COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 12

JAN. - MARCH

BOOK NO 1

1873

P. L.

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

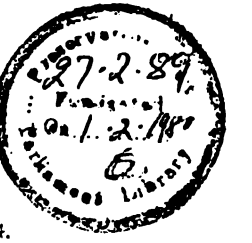
1873.

WITH INDEX.

VOL. XII.

Chamber Fumigated on 8.11.73.

Published by the Authority of the Governor General.



CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1874.

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

The Council met at Government House on Tuesday, the 28th January 1873.

PRESENT:

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

His Honour the Lieutenant Governor of Bengal.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble B. H. Ellis.
Major General the Hon'ble H. W. Norman, C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.
The Hon'ble R. E. Egerton.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. F. D. Inglis. Inglis

RULES FOR THE CONDUCT OF BUSINESS.

The Hon'ble MR. HOBHOUSE presented the report of the Select Committee on the Rules for the Conduct of Business.

BURMA TIMBER DUTIES BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to authorize the levy of *ad valorem* duties on timber floated down the rivers of British Burma. The matter was an extremely simple one. At present, these duties were levied by cubic measurement of each log. That was found to be inconvenient on account of the great differences in the value of different pieces of timber; and, in point of fact, by arrangement between the revenue authorities and the owners of timber, *ad valorem* duties were taken because that happened to be in favour of the timber owners. There was no provision for that in the law, and it was proposed to legalize the practice. At the same time, the opportunity would be taken to bring the law on the subject into one single

enactment; it was very short and very simple, but it happened to be contained in three Acts.

The Motion was put and agreed to.

BURMA PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Mr. Stewart be added to the Select Committee on the Bill for the levy of Port-dues in British Burma.

The Motion was put and agreed to.

SAVINGS BANKS BILL.

The Hon'ble SIR RICHARD TEMPLE moved that the report of the Select Committee on the Bill to legalize the repayment of money deposited in District Savings Banks in the names of Minors be taken into consideration. The report of the Committee was short, and he could not do better than read it *in extenso*. The Committee, then, after setting out that they had considered various papers connected with the Bill, which chiefly consisted of replies to certain references to all the Local Governments and Administrations in India, proceeded to report as follows:—

"We have extended the operation of the Bill to all Government Savings Banks, and we have taken the opportunity of repealing and re-enacting, with some necessary modifications, the extant provisions of Act No. XXVI of 1855 *(to facilitate the payment of small deposits in Government Savings Banks to the representatives of deceased depositors)*.

"We have added a clause legalizing repayments of deposits heretofore made to minors or their guardians.

"We have also provided for the case of deposits made by married women, or women who afterwards marry. This and the preceding provision are in accordance with the Regulations for the management of the English Post Office Savings Banks.

"We have raised, from rupees 500 to rupees 1,000, the amount which the Secretary may pay, without probate, &c., to the representative of a deceased depositor, and we have extended, from two to three months, the period fixed by the second paragraph of clause 3.

"We have inserted a section (suggested by 9 Geo. IV, c. 42, s. 40) declaring that, when the amount of a deposit does not exceed rupees 1,000, such amount shall be excluded in computing the probate-duty chargeable on the property of the deceased depositor.

"In the section relating to deposits belonging to lunatics, we have provided for the case of a deposit being made on behalf of a minor, who, on attaining majority, is found to be insane.

"We have defined 'Secretary' to include any person empowered to manage a Government Savings Bank, and we have made a few verbal amendments."

With these remarks, the Committee recommended that the Bill, thus amended, be passed. As the Council would perceive, this Bill, which was originally introduced with reference to depositors being minors, had been slightly extended, so as to include, by way of consolidation, the previously existing law, and that it also comprised one or two other matters which required legislation. It had been suggested by one or more of the Local Governments, that we should also include all the rules relating to the Savings Banks. But, on consideration, we had decided not to enter into that point, because those rules were contained in executive resolutions, and we were advised that, for such rules, executive sanction was sufficient. We had therefore acted upon what was understood to be a well-known principle of legislation, that we should not include anything in a law which could be done without legislative authority—that which you had the power to do executively, should not be done legislatively.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

TRANSHIPMENT OF GOODS BILL.

The Hon'ble SIR RICHARD TEMPLE also moved that the report of the Select Committee on the Bill to amend the law relating to the Transhipment of Goods imported by Steamer be taken into consideration. In this case also, as the report of the Committee was short, he would read it *in extenso*. The report, then, ran thus:—

"We, the undersigned Members of the Select Committee to which the Bill to amend the law relating to the Transhipment of Goods imported by Steamer was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

"We have slightly amended the wording of clauses five and six; but we have made no other changes, and recommend that the Bill thus altered be passed."

He believed that the circumstances relating to this Bill were within the recollection of the Council. It was known, perhaps, to this Council and the public, that a considerable amount of opium was grown in Persia, and that such growth was year by year increasing. He did not say that there was any danger of rivalry with British India; but then we should see that, in such matters, a great interest was protected, namely, the Indian interest in opium. This opium, coming down the Persian Gulf in Native craft, was taken into the British ports of Aden and Bombay. The opium brought into these ports was transferred to British steamers, and by them was conveyed round to China. This was considered to be making use of British ports, perhaps to the detriment of British fiscal interests. So, at first, this transhipment was prohibited. But it was thought better, on consideration, that we should not refuse the hospitality of our ports even to our possible competitors, but that we should offer every facility for such transhipment. That being the case, it only remained to determine what ports should be included in the arrangement. Of course Bombay would be included. But it was further considered whether we should not also include Aden. It was a free port for general merchandize, and it required special legislation to levy a transhipment fee in that port. We considered, notwithstanding the general privilege conceded to Aden, we might fairly levy this transhipment fee under the particular circumstances. Therefore, after consideration, we determined to include Aden.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTHERN INDIA IRRIGATION BILL.

The Hon'ble MR. EGERTON presented the further report of the Select Committee on the Bill to regulate Irrigation, Navigation and Drainage in Northern India.

His Honour THE LIEUTENANT GOVERNOR asked His Excellency the President to suspend the Rules for the Conduct of Business, in order to consider one point which was left doubtful in Committee with the view of saving time. It might be discussed in Council that day, so that the Council might make up their minds at the next meeting.

His Excellency THE PRESIDENT requested the hon'ble member, Mr. Egerton, to read the report of the Select Committee.

The Hon'ble MR. EGERTON read the report, which was as follows—

"We, the undersigned Members of the Select Committee to which the Northern India Canal and Drainage Bill, 1872, was referred, have the honour to make this final report.

"We have expressly provided that the proposed Act shall apply to all lands, whether permanently settled, temporarily settled, or free from revenue.

"We have, in the penultimate paragraph of clause 8, substituted 'date of the notification' for 'passing of the Act.'

"We have reconsidered clauses 35 and 45 as amended in Council, and we have nothing further to suggest with respect to those clauses.

"We have provided, in clause 38, for assessing the owner's rate by reference to land of similar description and with similar advantages as those of land irrigated by a canal.

"We have altered clause 42 into a declaration that no owner's rate shall be chargeable, either on the owner or occupier of land temporarily assessed to land-revenue at irrigation-rates, during the currency of such assessment. And we have struck out clause 43.

"We have provided distinctly, in the clause (66) describing the procedure for obtaining labourers for works urgently required, that the Local Government shall fix, and may from time to time alter, the rates to be paid to any such labourers, provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

"We have made a few transpositions and verbal amendments, and recommend that the Bill, thus amended, be passed."

His Excellency THE PRESIDENT observed that he had no objection to comply with the request of His Honour the Lieutenant Governor to suspend the Rules so far as to consider the report of the Committee now, if hon'ble members considered that course a desirable one to take.

The Hon'ble MR. ELLIS remarked that he had not seen either the report of the Committee or the Bill as amended by them; and he believed that every member, except His Honour the Lieutenant Governor, was in the same position.

His Honour the LIEUTENANT GOVERNOR observed that his proposal was not to consider the report of the Committee *in extenso*. The fact was, that, in respect to one clause, the matter was left doubtful, and he wished that point to be discussed now, so that the Council might be prepared to come to a decision

at the next meeting. He was not a member of the Select Committee; but the Committee were good enough to allow him to be present at their deliberations for a little time, and it would not be a serious breach of confidence to say that they had not made up their minds on that point.

He thought it would save time if he were to state his views on that one point on the present occasion.

His Excellency THE PRESIDENT observed that, when any objection was made, it was better to keep to rule, and as none of the members seemed to be in favour of the course proposed, he was not prepared to suspend the Rules.

LAND REVENUE (NORTH-WESTERN PROVINCES) BILL.

His Excellency THE PRESIDENT announced that the adjourned debate on the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces of Bengal would now be resumed.

His Honour THE LIEUTENANT GOVERNOR said, before this Bill passed into a stage which would withdraw it from the Council in general for some time, he should like to make a few observations. He thought it was of great importance that some of the important provisions should be carefuly considered and discussed. The subject was one of enormous importance—of an importance so great that, in HIS HONOUR'S view, all the other subjects put together, which were brought before this Council from one year's end to another, were not at all equal in importance to this one great subject—namely, the land-tenures and land-revenue of the country. It was to him, as he was sure it was to the public, a great source of satisfaction that this great subject should be treated by the able men who were now in a position to deal with it. The Lieutenant Governor of the North-Western Provinces, under whose auspices, HIS HONOUR might say, this Bill was introduced, and the hon'ble member who introduced it, himself holding a high position in those Provinces, were, of all men in India, the most fitted to deal with this great subject. HIS HONOUR thought there could be but one opinion, that it would afford great facilities and advantage to the officers of the Government, if the law on this subject, which was now scattered over many enactments, should be consolidated and put in a clear and compact shape. After the experience of several generations of eminent Revenue Officers, it was also desirable that, in those points which required amendment, the law should be amended; that the Bill should be cast in rough by those who were so well able to deal with it so fully; and that it should then be considered in this Council.

HIS HONOUR did not propose to address himself to the details of the Bill. But there were one or two important provisions which appeared in the Bill, to which he would draw the attention of the Council. The most important point—at all events the newest and most striking point—in this Bill was one which afforded a certain benefit to those cultivators who formerly occupied the position of proprietors. He thought that provision a most excellent one, and if accepted by the Council, it would be a great improvement of the law as it now stood. He not only looked upon it as a great improvement and political advantage that we should act thus, and maintain the traditional rights of these ex-proprietors; but also he thought that the provision would be of immense importance, inasmuch as it would introduce a principle which he believed was the very back-bone of Indian tenures of land. It would admit that the land might be, and was, held as a matter of status, and not as a matter of property under the ordinary conditions of contract under which land was now held in England. Property in land, in one sense, as introduced in India, was a modern invention of our own. It might be that certain privileges connected with the land were held by various individuals and hereditarily transmitted. But HIS HONOUR'S assertion was, that property, in the sense of the full proprietorship with which a man could do as he liked, was a thing unknown in this country; that rent, as distinguished from revenue, did not exist. The superior holders of landed tenures, known either as village headmen, taluqdárs, or zamíndárs, or anything else, might have hereditary rights; but such rights were more in the nature of offices than of property. At any rate, the rights which they held signified only the possession of a certain status, and not rights as proprietors. That being so, he rejoiced to see that, in this Bill, changes were proposed with a view, to a certain extent, to recognize this view of the case; that was to say, that the ex-proprietors had a certain status which they had never lost. We said—"the rights of property and the rights depending on contract you have lost, but your status as a cultivator of the soil was not lost." He looked on the deprivation of real status as a great political evil; he looked on that as a thing of which, according to Native opinion, and according to Native law and custom, a man could not be deprived. We should now, he hoped, revert to the custom of the country, and maintain the privileges which, according to a long course of custom, according to Native history and Native sentiment, these men were entitled to hold. He thought that the provision was a good and moderate one, and one which he hoped to see carried by the Council.

But going beyond that, there was another part of the Bill in regard to which HIS HONOUR entertained serious apprehension. He objected to the

wording of two or three clauses of the Bill as they now stood. The point was of extreme importance, although, upon the face of the Bill, it might not seem so. The Council were aware that the question of the rights of ryots was one which had been long and hotly agitated in India, not only in connection with Bengal Proper, but also in the North-Western Provinces, the Panjáb and Oudh, and in other cognate provinces. In respect to one limited class of tenants, this Bill would give special privileges. But when you went beyond ex-proprietary tenants, you came to the great class of occupancy ryots, and he found that section 76 of the Bill introduced some changes in the wording of Act X of 1859, on which he looked with very great apprehension. It was a question whether Act X of 1859 changed or declared the law. His own opinion was, that it rather declared than changed the law. A considerable period, as things went in India, had passed since Act X of 1859 became law. It had been the subject of great agitation and contention, and most important decisions upon its meaning had been passed in the highest Courts of law. The people had become acquainted with that law; and, in the opinion of many eminent men who had been consulted, that law should not be lightly altered. The law to which people had become accustomed, and which had been settled by the decisions of so many eminent Judges, should not be tampered or interfered with, without urgent necessity. The question therefore was, whether section 76 of this Bill did not alter that law to some material extent. It was at one time supposed that Act X of 1859 introduced provisions very unfavourable to the landlords. It had since been more justly shown that, probably, the provisions of that law were rather unfavourable to the tenant, inasmuch as they gave grounds for the enhancement of rent which did not previously exist. Putting aside the ex-proprietary tenants, the great mass of the other occupancy tenants were those whose position and status were regulated by sections 6 and 17 of Act X of 1859; and, in the North-Western Provinces, it was proposed to substitute section 76 of this Bill for sections 6 and 17 of the Act of 1859. Now, when he came to compare those sections with the provisions of this Bill, and to read them by the light of the Statement of Objects and Reasons, and some correspondence which had been published, he was very much inclined to fear that this Bill did alter the law. He believed that it had been done inadvertently: he could not think it had been done designedly. Perhaps he might venture, as having been engaged in the administration of the law, to throw out a suggestion. He had very great fear that the wording of section 76 of the Bill would introduce very considerable changes to the disadvantage of the ryots—changes which he, for one, would very much deprecate.

The first alteration which HIS HONOUR noticed in regard to the wording of this section was this. The present law, section 6, Act X of 1859, was in this form :—

"Every ryot, who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same," &c., &c.

That section and section 17, to which he should presently refer, were those sections of Act X of 1859 which had been very hotly contested in the Courts; he might say every word had been the subject of a most solemn and important legal interpretation; and he therefore considered that, if it was not intended to make any material change, it was most dangerous to alter the wording of a law which had been so thoroughly sifted—a law which had so thoroughly become the very back-bone of the country. He would exceedingly deprecate the change of a single word, if the change was not really necessary.

Almost the very first word of section 76 of this Bill was new, and at once made a considerable difference against the landlord. The term ryot was in its origin somewhat vague, but a long series of decisions had settled and made it clear that the ryot of Act X was, in fact, a cultivator, and that a tenant who was not a cultivator was not entitled to the benefits of section six. It seemed to HIS HONOUR that, when the word "tenant" was introduced instead of the word "ryot," you widened and increased the scope of the law; that you gave rights of occupancy to men who were not cultivators of the soil, to farmers and others who were not engaged in cultivation; and it would be very undesirable that tenants of that description should acquire such rights.

Again, the words of section 6 of Act X of 1859 were—"Every ryot who has cultivated or held land for a period of twelve years, has a right of occupancy." But in section 76, the words are—"Every tenant who has cultivated or held land continuously for a period of twelve years, shall be recorded as a tenant with a *simple* right of occupancy." HIS HONOUR did not understand the reason for the introduction of the word "simple." Why should it be introduced there? He feared that, to the word "simple," an important meaning might be given; because, as he went on, he found that, while under the present law the rights of tenants having rights of occupancy were defined by section 17 of Act X of 1859, which laid down the circumstances under which, and under which only, rent could be enhanced, and the limit to which it could be enhanced, that was materially changed by this Bill; in future, the standard of rent was not to be the special standard laid down by section 17 of Act X of 1859,

but reference was to be made to what were called the "current rates of rent." Now, if he looked to the Statement of Objects and Reasons and the correspondence which had been published, he was filled with apprehension that the term "current rates of rent" meant simply the prevailing rates of rack or competition rent. If so, this Bill would introduce what the High Court of Bengal, sitting in very solemn judgment, had declared not to be the existing law. The hon'ble member in charge was no doubt aware that this point was the very subject of contention in what was known as the great Rent Case of Bengal. The hon'ble member was probably aware that that eminent Judge, Sir Barnes Peacock, did hold what HIS HONOUR apprehended this Bill might be considered to lay down, that tenants having rights of occupancy were entitled to hold simply at the rates of rent fixed by competition; that the right was a simple right of occupancy, and that an occupancy tenant had no other rights whatever. That was the opinion of one very eminent Judge. But it happened that, in a Court of fifteen Judges, fourteen Judges held a contrary opinion. They considered that a tenant with rights of occupancy was not entitled merely to hold at a rack-rent, but that his rent was limited, and could only be enhanced under certain express conditions, and that those conditions were laid down by section 17 of Act X of 1859. HIS HONOUR was sure that the hon'ble member in charge of the Bill would not ask the Council to upset the law which was so solemnly settled and established by the highest Court in the country, which, for a long series of years, had been settled to be the law of the land, and which had been looked to as the Magna Charta of the rights of occupancy tenants. He was sure the hon'ble member would not ask them to change that law in a sense adverse to the rights which ryots now possessed under the existing law.

HIS HONOUR would not trouble the Council by going into the details of the modes and limitations of enhancement which were now recognized by the law; but he earnestly entertained the hope that the hon'ble member in charge of the Bill would so mould the wording of the Bill as to depart as little as possible from the conditions under which enhancements of rent could now be made; and that he would not alter the rights of occupancy ryots as they had been settled. It was all very well to protect the rights of the few who were called privileged cultivators; but it was a great deal more important to protect the rights of the mass of the cultivators of the country.

There was one other important change made by this Bill. It was the provision which enabled the Settlement-officer, at the time of settlement, to settle the rents of the ryots generally, and to enhance the rents if he considered it

advisable to do so. His Honour thought there was a great deal to be said in favour of that procedure, by which rents would be raised more easily than at present. Under the revenue-system prevailing, that was probably the right course. At the same time, he could not but grudge this facility of enhancement, and for this reason, that, at any rate for every two or more rupees enhanced, only one rupee went to the public purse, and the other rupee or rupees went to the man whom we had chosen to set up and call the landlord. His Honour's opinion was that there were only two courses open to us: either that we must look to a large increase of land-revenue in proportion as prices increased and values increased, or we must put other taxes upon the country. And his belief was that, for every rupee you put into the pocket of the landlord, you must extract another rupee from the people by some other way: for every lákh given to the landlords, you must take a lákh by means of some other tax. The course we were pursuing was somewhat thus. At the time of the previous settlement of land-revenue in the North-Western Provinces, we proceeded somewhat in this manner. We gave to the landlord one-third of the gross revenue paid by the ryots, and we took two-thirds into the public treasury. It was perfectly true, as expressed in the Statement of Objects and Reasons, that, in the course of that settlement—Mr. Bird's settlement—there were no facilities for enhancement, and, as a rule, the rents of the ryots were not enhanced. We would assume that a ryot paid a rent of twelve rupees. Of that, eight rupees went to the public treasury and four rupees went to the landlord. Now, suppose that, on account of the rise of prices and the rise in the value of everything else, that ryot's rent was enhanced fifty per cent.: in that case, the twelve rupees' rent would be raised to eighteen rupees, which was now to be divided on this principle. We would take fifty per cent. of the whole into the treasury, and give fifty per cent. to the landlord. The consequence would be, that, whereas the ryot's rent was increased from twelve rupees to eighteen rupees, and the former division gave eight rupees to the public treasury and four rupees to the landlord, now, only nine rupees would go to the treasury and nine rupees would go the landlord; therefore, although the ryot's rent was enhanced by six rupees only, one rupee went to the treasury and the remaining five rupees went to the landlord. Moreover, he found in the Bill a very proper provision that, when the rent had once been fairly settled under the provisions of the Bill, it should not be altered for a prescribed period. The landlord's rent was settled for thirty years; the ryot's rent for fifteen years. In the meantime, the prices of things were changing; money was changing in value: all things were rising in value in India. It was therefore very possible that, at the end of fifteen years, another fifty

per cent. might be added to the ryot's rent. His Honour was supposing that the ryot originally paid twelve rupees; he would now pay eighteen rupees; and fifteen years hence he would pay twenty-seven rupees. It followed that, at the end of the fifteen years, nine rupees would go to the public treasury and eighteen rupees to the landlord. Well, then, what happened? The more money the landlords got from the people, the more money they spent, and landlord families became more numerous. We were told that they must live. The consequence was, that the family who spent two-thirds of the gross income of a village or estate would be less and less inclined to give up that large revenue which, at the end of the period of settlement, they would derive from the land, and it would be said that it was cruel suddenly to reduce their income and the value of their property. In His Honour's view, the longer the term for which you settled the revenue, the more the landlord class became accustomed to the idea of property in the land; the more they became wedded to the habit of spending the income, the more difficult it would be to raise the public revenue on the land.

In reality, then, we must, he believed, adopt one of two courses: we must either go back to the original character of land-tenure and land-revenue in India; we must say boldly to the landlord,—"You must go back to the position of a collector and privileged cultivator. What has of late been called rent is really revenue; we will take the greater portion as revenue, merely leaving you a portion for your trouble in collection and in consideration of your position." Or, on the other hand, we must permanently settle the revenue, and do what Lord Cornwallis desired to do—settle the revenue permanently, not only for the landlords, but also for the ryots. With a permanently fixed land-revenue, as in European countries, we must set against that settlement the necessity of raising taxes in other forms. You must either put an end to that idea of the continual increase of property in land, and raise the revenue very largely, enhancing the rate on the landlord and ryot alike, or you must permanently settle the land-revenue for all parties, and adopt other systems of taxation. No doubt this last would be in one view a great gain; it would be an immense thing to put an end to the harassment and the setting of class against class; of Government against one class, and one class against another, and all the irritation caused by settlements and enhancements, and all the rest of it. In His Honour's view, the permanent settlement in Bengal had given opportunity for the creation under the zamíndárs of a vast mass of landed proprietors of a smaller and more popular character. That, undoubtedly, was of very great benefit to the country. And if, in Bengal, it was necessary to impose other taxes, the country would not be without compensation in the

permanent settlement. His Honour's view was, that the time had come when, in dealing with a Bill of this kind, we must take our course in one line or the other; either towards a permanent settlement of the revenue of landholders and ryots alike, or adopt a system of periodical enhancement of the revenue commensurate to the increase of rents on the ryots. He thought nothing could be worse than a system of continual enhancement of the rent of the ryots with very inadequate gain to the public treasury. He would either stop enhancements of all sorts and rest on a people rendered stable by the wide diffusion of settled and secure landed property, or would raise the revenue as the rent was raised, and rest on the contentment due to the avoidance of other taxes.

The Hon'ble Mr. Bayley said, he did not propose to detain the Council with any very lengthy observations regarding the Bill in its present stage. He could not, indeed, add anything to the opinion of His Honour the Lieutenant Governor as to its extreme importance, whether as a measure of consolidation, or as one of reform.

He only wished to say that he entirely concurred in the general expediency of the Bill, so far as it concerned the consolidation of the existing law. And as regards the reforms which it introduced, he thought he might say, generally, that he also agreed with His Honour so far as to think the principle upon which our legislation in this respect had hitherto proceeded was to some extent erroneous. He believed, that is to say, that the ancient custom of the country certainly never generally recognized such idea of full and complete property in the land as had been recognized by the theory of modern English law, although the latter had, to a certain extent, guided both our Courts and legislation in this country. He did not mean to say that absolute property in land was never found in India; but he certainly thought that it was not the general rule. He might go further, and say it was hardly possible to recognize any one uniform, general law of property in India. The truth was, there was never any one principle accepted as the basis of the land-law. The status of the various persons interested in, or connected with, the land had been settled by a series of compromises, induced by various general and local circumstances, which had created, perhaps, the most complicated and varied body of law and custom that the world had ever seen. We had thrown all our influence into the scale in favour of one particular portion of the community connected with the land, whose position, perhaps, fitted best with the theory of the English idea of proprietors. And no doubt the practical effect of carrying out that policy

had resulted in the enormous evils which the hon'ble member in charge of the Bill had so vividly described in his speech at the last meeting of the Council, and which, vivid as it was, gave a very inadequate idea of the great injustice and political evils which were the logical consequences of the view which had been thus generally taken by our authorities. The present Bill did very much, so far as it could be done, to remove those mischievous effects of the principle followed, without destroying the efforts made to reduce the land-law to some sort of system and uniformity. It very wisely, moreover, adopted that method of compromise by which, in accordance with immemorial practice, the Natives had themselves endeavoured to adjust the difficulties which had arisen out of our administration of the law.

He did not propose, at this stage of the Bill, to go into the details of the measure, because he thought the general policy required first to be considered as a whole. It was well understood, moreover, that the present was one of three Bills intended to carry out that policy in a uniform manner, which were necessarily, to some extent, connected with each other, and which should therefore be based, not only on the same principle, but should be made consistent in their form and expression. It would be very convenient therefore that all three Bills should be considered at the same time, and if possible by the same Committee, and that they should be carried out in harmony with each other. The principle being practically the same, it would nevertheless be very difficult otherwise to prevent the details from clashing in some respects.

In regard to some of the objections which His Honour the Lieutenant-Governor had taken, MR. BAYLEY believed they arose to some extent from the nomenclature adopted in the Bill, to which MR. BAYLEY had no inherent objection, excepting that it required to be very carefully considered; if not, there might be some danger of unintentionally changing the law as it stood. He merely instanced the new meaning given to the term "collector," which, unless carefully guarded, would be attended with considerable inconvenience. The word was used in a vast number of Regulations and Laws passed during the last century in a way so strictly technical, that, unless extreme care was taken, a new technical sense given to it would practically alter the law. Therefore, it appeared to him on this ground also, that it was very necessary that this Bill, and the others to which he had alluded, should be considered, as far as possible, together.

With regard to the policy of fixing the rates at the time of settlement, as a matter of fact he believed that it was certainly the original intention of the present Settlement Law to fix them at that period, and no doubt in the

majority of the earlier settlements the intention was acted upon. But it was found that the Settlement-officer had not legally the power of doing that which he endeavoured to do, and that the law did not give the legal force intended to his acts. MR. BAYLEY knew the evils which that want of power had brought about. As regards the time of settlement becoming one of general enhancement of rents, this was so already, the settlement was taken advantage of as a time of enhancement. The only difference was, that it now occurred after the Government revenue was settled, and when the Government could not get any benefit from it. And this enhancement was not now made by Settlemen-officers who were acquainted with the people, but by rough agreement between the landlord and tenant, and without any very satisfactory machinery to adjust their disputes. The Bill proposed merely to give a legal and useful shape to the existing practice, and to bring it under needful restrictions. As to the exact period for which the rents should last, it might be a question to be considered. MR. BAYLEY would not follow the Lieutenant Governor into the very difficult questions of political economy raised by him; he would only say that, so far as they affected the practical question before the Council, the present Bill seemed to go a long way towards a satisfactory compromise between conflicting views.

The Hon'ble MR. ELLIS said that the Bill now before the Council had a two-fold object—the consolidation and the amendment of the existing law. As to the first, it was obviously desirable to clear up all doubtful points, to legalize existing practice, and to bring into one enactment the various Regulations on revenue, tenant-right and other matters affecting the land. He therefore had no hesitation in expressing his concurrence with the Hon'ble Mover as to the necessity for legislation. As to the second object of this Bill, it was admitted that the amendments embraced points of very great importance; and with the short time the Council had had at their disposal, he did not feel that he could do justice to them. For this reason, and not because he failed to appreciate their importance, he would not follow his hon'ble friends, the Lieutenant Governor and Mr. Bayley, in their remarks. He would content himself with saying, generally, that he fully approved the direction taken by the amendments, while he thought some of the new provisions open to criticism, and was disposed to object to some of the clauses as they now stood. Considering, however, the great local experience of the Hon'ble the Mover, and that this Bill had been the result of careful consideration by a Committee of some of the ablest officers in the North-Western Provinces, and especially considering that it was put forward by the very best authority on the revenue and land-tenures of Upper India, the Lieutenant Governor himself,

it was, *primâ facie*, highly probable that his (MR. ELLIS') criticisms and objections were not well founded. It was thus not unlikely that, on further enquiry and explanation, his present opinion would be modified in regard to those points on which he differed, and he would refrain from stating them to the Council at the present stage of the discussion. He begged to give his vote for the motion for a reference to a Select Committee, and, in doing so, would express a doubt whether the period of six weeks would suffice for a determination of the many important details which would have to be considered by the Committee. But he would not move any formal amendment, as it would be open to ask for an extension of time.

The Hon'ble SIR RICHARD TEMPLE said:—"In the first place, I desire to observe that one point in the Bill, section 75, on which His Honour the Lieutenant Governor has just laid great stress, namely, the provision that the ex-proprietors who, from any cause, have been sold out of their lands, may still have the privilege of cultivating the lands as privileged occupancy tenants, is not at all new. A similar, just and expedient provision was embodied in the Panjáb Tenancy Act of 1868, and in the Oudh Rent Act. Having myself been concerned in the passing of the Panjáb Act, I am glad to see that a similar policy in this respect is followed in the present Bill.

"We have just heard doubts expressed whether this Bill sufficiently guards, by its sections 75 and 76, the rights of ryots, cultivators and tenants. Certainly, the Bill does not go so far as the Panjáb Act, and hardly as far as the Oudh Act.

"The Panjáb Act described several classes of privileged ryots more than those mentioned in this Bill, and then provided that these classes should be entitled to have their rents fixed at favourable rates, determined by various percentages below the average rent-rates of the district. Some classes, more highly privileged than the others, were to pay as much as thirty per cent. less than the average rate. But even the ordinary occupancy ryot was to pay fifteen per cent. below that average. By the Oudh Act, the occupancy ryot was entitled to have a favourable rate, twelve per cent. less than the average.

"Now, it has been objected by a previous speaker that this Bill does not make adequate provision in these respects. But although the Bill does not make the provisions as to rent-rates very specific, it does seem to contemplate such provision being made by executive authority.

"His Honour the Lieutenant Governor seems to consider that the 'simple occupancy tenant' of this Bill will be liable to be rack-rented, because he will

be chargeable with 'the current rates of rent for similar land.' No doubt he might, under some circumstances, be thus chargeable. But then the Bill also provided that he might be charged 'by the standard of the rent-rates sanctioned by the Board of Revenue for the circle in which the holding of such tenant is situated.' This seems justly to afford opportunity to the Board for fixing some standard, with a slight difference in favour of the occupancy ryot.

"So, with the privileged ryot of section 75; his rent is to be fixed by the Settlement-officer at two annas in the rupee less than the average rent-rate. This is a distinct concession, similar to the concessions allowed in the Panjáb and Oudh. But in this Bill the application will be limited to a very small class.

"Altogether, the details of the status of the 'simple occupancy tenant' may well afford matter for consideration by the Select Committee, if the Council shall to-day agree that the Bill be referred to such a Committee.

"Next, I infer from the tenor of the remarks by His Honour the Lieutenant-Governor, that in this Bill we should not concede too much to landlords in comparison with tenants; that in this way it might happen that the dues of the State in respect to land-revenue might be transferred to the landlords, which again might lead to the necessity for other kinds of taxation, and so on. Without following His Honour in that train of argument, I may remind the Council that this Bill is proposed for provinces where the lesser proportion only of the tenures relates to landlords and tenants, while the major proportion relates to peasant-proprietors. Indeed, the great majority of the people for whom this Bill is intended are those peasant-proprietors who are quite the best of their kind in all India, and who approach most nearly to the status of similar classes in continental Europe. As to the other kinds of taxation to which His Honour adverted, I am sure that the Council will excuse me from entering upon that subject. This is an instance to which the very familiar words of the poet seem specially applicable—'better bear the ills we have, than fly to others that we know not of.' That is, better make the most of the taxes we have, than fly to taxes of which we know not what the effect or the result may be.

"Lastly, I listened with due attention to what His Honour said regarding the fiscal interest connected with the permanent assessment of the land-revenue. We are all, perhaps, agreed that it would be well to concede to the people a permanent limitation of the demand for land-revenue. But how far such a limitation is reasonably practicable in the North-West Provinces; whether it should be an absolute pecuniary limitation, as in Bengal, or whether it should

consist of a fixed share of the State in the produce, the value of such share in money to be altered from time to time, according to range of prices, are questions still under the consideration of Government."

The Hon'ble MR. INGLIS said:—"As the principle on which section 75 is drawn, which recognizes ex-proprietary tenants as a separate class of occupancy tenants, with privileges superior to those who have acquired a right of occupancy by mere prescription, appears to be generally approved, it is unnecessary for me to add anything to what I have already said on this subject last Tuesday.

"I wish, however, to say a few words on some of the remarks made by His Honour the Lieutenant-Governor. He objects to the use of the word 'tenant,' in section 76, in place of the word 'ryot' used in section 6 of Act X of 1859. If His Honour will read the definition given of a tenant in section 3 of this Bill, in connection with the last part of section 76, which provides that, before a tenant can acquire a right of occupancy in any land, he must have cultivated it continuously for twelve years, and also read clause one, which bars the acquisition of this right in any land not let, he will, I think, see that his fears that a farmer who may have taken a part of an estate on lease can acquire a right of occupancy in it under this section are groundless. His Honour then objects to the phrase 'simple right of occupancy,' in the latter part of the first clause of the same section, as an alteration in section 6 of Act X of 1859, which provides that a tenant who has cultivated land for twelve years shall have a right of occupancy in such land."

[His Honour THE LIEUTENANT-GOVERNOR observed that, in the definition of "tenant" in the Bill, "cultivating" did not occur.]

The Hon'ble MR. INGLIS resumed:—"The word to which His Honour objects has been introduced to distinguish tenants who have acquired a right of occupancy by prescription, from tenants who have a right of occupancy in virtue of their former proprietary title in the land. Act X includes all occupancy tenants liable to enhancement of rent in one class. If ex-proprietary cultivators are to be recognized as a separate class, as is now proposed, some such word as that used in this section is necessary to distinguish the two classes.

"With reference to His Honour's remarks on the rules prescribed in section 76 for the determination of the rent payable by tenants with a simple right of occupancy, I would point out, that this section is intended to apply only to Settlement Courts, and to the time when the settlement of a district is under revision: at all other times, suits for enhancement and determination of rent

will be decided under the provisions of the Rent Law, and by officers invested with powers under it. It may be advisable, as His Honour urges, to lay down a stricter procedure for them than that which is here proposed for the guidance of Settlement-officers; but as the chief duty of a Settlement-officer is to ascertain, by the most careful enquiry, the rent actually paid for land of every description throughout the district under settlement; as his opportunities for ascertaining this are far greater than those enjoyed by any officer exercising powers under the Rent Law during the currency of a settlement; and as his conclusions have to be submitted for the consideration of the Commissioner of the Division and of the Board of Revenue before they can be acted upon,—it is, I contend, far better to give him the power to determine the rent payable by a tenant for any particular field, in accordance with these general deductions and observations, than to compel him, as the Rent Courts are obliged to do, to take the evidence of five or six cultivators on a matter on which he has already recorded all the evidence obtainable, not from a few interested witnesses, but after an inquiry extending over perhaps two or three years, among all classes of the agricultural community. Moreover, this is no new power which it is now proposed for the first time to give Settlement-officers as an experiment: they exercised it formerly under Regulation VII of 1822, when the settlements under Regulation IX of 1833 were made. It is certainly in accordance with the feelings and traditions of the people. It will put a stop to much of the ill-will and irritation now caused by the enhancement-suits which invariably follow a revision of the assessment; and it will, as I pointed out last Tuesday, relieve both landlord and tenant in a great measure from the heavy expense and delay they are now put to in re-settling the rental of an estate after revision of the Government demand on it.

"At the conclusion of his speech, His Honour made some remarks from which I understand that he objects to the principle on which the land-revenue demand is settled in the North-West, on the ground that the Government is shut out, during the currency of a settlement, from any share in the increased rental that may be obtained by the landlords; and also, that he considers that the share of the rental of an estate taken as land-revenue is too low. I regret that His Honour has thought fit to make these remarks, as I was in hope that all discussion on these questions had been ended. I shall merely say now, that our experience of the settlements under Regulation IX of 1833 is directly opposed to the conclusions arrived at by His Honour, and affords ample proof that the share of the assets of an estate now taken as revenue is as high as can be imposed with justice or safety, especially now that landlords have no longer the power they

formerly had of increasing their receipts by any considerable extension of cultivation. But it seems to me that the discussion of these questions is altogether out of place here, the principle on which the land-revenue is to be assessed, and the share of the rental to be taken by the State, being matters to be decided, not by the Legislative Council, but by the Executive Government."

His Honour THE LIEUTENANT GOVERNOR observed that the Hon'ble Mr. Inglis had given an explanation which seemed completely satisfactory, in regard to the definition of the word "tenant." But when we came to refer to that definition, we found it to be as follows:—

"'Tenant' means occupant of land who is, or, but for a special contract, would be, liable to pay rent therefor."

HIS HONOUR thought it was much better, seeing that the existing law—

His Excellency THE PRESIDENT observed that the Council must adhere to the Rules. Each member was only entitled to speak once in a debate.

His Excellency THE PRESIDENT said:—"The importance of some of the questions raised in this Bill is very great, and has been fully recognized by hon'ble members.

"For my own part, I have great confidence in the knowledge and ability of my hon'ble friend on my left (Mr. Inglis), and the Board of Revenue of the North-Western Provinces, who have prepared the Bill; and I agree with my hon'ble friend opposite (Mr. Ellis), that there is probably no man in India who is so complete a master of the revenue-system of the North-Western Provinces, or better able to weigh the various rights connected with the settlement of the land-revenue, than Sir William Muir, the Lieutenant-Governor of the North-Western Provinces, with whose approval the Bill has come before us.

"I therefore anticipate that this Council will find upon examination that the Bill, in its main features, will deserve their approval. At the same time, as the most important clauses of the Bill have been introduced since the Bill was first brought in, I shall await the report of the Select Committee before expressing an opinion upon the questions which have been raised to-day, many of which seem to me to be better suited to discussion in Committee, where explanations can be freely given and received, than in the whole Council. His Honour the Lieutenant-Governor has made some remarks upon the executive policy of the Government in respect to the principles upon which new settlements of the land-revenue should be made. Upon this, I wish to observe that, in my opinion, there is no necessity for imposing new taxes in India, and

revisions of the land-settlement should be conducted with great moderation and consideration for existing interests."

His Highness THE MAHÁRÁJÁ of VIZIANAGRAM said, one most important point was brought forward by His Lordship and the Lieutenant-Governor of the North-Western Provinces, with regard to which he wished to offer a few remarks. When giving out land permanently, it was of the greatest importance that the Government should confine it to those districts or zilas where the land was thoroughly surveyed by a *paimáish* or revenue survey, and also to those districts which had been surveyed by Trigonometrical Survey Officers, and where every inch of uncultivated land, including forest-land, was surveyed. Because, no doubt, even if the land were given to the ryots or proprietors all over the country for a century, or half a century, still they would be under a vague fear that the Sarkár might increase the revenue again. But where the province, or division or district was thoroughly surveyed both trigonometrically and by *paimáish*, there was no harm in making a permanent settlement. But until such surveys had been completed, there was great danger in giving out the land permanently.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be referred to a Select Committee, consisting of His Honour the Lieutenant-Governor, the Hon'ble Messrs. Ellis, Hobhouse, Bayley, Chapman, Egerton and Inglis, and His Highness the Mahárájá of Vizianagram, with instructions to report in six weeks.

The Motion was put and agreed to.

OATHS AND AFFIRMATIONS BILL.

The Hon'ble MR. HOBHOUSE gave notice that, at the next meeting of the Council, he proposed to introduce the pending Bill relating to Oaths and Affirmations, and to move that it be referred to a Select Committee.

The Council then adjourned to Tuesday, the 4th February 1873.

CALCUTTA;
The 28th January 1873.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Govt. Central Press.—No. 71 L. D.—27-6-77.—50.