personal and exclusive right of property in his estate. Subordinate rights are, under certain conditions, reserved; but all rights other than subordinate which at the annexation of the province, existed in the estate, have been entirely swept away. The Taluqdár, instead of holding his estate, as he formerly did, subject to the conditions of the Hindú or Muhammadan, or local law, according to which his power of disposing of ancestral property is very limited, now possesses an absolute power of disposing of his estate either by sale or gift during his life-time, or by will. The effect of this has been to bring about changes in the tenure land almost greater than those which were caused by the settlement made by Sir Robert Montgomery with the Taluqdárs. And there was another change not less important made soon after the issue of the orders regarding the grant of the sanads.

This was the introduction of the rule of primogeniture for regulating the succession to estates. This also was done under orders of the Governor General, which have I presume, received from the Indian Councils' Act the force of law. I have spoken, of the introduction of the rule of primogeniture; but I ought to add that, although this was a complete novelty in the great majority of cases, a not dissimilar custom, known locally as that of the *gaddi*, had long prevailed in a considerable number of the principal families.

Sir, I am most unwilling to say a word which may seem to throw blame upon the administration of Sir Charles Wingfield, my predecessor in the office of Chief Commissioner of Oudh. He made over to my charge a povince which, although it had been only a few years under the British Government, might, I believe, fairly challenge comparison in the general excellence of its administration with any province in India. I cannot state this belief too strongly, and I should feel guilty of something like personal ingratitute if I failed to declare it. But I must, confess that it seems to me that Sir Charles Wingfield had a great deal of what I must call that almost superstitius reverence for institutions of a purely English type which is so common among Englishmen. Their ideal country is one with great landlords, unfettered by the claims of kindred or custom, whose estates descend, under the law of primogeniture, undivided to a remote posterity. Now Sir, I shall not be so rash as to say in this place a word against this belief. But, however good this English idea may be in our own country, I think that it has been worked out in Oudh in a manner which has sometimes led to very strange results.

I will give one or two examples to illustrate what I mean. They will serve to show nature of the rights which are now claimed by the Taluqdárs of Oudh under their sanads. An estate may have been for many generations in the undisturbed possession of a certain family ; it may have been held by them when we annexed the province, and they may have retained it throughout the troubles of 1857. For the sake of giving a little more colour to my picture, I may suppose that this family served the British Government faithfully during the whole rebellion. For some reason or other, perhaps by mere accident, this estate was summarily settled in 1858 with a Taluqdár who had never possessed, or pretended to possess, any rights in it at all, and who had been in open rebellion a few months before. It was accordingly included in the sanad given to him under the orders of the British Government. The Taluqdàr is now legally the sole proprietor of the estate, and the former owners neither possess nor can recover any rights in it at all. This at least was the rule only a few months ago, when the Taluqdàrs consented to

relax it; and, as the concessions that they have lately made in this respect have not yet been made legally binding, this is still the law.

I will now give another example of a different character.

Before the annexation of Oudh, there may have been two brothers in joint possession of an ancient family estate. One brother had the mangement of the whole, and gave to the other brother the share of the profits of the estate to which he was entitled. In 1858 a summary settlement was made, to determine the amount of the revenue that was to be paid by each estate to the Government. It was supposed when this settlement was made that it would last only until a regular settlement could be made in the usual way. In consequence of some accident or other, one of our two brothers did not appear when the summary settlement was made. The other brother appeared before the settlement officer, and the summary settlement for the revenue was made with him accordingly. The other brother shortly afterwards came back, and re-assumed, without objection, the position in the estate which had formerly belonged to him. A year or so afterwards he found, to his astonishment, that every right which he had possessed had ceased to exist, and that his brother had become the sole owner of the estate, with absolute power to give away, or sell, or bequeath, the whole or any part of it as he pleased. And on the death of this brother, unless he makes some other disposition of the property, the estates, supposing it to be done to which the law of primogeniture has been made applicable, will descend to his eldest son to the exclusion of the rest of the family. I might, without any extravagance, make this example sound still more strange to English law. I might say that the brother whose rights were thus swept away was the elder brother, who had always had the management of the estate. I might further suppose that this elder brother was, throughout the rebellion, a loyal servant of the Government, while the younger brother who, by a mere accident, became the sole proprietor of the estate, remained until the last moment in rebellion. But these, although really perfectly legitimate suppositions, would only be embellishments not really affecting the case in its legal aspect.

Now, Sir, I admit that these cases that I have supposed are extreme cases, but such cases are the best criterion that can be applied; and it must not be supposed that they are imaginary cases. In all the main principles involved, these cases are really identical with many that have actually occurred, and they represent correctly what I understand to be beyond any doubt the law in Oudh at the present time, according to the view which is held by the highest legal authorities in the

country. If it were necessary, I could give other examples just as extraordinary. Now, Sir, for my part, although these things may be law, I declare them to be not only utterly unjust, but utterly unmeaning and irrational, and I declare my undoubting conviction that Lord Canning would have scorned the notion that any results so preposterous were the legitimate consequences of his policy.

And this, Sir, brings me to another part of this question. It is a difficult subject for me to speak upon in the presence of your Excellency, and in this Council but it is a subject upon which I ought not, I think, to remain altogether silent. And I do not see why, because I happen to agree for the most part in the views which your Excellency has taken, I should avoid giving an opinion which if I had differed from your Excellency, it would clearly have been my duty to declare.

There has been an idea—at one time it was very prevalent, but I hope that it is dying out—that a great line of policy was deliberately and solemnly adopted by Lord Canning in Oudh, and that your Excellency's Government has been systematically and persistently endeavouring to set that policy aside. Now, Sir, I have had for the last year the best possible opportunities of forming an opinion upon this subject, and I wish now to declare my conviction that this idea has no foundation whatever in fact.

It will be understood from the account that I have already given of the measures that have, from time to time, been taken in Oudh, that, in my belief, a very great deal of what is often called the policy of Lord Canning, not only is no proper part of that policy, but is totally opposed to all the principles which that lamented Statesman invariably maintained. From first to last in everything that Lord Canning wrote regarding Oudh, I find evidence of his anxious desire that justice should be done to all classes, so far as this was compatible with the engagements into which he had been forced to enter by the political necessities of the time. It seems to me that, from first to last, the object of your Excellency's Government has been the same. Your Excellency has invariably disclaimed the remotest intention of interfering with the principles of Lord Canning's policy, but has declared it the duty of the Government to remove, so far as was practicable, the blots by which that policy had been needlessly deformed. For my part, I think it clear that they are the truest friends of Lord Canning's policy, who strive to render it consonant with justice, and for this reason I believe that your Excellency's measures have had the effect of giving to that policy a stability which it would not otherwise have possessed. I have said that there have been

two policies in Oudh; first, the policy adopted by Sir Robert Montgomery with the object of restoring peace; and secondly, the policy that grew up out of the sanads given to the Taluqdárs. The first of these policies, if not always just, was, for political reasons, necessary so at least it was thought at the time. The second policy was, in my belief, not only unnecessary, but altogether inconsistent with the policy that was first adopted by Lord Canning. It is this second policy that has led to almost all the difficulties and hardships that have occurred and if it had not been for the complications caused by this second policy, the removal of the more serious blots upon the first policy, whether they affected under-proprietary or any other rights, would I have no doubt, have been a comparatively easy task. I need not refer in detail to the particular points in which your Excellency's Government has thought it right, from time to time, to interfere in Oudh affairs. There may be a reasonable difference of opinion upon some of those points; but the general character of the measures that have been taken seems to me to have been simply this,—that while the policy of Lord Canning was to be strictly adhered to, unjust results which had followed from that policy, and which were never contemplated by its original authors, should, as far as practicable, be removed. I believe that if the life of Lord Canning had been spared we should have heard nothing of these attacks upon your Excellency's Government, for he would have been the first to declare that, when grossly unjust results were apparent, it was the duty of the Government to endeavour to repair them. The course that has been followed by your Excellency's Government in these matters has not been to endeavour to set things right by legislation, for this would clearly have led to much suspicion, and would have exposed the Government to charges of intending to set aside the engagements into which it had formerly entered. The course adopted when it was clear that some extreme injustice had to be remedied, has been to appeal to the good feeling of the Taluqdárs themselves. And I must do the Taluqdárs the justice of admitting that they have shown themselves perfectly ready to take a liberal and reasonable view of these questions. Many of the worst blots upon the policy that had been adopted in Oudh have thus been, if not altogether removed, at least mitigated in their character. I may notice some of the instances in which this has been done. According to the interpretation that was put upon the sanads before your Excellency interfered, the only underproprietary rights that could be upheld were those which were actually enjoyed just before the annexation of the province. This rule pressed often very hardly and unjustly on old proprietors who, perhaps after holding their lands from time immemorial had been ousted during the disturbances which prevailed immediately before we took possession of the province. As the law now stands, in accordance with

arrangements made with the consent of the Taluqdárs, an under-proprietor can recover any rights which he held under a Taluqdár at any time during the twelve years preceding annexation. In many other respects, the rules affecting under-proprietary rights have been so modified as materially to improve the position of the under-proprietors. Again, the proprietor of an estate may have mortgaged his estate to a Taluqdár shortly before annexation. Under the interpretation formerly put upon the sanads he could not redeem the mortgage, and all his rights were held to have been transferred to the Taluqdár. This gross injustice has been remedied, and the law has been altered with the Taluqdárs' approval. In the matter also of the rights of tenants, regarding which there has been so much discussion, the result has been that the Taluqdárs have agreed that a large class, estimated by Sir Charles Wingfield at one-fifth of the whole number of cultivators in Oudh, shall receive rights of occupancy, and important protection has been afforded to other classes of tenants also. And, at the present time, I believe that the Taluqdárs, entirely with their own good-will, are engaged at Lucknow in devising means for redressing those very hardships of which, a few minutes ago, I gave such strong examples. In all these cases—and it would be easy to give many other instances—the Taluqdárs have shown a spirit of liberality which does them honour; but it is indisputable that all these results have been obtained in reality through the efforts made by your Excellency's Government to redress the injustice that had occurred, and I believe that, without your Excellency's interference, not one of these results would have been either obtained or thought of.

And, Sir, I could perhaps hardly give a better proof of the real character of the policy which has been followed by your Excellency's Government in Oudh, than this Bill, which I now, with the approval, I believe, of your Excellency, ask leave to introduce. This Bill does not attempt to redress the evils of which I have been speaking. I do not think it right that those evils should be concealed, but I hope that there may be no necessity for interfering by legislation for their redress. No such course should, I think, be adopted, except under extreme necessity. If this Bill pass into law, no one will be able to say that one iota of the engagements entered into by Lord Canning has been set aside. On the other hand all the legal doubts which may now exist as to the actual nature of the rights of the Talukdárs will be removed, and the law will secure to them everything to which their sanads declare them to be entitled.

I need not now, Sir, describe in detail the provisions of the Bill which I ask leave to introduce.

So far as the rights of the Taluqdárs are concerned, the Bill is, in essential respects, similar to the Bill which Lord Canning moved for leave to bring into the Legislative Council shortly before he left India. It proposes to give the force of law to all the conditions contained in the sanads of the Taluqdárs. The Bill also defines the manner in which succession by primogeniture, or otherwise to the estates of Taluqdárs, is to be regulated. Here, also, the principles laid down by Lord Canning have been adhered to.

Legislation upon this last subject has become very urgent. The estates of the Taluqdárs of Oudh are held under altogether peculiar conditions, and, as I have already noticed, their property is of a character unknown to Hindú or Muhammadan law. We have given to the Taluqdárs powers over their estates similar to those possessed by English landlords, but there is no law which regulates the manner in which those powers are to be exercised. For example, the sanads give to a Taluqdár an unlimited power of leaving his estate, or any portion of it, by will, to any one he pleases. But wills are rarely made by Hindus anywhere, and I may say that, in Oudh, they are not known at all. How then is this power of willing away property to be exercised? Only a short time ago, the Judicial Commissioner of Oudh sent to me a case which showed how this question is being practically answered by the Courts, and he represented the necessity for legislation on the subject which this case showed to exist. It has been declared by the Courts, and I believe properly, that no writing on document is absolutely required to legalize any transaction which a Hindú is capable of performing. In the case to which I refer, the Taluqdár was a Hindú lady, and she held her estate under sanad from the British Government. In the exercise of the power given to her, a power utterly unknown to Hindú law or to the former custom of the country, she determined to leave her estate, worth, I believe, some twenty or thirty thousand Rupees a year, out of the regular line of succession, to a person who, if she had died intestate, would have had no claims whatever to the property. I make the following quotation from the judgment of the Court of the Commissioner of Roy Bareilly, by whom the case was disposed of. It will show to the Council very clearly the present state of the law.

" It appears unnecessary," the judgment says, " to go into the question of the genuineness of this will, as the respondent has filed proofs showing that Massamat Goláb Kour verbally appointed him her heir. * * Appellant's claim must be dismissed ; for it is clear to me that Massamat Goláb Kour had power to bequeath her estate as she chose, and that even if the will filed by the respondent be rejected as an untrustworthy document, the declaration made by Massamat Goláb Kour to Tahsíldár Ali Buksh in according to Hindu law a valid will. ** It may be a subject for regret that so important a transaction as a testamentary disposition of

one's property can be made by a woman concealed behind a screen, and invisible to even the witnesses of her spoken wishes, but this is not the question before this Court. The questions to which this Court has to reply are :—

" Did Lord Canning give to Hindú Taluqdárs in Oudh full power to bequeath their estates as they chose ?

" Did Lord Canning confer this power on women as well as on men ?

" According to Hindú law, is the testamentary disposition of her estates made by Massamat Golább Kour, by her word of mouth in the presence of Tahsildár Ali Buksh, a valid and legal testament ?

" Is a nuncupative will legal ?

" To all these questions the Court answers in the affirmative, and upholding the order of the Lower Court dismisses the appeal."

I think, Sir, that I need add nothing more to prove the necessity for legislation. The British Government has created rights which the existing law is incapable of protecting, and it is the evident duty of the legislature to supply the protection which those rights require.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. STRACHEY also introduced the Bill to consolidate and amend the law relating to the recovery of rent in Oudh and moved that it be referred to a Select Committee with instructions to report in six weeks. He said :—

" The statement which I have just made in moving for leave to introduce a Bill to define the rights of Taluqdárs, will serve also as an introduction to the remarks which I have to make regarding this Bill, and I shall make those remarks as brief as possible. I have already referred to the arrangements made last year for the settlement of the questions which had been long pending, regarding the claims of under-proprietors to sub-settlements, and regarding rights of occupancy. The first part of those arrangements subsequently received the force of law. When, in October last, Sir William Muir introduced the Bill which was passed as Act XXVI of 1866, he explained the reasons which rendered it desirable to postpone legislation regarding that portion of the arrangements entered into with the Taluqdárs which related to the rights of tenants. The fact was that this part of the subject could hardly be disposed of without going into other questions which had not then been sufficiently considered.

The primary object, Sir, of the present Bill is to give the force of law to the engagements entered into last year by the Government, and to confirm the concessions made by the Taluqdars in favour of certain classes of tenants. The engagements entered into by the Government involved the necessity of cancelling all orders, rules, and circulars which were in force in Oudh, recognizing a right of occupancy in non-proprietary cultivators, and the revision of the rules regarding the hearing of suits in the Summary Courts, so that these rules might be brought into accordance with the new state of things. I shall say nothing of the reasons which induced the Government to enter into these engagements. They are well known to the Council, and I think it could lead to no useful result to re-open a discussion which has been closed. The practical question now is, in what manner can these engagements be most satisfactorily carried out. I think, Sir, that there can only be one answer to this question. We require an entirely new law to provide for the numerous questions of importance which relate to the recovery of rent, and this law must be framed in a manner which shall carry out the engagements into which the Government has entered.

There can be no doubt that legislation upon this subject would have been urgently necessary, even if the arrangements of last year had never been made. Nothing can well be more unsatisfactory than the present state of the revenue-law in Oudh. I will not weary the Council by attempting to state what that law actually is. The revenue-law of Oudh can only be found, if found at all, buried in the provisions of old Regulations that have long been obsolete throughout the greater part of India, or in orders and circulars more or less doubtful in their authority, and frequently contradictory in the nature of their instructions. The revenue-law, whatever it may be, rests almost entirely upon orders of the Governor General, which have received from the Indian Councils' Act the force of law; but to say which orders have or have not received this confirmation, is often by no means easy. The diversity of procedure actually followed by the Revenue Summary Courts has been excessive. These Courts, although called summary, have been more dilatory and uncertain than any Courts in the province, and this has been mainly caused by the doubtful and unsatisfactory state of the law. And if the Courts have been unable to say what law they were administering, it may easily be imagined how the people have fared, and how wide a door has thus been opened to needless and unjust litigation.

It is to be regretted that we cannot now apply to Oudh the law that prevails in the North-Western Provinces, with which it is probable that Oudh may some day be united. But this is, at the present time, obviously impracticable. The

present Bill, however, if it become law, will make the system followed in Oudh much more like that of the North-Western Provinces than it is at present. Many differences which now exist will be got rid of, and thus the future assimilation of the law in both provinces will be facilitated. No doubt this Bill looks at first sight very different from the law in force in the North-Western Provinces; but the differences of procedure are, for the most part, not very essential. There are, of course, some essential differences of substantive law, especially in respect to rights of occupancy; but these are difference which will be permanent, and which will always have to be recognized. And I may here properly notice that considering the circumstances in which Oudh is placed, and the importance of not making its laws more divergent from those of the North-Western Provinces than is really necessary, it seems to me right to avoid widening present differences of system by legislation on matters that are not immediately essential. It will be obvious that there are many matters of importance with which a law of this kind might not improperly deal, to which this Bill makes no reference. This does not pretend to be a complete Code in respect of the recovery of rent. It professes only to provide for those matters regarding which legislation is really necessary at the present time.

Acting upon this principle, that uniformity of system with the neighbouring provinces is highly desirable, so far as this can be obtained without injury to any special local interests, I have embodied in this Bill very many of the provisions of Act X of 1859 and of XIV of Act 1863, which seems properly applicable to Oudh.

The most important differences between this Bill and the law in force in the North-Western Provinces and Bengal, are to be found in those provisions which refer to rights of occupancy. Section 4, and Sections 32 to 35 of the Bill, contain, with some modifications, the rules upon this subject, which under the arrangements made last year with the Taluqdárs, it was proposed to apply to Oudh. It is necessary to explain that these Sections differ in some respects from what was originally approved by the Government and by the Taluqdárs.

Under the arrangement made last year, an ex-proprietor could only obtain a right of occupancy if he had been in possession of his holding continuously for twenty years, or since he ceased to be proprietor. After this rule had been agreed upon, it became clear that the necessity of proving in every case this long period of continuous possession, would often have involved a troublesome and tedious inquiry, and this would practically have been as disadvantageous to the landlord as to the tenant. The Taluqdárs consequently have agreed to omit altogether

from the rule the condition of continuous occupancy. As the rule now stands in Section 4 of this Bill every person who, within the thirty years before annexation possessed the proprietary right in the village, but has, through any cause, fallen to the position of a cultivator, will have a right of occupancy in the land now in his possession. The condition that the land has not come into his occupancy for the first time since the 13th February 1856, is intended to prevent an ex-proprietor from obtaining a right of occupancy in land which has only lately been acquired by him, and this is nothing more than is reasonable. The Section, as it now stands, is more favourable to the exproprietor than the original rule, and I think that the Toluqdārs deserve much credit for the liberality which they have shown in agreeing to the change.

Some alterations have also been made, with the consent of the Taluqdárs, in the rules which define the conditions under which the rent of a tenant having a right of occupancy may be enhanced. These rules are to be found in the first Sections of Chapter IV of the Bill.

The original rules were taken, with slight alteration, from the proposals made by Sir William Muir or the amendment of Act X of 1859. In addition to the grounds of enhancement now stated in this Bill, the rent of the ex-proprietor might be increased if it " had remained without enhancement from " a period since which the money value of agricultural produce in the vicinity " had risen, or had been enhanced in a proportion less than the rise of such " money value, or otherwise than in consequence of such rise."

The rule under which, in this case, enhancement of rent might be made, followed a well known decision of the Calcutta High Court. It would have been by no means easy to apply the rule in practice, and the Taluqdárs, in whose interest it was originally inserted, themselves prefer that it be omitted. The conditions under which, according to the present proposals, the rent of a tenant having a right of occupancy can be enhanced, will be simple. If the rent paid by him is below the prevailing rate paid by other tenants of the same class for land of a similar description, the rent may be raised to the full rate so prevailing. In other cases, the rent payable by tenants-at-will will be the standard by which the rent of tenants with a right of occupancy will be regulated. If the rent paid by a tenant with a right of occupancy is more than 12½ per cent., or two annas in the rupee, below the rent paid by tenants-at-will for similar land, the rent may be raised to the amount paid by such tenants-at-will, minus 12½ per cent.

The only other case in which the rent can be enhanced, is when the area of the land has increased. This case demands no special notice. Some other alterations

have been made in the original rules, and these, as I have noticed in the Statement of Objects and Reasons attached to the Bill, have not all been communicated to the Taluqdárs. This will be done through the Chief Commissioner of Oudh before further progress is made with the Bill, and I need not refer to them now.

Except the rights of occupancy of which I have now been speaking, no rights of occupancy are recognized by this Bill. It will be seen that no rights can grow up in Oudh, like the rights which grow up in Bengal and in the North-Western Provinces from the mere occupation of the land for twelve years or for any other period.

I have noticed in the Statement of Objects and Reasons attached to this Bill that one of the reasons which renders legislation desirable, is the doubt that exists regarding rights of occupancy in estates not belonging to Taluqdárs. On this subject I cannot do better than make the following quotation from a valuable note by Sir William Muir on the revenue-law now in force in Oudh :—

"The Courts," he writes, "would, no doubt, afford to the class of ex-proprietors protection in all taluqdárí villages on the strength of the late compromise. It would be held that by agreement they had obtained a right of occupancy, and of having their rents fixed under certain principles. But there is no similar compromise or agreement on the part of those landlords who are not Taluqdárs; yet it is evidently the intention of Government that the system should be the same here also; for the Chief Commissioner was informed that precisely the same 'rules would be applied to all *non-taluqa* villages in which the former proprietors have succumbed before others.' Now in the non-taluqa villages the Revenue Court would proceed upon one of two suppositions. It would either entertain the claim on the ground that, under the convictions of the presiding officer, the ex-proprietary ryot had, by the custom of the country, or by the law introduced in 1856, the right of occupancy—a principle which might go greatly beyond the compromise of the Taluqdárs, and confer protection on other classes not contemplated by them;—or, if the presiding officer held that there was no right then, as the landlords in non-taluqa villages were not parties to the compromise, the Court would probably refuse protection. The only remedy for this state of things is either a new legislative provision, or the endeavour to persuade all the Zamíndárs in the portion of Oudh (one-third) not belonging to taluqas to enter into the same agreement as the Taluqdárs have done. Evidently, the former measure would be the simplest and most effective."

It seems unnecessary for me to add anything to these remarks of Sir William Muir.

The Bill lays down broadly, in Section 40, a very important principle. It is there stated that—

"It shall in no case be competent to the Court to inquire into the propriety of the rate of rent payable by a tenant not having a right of occupancy. The rent payable by such tenant

shall be such amount as may be agreed upon between him and the landlord ; or if no such agreement has been made, such amount as was payable in the previous year ; or if notice of enhancement of rent has been served upon such tenant in the manner provided by Section 37, the amount stated in such notice, unless such tenant has successfully contested his liability to pay such enhanced rent in the manner provided by Section 38."

This principle differs to an important degree from the principle laid down in Act X of 1859, at least as that principle has been interpreted by the Calcutta High Court. According to the view taken by the High Court, a landlord may eject a tenant-at-will if he cannot come to an agreement as to the rate of rent to be paid. But if the landlord, after giving notice to the tenant that the rent will be enhanced, does not oust the tenant, the tenant, if he choose to do so, may wait on until the landlord sues for the enhanced rent, or proceeds to levy the amount by distraint, and the tenants may then raise the objection in Court that the rent demanded by the landlord is excessive. The court will then determine what is a fair and equitable rent, and the amount thus determined is what the tenant will have to pay.

I do not think that the legislature could introduce a similar rule into Oudh without exposing the Government to the charge of attempting to establish rights of occupancy under another form. Nor do I believe that it is desirable, in the interest of the tenants, that we should give power to the Courts to determine, under such circumstances as those that have been described, the rates of rents which tenants-at-will ought to pay. This sort of protection seems to me to be no protection at all, and I believe that it does more harm than good to the tenants themselves. This belief is in no way inconsistent with an apprehension which I confess that I feel, that it may be found hereafter that the practical recognition of the principle in respect of the majority at least of the cultivators of Oudh, that rents are to be fixed by competition and not by custom, may lead to unfortunate consequences. In this matter I accept, for my part, although it has become the fashion in India to doubt it, the doctrine that rents paid by labourers in a low state of civilization cannot safely be left to the mere discretion of the landlord. I believe, as Mr. Davies has said in his report on tenant-right in Oudh, that—

"The doctrine that rents paid by labourers raising their wages from the soil cannot safely be exposed to competition, as expounded by Mr. J. S. Mill, is now generally accepted by political economists. It is seen that a rapidly increasing population is soon straitened for food ; that they will contend fiercely amongst themselves for the payment of the rent of land from which alone, in a purely agricultural country, they can extract it ; that such contention, whilst nominally and transiently raising rents, must lead to impoverishment and reduced wages ; that, with increasing poverty, the secondary wants necessarily diminish, self-respect vanishes, whilst

the multiplication of numbers is accelerated; that the end is to the landlord a shrunken rent-roll and deteriorated property; to the country a degraded and desperate peasantry. It is admitted, on the other hand, that rents paid by capital may safely be left to competition, that sensitive fund giving timely and early warning of over-exaction to the investor. Contending not for bread, but for the fair interest of his money, he, unlike the starving cultivator, can and will separate from the soil. Whence is suggested an answer to the question often asked,—'why allow competition for grain and not for the rent of land paid by peasants?' Because competition for grain has no tendency to multiply the number of mouths to be fed; but, by adjusting its price in proportion to the supply, rather puts people on their thrift; whereas competition for rack-rent leases, by encouraging false confidence, by eventually lowering wages and by minimizing the prudential checks, has a direct tendency to stimulate the increase of population, and, in course of time, to lessen the fund for its spuport."

I think, Sir, that after all the discussions that have taken place with regard to this subject, no useful purpose is to be gained by my entering into it again. Circumstances beyond control have brought about this state of things in Oudh, and I can only express the hope that my apprehensions may prove unfounded. And, after all, much has been accomplished for the protection of tenants in Oudh, although it may not be all that was theoretically desirable. But (I quote again from Mr. Davies' Report)—

"If at any future time the condition of the cultivating classes should become such as to demand legislative interference; if it should be found that, from the operation of causes familiar to modern science, the country is reduced to a worse state than that from which the British annexation was intended to rescue it, I conceive that the duty of dealing with such an emergency cannot be evaded by the Government. If, at some future time, further interference should become necessary, such changes of proprietorship, and feeling will probably have taken place as will pave the way for legislative action."

To this I only desire to add that, if the results thus contemplated as possible by Mr. Davies should unfortunately occur, the sanads of the Taluqdárs themselves, and the orders under which those sanads were granted, give to the Government full authority to interfere. For the rights that were bestowed upon the Taluqdárs were "conceded subject to any measure which the Government may think proper to take for protecting the inferior Zamíndárs and village occupants from extortion;" and every Taluqdár has been bound by a special condition inserted in his sanad, "that he will, so far as is in his power, promote the agricultural prosperity of his estate;" and it has been declared that the breach of this condition shall annul the right that has been conferred upon him. I hope that it may not be necessary hereafter to remind the Taluqdárs of these obligations.

It may be proper that I should add that, except in respect of the special conditions under which rights of occupancy are to be enjoyed, the legislature

is, in my opinion, no more fettered in Oudh in dealing with questions between landlord and tenant, than in any other province of India. With the exception that I have now noticed, there is, I consider, no subject referred to in this Bill which is in any way mixed up with the political engagements entered into by the Government with the Taluqdárs. It is desirable that there should be no misunder standing on this point.

It was estimated by Sir Charles Wingfield that, under an arrangement very similar to that which has now been made, some 20 per cent. of the whole body of cultivators in Oudh would obtain a right of occupancy.

An important protection to all tenants will, I hope, be further given by the provisions contained in Sections 22 to 27, regarding compensation for unexhausted improvements. All tenants have, I think, a right to claim that, if the landlord determines to oust them or to enhance their rent, they shall be entitled to compensation for the value of improvements of the land which have been made at their own expense. The justice of this principle is now so generally admitted that I think it needless to say much regarding it. Although it has long been more or less recognized in other Indian provinces, it has, I believe, been nowhere so distinctly laid down as it will be in Oudh, if Sections 22 to 27 of this Bill become law. These Sections, somewhat differently expressed, formed a part of the arrangements entered into last year. The only change of importance that has been made in the rules as they originally stood is that compensation for improvements may be claimed, not only when the landlord desires to oust the tenant, but also when he demands a higher rent. It is to the credit of the Taluqdárs that they have readily agreed to this alteration. The matter was, however, in reality, one which need hardly have been mixed up last year with the question of rights of occupancy, and there was, perhaps, no necessity for specially consulting the Taluqdárs regarding it.

The fourth and fifth Chapters of the Bill refer to the enhancement of rent and to the ejectment of tenants from their holdings. The provisions of these Chapter, although of very great importance, do not seem to require any special explanation at this stage of the discussion. They are, for the most part, very similar, so far as tenants-at-will are concerned, to those contained in Act X of 1859. Of the conditions under which the rents of tenants with rights of occupancy can be raised, I have spoken already.

The next Chapter of the Bill refers to distraint for arrears of rent. The Bill admits the principle which is everywhere acknowleged in India, that the produce of the land is held to be hypothecated for the rent payable by the tenant,

and it gives to the landlord the power, when an arrear of rent is due from any tenant, to make distraint of the standing crops, or other ungathered products of the land on account of which the arrear is due. Under the law which prevails in the North-Western Provinces and in Bengal, if, when the distress is made, the tenant does not pay the amount due or institute a suit to contest the demand, the landlord may, by his own authority, cause the distrained property to be brought to sale by the Amín of the Civil Court, or other officer entrusted with the duty of conducting sales in execution of decrees. This power of bringing the property of tenants to sale, is exercised in such a way that the Collector has little power of checking the abuses which, under such a system, are almost certain to arise. Where, however, landlords have long exercised this power, it may be doubtful whether it is expedient to deprive them of it. In Oudh, although the law which is considered to be in force regarding distraint, Regulation XXVIII of 1803, gives the power of bringing to sale the property of a defaulting tenant, the exercise of this power has been greatly discouraged by the orders of the Chief Commissioner, and, in the greater part of Oudh, it has been little exercised. Consequently, in taking away from the landlord the power of bringing the tenant's property to sale on his own authority, there will be little practical change in the system actually followed. While the Bill proposes to maintain the power of the landlord to distrain the crops of the tenant it does not give to him the power of sale. After the distress has been made, the landlord must, within ten days, institute a suit for the recovery of the arrears due to him, and at the time of bringing the suit, he may apply to the Court to order security to be taken from the defendant for payment of any decree that may be passed against him, or, in default for the attachment of the property already distrained. I need not enter into further details, but I hope that these provisions of the Bill while they guard against abuses, will not in any way interfere with the security for the speedy recovery of his rents which must always be preserved to the landlord.

The remaining Chapters of the Bill refer to the jurisdiction of the Courts and to the procedure to be followed by them.

It must be remembered that, in one important respect, the system followed in Oudh in the administration of the Judicial and Revenue Departments, differs from that followed in the neighbouring provinces. The same officers preside in Oudh over the Civil and Revenue Courts, whereas, in the North Western Provinces and in Bengal, the Court of the Collector is entirely separate from the Courts of the Judges who dispose of ordinary civil suits. Even where this separation exists, there seems to me to be no gain and very much loss in having a different procedure

for the two classes of Courts. Three-fourths of the suits that are heard in the Collectors' Courts under Act X of 1859 are, in fact, civil suits of the simplest character and the procedure followed in similar cases in the Civil Courts would be entirely applicable to them. No simpler and more appropriate rules could, I believe, be adopted than those contained in the Code of Civil Procedure. The procedure of Act X of 1859 is very similar to that of the Code, but where it differs, the provisions of the Code are almost always clearer and better, and more likely to prevent delay in disposing of cases. And, whatever may be said in other provinces where a different system prevails, in favour of retaining these differences of procedure, certainly nothing can be said in favour of such a course in Oudh, where the same officers preside over both Civil and Revenue Courts. It is proposed, therefore, to apply to the suits that will be heard under this Bill the rules contained in the Code of Civil Procedure. A few additions and modifications are necessary, because the Code was drawn up on the assumption that the particular classes of cases with which this Bill deals would not come into the Civil Courts at all ; and, consequently, the provisions for disposing of them are not always sufficient.

I do not think that I need explain the provisions of the Bill further. I dare say there may be many points in detail in which it may be improved, and the more thoroughly it is examined and discussed, the better. But I hope that it may be said of the Bill generally that if it become law, it will carry out the objects with which it has been introduced.

Before, Sir, I conclude what I have to say regarding this Bill, I wish to acknowledge the large share that Mr. Davies, the Financial Commissioner of Oudh, has taken in its preparation. And having mentioned Mr. Davies' name, I hope that your Excellency will allow me to take this opportunity of expressing my sense of the great obligations which the Government and the province of Oudh owe to Mr. Davies for the part that he has taken in the late controversies, and in the arrangements by which we may hope that those controversies are now being terminated. From the time when the duty of making the inquiry into rights of occupancy in Oudh was entrusted to Mr. Davies, he has had a very difficult task to perform, and he has performed it in a manner which has deserved and has obtained, the warmest approval of the Government, and has gained the confidence of all classes in Oudh.

Sir, there are only a few more words that I wish to say. I have avoided, as far as possible, re-opening discussions that have, I hope, been closed, but there is one matter to which I think that I may properly refer.

When I last year submitted to the Government the report which led to the settlement of these questions, I expressed a belief that, judged by the results the measures that had been taken by your Excellency's Government must be pronounced successful. This Bill shows, in respect of the important questions affecting landlords and tenants that had long been pending in Oudh, what those results actually are. It appears to me that, however incomplete these arrangements may be, they have certainly had the effect of very much improving the position of the humbler classes in Oudh. In the first place, privileges which custom had long given to a large and important body of cultivators, have been secured to them as rights. I believe that everybody admits that this class possessed special claims to consideration. Neither the Talukdárs, nor Sir Charles Wingfield, nor, so far as I know, any one else, have ever said that it is not just that these advantages should be granted to this class of tenants. It would be a great mistake to suppose that, in the matter of protection to tenants, the results that have been obtained are insignificant. The number of tenants who will have a right of occupancy under these rules was estimated, as I have already noticed, by Sir Charles Wingfield, at one-fifth part of the whole number of the cultivators of Oudh. I can understand that it should be maintained by some, although, in fact, I believe no one has maintained anything of the kind, that this result is a bad one, but it certainly is not an unimportant one. It may be said that these advantages are due, not to the action taken by the Government, but to the liberal concessions of the Talukdárs. But the truth is that, in this as in other matters, it has seemed far wiser to correct the errors of the past by coming to an amicable arrangement with the Talukdárs, than by carrying out the necessary measures under the authority of the Government. I do not wish to detract from the credit due to the Talukdárs. I think that they have shown in these transactions a liberality and a sagacity which are very honourable to them. Whether, if the Talukdárs had refused their consent, the legislature would nevertheless have carried out provisions in favour of tenants similar to those contained in the present Bill, I cannot say. But I am sure of this, that it would have been right for the legislature to do so. However this may be, the arrangements that have been made have, in truth, been as much the result of the measures taken by the Government as if they had been carried out by legislation without reference to the Talukdárs; and the fact appears to me altogether indisputable that, without the interference of the Government, no such arrangements would have been carried out, or even seriously thought of. And it must not be forgotten that these privileges which have been given to a large class of cultivators are by no means the only advantage that has been gained. The provisions under which every tenant who has made improvements will be able to claim compensation for their value,

if his landlord desires to eject him from his holding or to enhance his rent, will have, undoubtedly very important consequences, and I believe that they will be as beneficial to the landlords as to the tenants. When I remember the agitation upon this very subject that has so long been going on in Ireland, and which still continues; the importance which English Statesmen and economists have long attached to this question, the proper solution of which has been supposed by many to be the panacea for all the misfortunes and for all the wrongs of Ireland, and the attempts made by different English Governments to settle it; I may safely affirm that if there had been no other result of these Oudh controversies than this, English Statesmen at least would not think the result an insignificant one. Sir, I will not pursue this subject further. I will merely repeat my conviction that the interference of your Excellency's Government in Oudh in respect of the matters of which I have been speaking, was necessary and wise, and that it was been successful in bringing about results which will be highly beneficial to the most important interests of the province.

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND understood that this Bill was based on the consent of the Taluqdárs, under which circumstances it was not likely to meet with any opposition. At the same time he found that a reference to the Taluqdárs was to be made as to the Sections relating to rights of occupancy and other privileges to be enjoyed by certain classes of tenants. He confessed he would have preferred to know distinctly what the views of the Taluqdárs really were before the Bill was introduced, although he was quite willing to take the Hon'ble Mr. Strachey's word for it that the more important of the variations had already been assented to. The Bill embodied many points of first principle, and a cursory reading had enabled him to point out some subjects which seemed to require change or at least consideration. Take, for instance, the first case in Section 32 as to the enhancement of the rent of a tenant with a right of occupancy. If the rate of rent paid by such tenant was below the prevailing rate of rent payable by the same class of tenants having a right of occupancy, for land of a similar description and with similar advantages, *situate in the same village*, the Court was to enhance the rent of such tenant to the rate so prevailing but it might well happen that the great body of the ryots in that village had no right of occupancy, or that the majority had rights of occupancy, and paid the same, but less than the same class in adjoining villages of the same district, up to the rates of which the Landholder wished to raise them. By what rule then would the Court be guided? He trusted that the Hon'ble Sir George Yule, whose experience in revenue matters was so great, and knowledge of Oudh so intimate would consent to serve on the Select Committee to which the Bill would be referred.

The Hon'ble MR. MAINE observed that it was very important that the Taluqdárs' consent should be obtained to everything in the Bill of which they had not already expressly approved, otherwise the Bill could not come within either class of those measures which—with the concurrence, as he believed, of the Council—he had recently described as being proper to pass at Simla. For it certainly was not a trifling measure of routine, and in the absence of the Taluqdárs' approval, it could not be said that this was a measure on which every one entitled to speak with authority had spoken.

The Hon'ble MR. STRACHEY explained that he had been obliged to leave Lucknow before this matter could be finally settled with the Taluqdárs. He fully admitted that it would have been more satisfactory if he had been able to state that all the changes of which he had spoken had been already approved by the Taluqdárs. He felt sure, however, that no difficulties on this score would arise.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable—The Hon'ble Mr. Taylor, and the Mover.

On the Bill to consolidate and amend the law relating to the recovery of rent in Oudh—The Hon'ble Messrs. Maine and Taylor, the Hon'ble Major-General Sir H. M. Durand, the Hon'ble Sir George Yule and the Mover.

The Council adjourned till the 24th July 1867.

SIMLA,
The 17th July 1867.

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

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