Friday,
2nd March, 1883

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXII

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1883,

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

The Council met at Government House on Friday, the 2nd March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Rájá Siva Prasád, C.S.I.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble R. Miller.
The Hon'ble Kristodás Pál, Rai Bahadur, C.I.E.
The Hon'ble J. W. Quinton.

NEW MEMBER.

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

BENGAL TENANCY BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal. He said:—

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

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

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

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

"But the truth is that, if there ever was a measure against which the charge of unnecessary, precipitate or premature legislation could not, with any decency, be brought, it is this. If we trace it to its ultimate origin, we shall find that it embodies an endeavour to redeem a pledge which was given at the time of the permanent settlement, and which has never been adequately redeemed. If we examine its immediate causes, it will be easy to show that, for the last twenty years, there has been a persistent demand for a revision of the existing law, no merely on points of detail, but on points of principle; not merely as to procedure, but as to substantive rights; that this demand has grown in urgency with each succeeding year; that the subject has occupied the attention of successive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Raiyats	paying over	Rs.	100	25,000 or, say, $\frac{1}{400}$ of the whole.
,,	between	,,	50—100	120,000
,,	,,	,,	20—50	680,000
,,	,,	,,	5—20	2,800,000
,,	under	,,	5	6,200,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Their instructions were—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"He added that he did not—

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

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

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

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

'1. That from 1863 the necessity of a radical revision of Act X of 1859 had been admitted on all hands; that since the Pubna riots in 1873 this necessity had been recognised as urgent; and that the landlords had been as forward as any class in pressing for a change in the law. § 12.

'2. That Act X of 1859, while opening the door to certain classes of raiyats who had no claim to occupancy-rights, had on the whole operated to the detriment of the entire body, especially in Bihár, where 'only the more powerful raiyats had succeeded in resisting the landlords' encroachment,' where occupancy-rights had to a large extent disappeared, and the rents of the great mass of tenantry had been enhanced to twice their former amount within the last 16 years. § 22.

'3. That the rights originally conferred on the zamíndárs, whatever else they might have been, were not those of 'absolute proprietorship,' the Government prescribing a fixed rental to be adjusted by itself according to recognised rules, stringently forbidding any other exaction on the part of the landlords, taking numerous precautions for the protection of the raiyats '*in their possessions*,' and reserving to itself the rights of future interference, should it ever be necessary, on their behalf, without such interference giving rise to any claim on the part of the zamíndárs for abatement of revenue. § 20.

'4. That the rents of Bengal were and must in existing circumstances, continue to be 'customary,' not 'competitive,' in the sense of the word employed by economists, the real competition being that arising from the necesity of large numbers who must live off the land, and have no alternative but starvation; that it was the duty of the State to regulate this customary rate, and so to fix the extent of beneficial interest left to the raiyats, and thus, in the words of a distinguished Revenue-officer, to recognise 'the raiyat's right, founded on the most ancient authentic records and uninterrupted prescriptive usage, through a succession of Governments, native and foreign, from ancient times to our own, to have their payments fixed by the authority of Government.' § 26. § 28.

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

§ 30.

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'6. That the present time afforded the best opportunity for legislation.'

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

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

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

§ 29.

§ 14.

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

§ 24.

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

§ 25.

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

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

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

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

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

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

(1) by the establishment of special Rent Courts;

(2) by adopting the abbreviated Small Cause Court procedure of the Rent Commission;

(3) by conceding in certain cases summary sale without decree.

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

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

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

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

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

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

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

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

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

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

1st, to give reasonable security to the tenant in the occupation and enjoyment of his land ; and

2ndly, to give reasonable facilities to the landlord for the settlement and recovery of his rent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"It will be observed from what I have said that a right of occupancy is to be acquired by a settled raiyat holding raiyatí land "*notwithstanding any contract to the contrary.*" We consider it essential to carry the enactment to this extent. To quote again from the despatch of the Government of India to which I have just referred: 'Such is the power of the zamíndárs, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support not only of the Bengal Government but also of the almost unanimous opinions of the Bengal officers.'

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

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

To

Zamíndár.

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

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

* * * * * * * *

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

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

† *i.e.*, 6 annas per rupee per annum, or $\frac{6}{16} \times 100$ per cent. = 37½ per cent.

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

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

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

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

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

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

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

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

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

"(2) *Pattá.*

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

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

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

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

(1) the raiyat may use the land in any manner which does not render it unfit for the purposes of the tenancy;

(2) he may make improvements on it as provided by the Bill;

(3) he must pay rent at fair and equitable rates as determined by the Bill;

(4) he cannot be ejected except under a decree passed for breach of certain conditions, or for using the land in such a way as to render it unfit for the purposes of the tenancy;

(5) he may sub-let the land;

(6) his interest is to be transferable, subject to certain rights reserved to the landlord; and

(7) his interest is to descend as if it were land.

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

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

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

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

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

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

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

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

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

1st, that the rate of rent was below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in places adjacent; and

2nd, that the value of the produce or productive power of the land had been increased otherwise than by the agency or at the expense of the raiyat.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time the table is prepared;

(*b*) to the value of the average gross produce of land of that class, and the cost of raising that produce about the time those rates were fixed, or, where these matters cannot be ascertained for that time, about such other time as it may be fair and equitable to take for the purpose of comparison;

(*c*) to the value of the average gross produce, and the cost of raising that produce at the time the table is prepared; and

(*d*) to the following rule, namely, that, where the rate of rent for any class of land is raised on account of an increase in the value of the produce, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value.

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

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

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

(*b*) that the statistics of gross produce and value given in the table are correct.

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

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

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

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

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

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

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

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

"On a comparison of the provisions for enhancement with the provisions for reduction, it might be said that they have a somewhat one-sided appearance. The landlord can use the table of rates for the purpose of levelling up; the tenant cannot use it for the purpose of levelling down. But it must be remembered that the principle on which the Bill is framed is to proceed as far as practicable on the basis of existing rents, and that nothing is further from our intention than to bring about a general reduction of rents. Whether under exceptional circumstances and in special areas—such, for instance, as the area in Bihár, where we learn from recent reports that the average rates all round have been enhanced by 50 per cent. in the last 43 years, whilst the area under cultivation has actually decreased, and the rise in prices during the same period has been at most 73 per cent.—it may not be necessary to take steps, if not for a reduction, at least for a readjustment of the rates of rent, is a separate and difficult question on which I will not enter now. But I repeat that proposals for a general reduction of rents form no part of the Bill.

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

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

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

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

(*a*) for arrears of rent;

(*b*) on the ground that the raiyat has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken some condition on breach of which he is, under the terms of a written contract, liable to be ejected; or

(*c*) that he has refused to agree to an enhancement of rent on which the landlord insists.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) when it is payable to co-sharers jointly, and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and

(2) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.

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

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

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

"I have already expressed my apprehension that in many parts of the country the framing of a table of rates will be impossible. I should add that, in

many instances, the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and, with a view to provide such a remedy, we have inserted in the Bill a chapter which is entitled *Of the Settlements of Rents by a Revenue-officer.*

"There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error as to the quality of the soil, the estimated amount of the produce, or some other similar matter with which the Revenue-authorities conducting their inquiries on a great scale are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words, an important portion of the work, after being done by those authorities who are most competent to perform it, is liable to be pulled to pieces by another set of authorities who are far less competent to perform it. The enormous amount of unnecessary expense, trouble and vexation which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that, out of 2,391 decisions in suits brought to contest the Settlement-officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine, and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

"The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

(*a*) when a large proportion of the tenants or of the landlords desire that it should be applied, and

(*b*) when a resort to it is likely to settle or avert a serious dispute existing or likely to arise between landlords and tenants generally.

It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

"When the rents to be settled are rents which are liable to enhancement or reduction by a Court, they will be *fixed* according to the principles embodied in the Bill, and so that no rent shall exceed the maximum prescribed in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are ascertained and recorded under Regulation VII of 1822.

"The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained, and the amount of the rent fixed or ascertained. This jamabandi will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the ground on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for ten years.

"While it remains in force it will be conclusive (except as I will presently explain) as to the rents payable by those tenants whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

"It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions, as *e.g.*, that of the status of a tenant, which more properly appertain to the jurisdiction of the Civil Courts, and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

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

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

(*b*) that the tenant belongs to a class different from that to which he is shown in the jamabandi to belong, or

(*c*) that the land comprised in the tenancy is different from, or more or less than, that shown in the jamabandi, or

(*d*) that a rent different from that shown in the jamabandi has been fixed by contract.

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

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

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

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

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

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

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

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

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

attached to possession not merely in rent-suits but in other forms of litigation. It was a notice of appeal in a fine case, and it ran as follows :—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

" We hope that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered ; but, with the exception of those to which I have referred, none have been suggested which the Government of India would be prepared to accept. As to the possibility of

devising any effectual procedure analogous to that employed in the case of negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies, both in this country and elsewhere, is, as I have already remarked, against it.

"A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into Court armed with documentary evidence of so trustworthy a character that the presumption against any defence being possible is extremely strong.

"In such cases, the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant and decide against him summarily and provisionally unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury are almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit.

"The truth really is, that facilities for recovering rents in Bengal should be sought for, not so much in novel forms of procedure as in a trustworthy record of tenancies and their incidents, and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits.

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

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

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

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

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

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

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

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

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

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

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

The Motion was put and agreed to.

INLAND STEAM-VESSELS BILL.

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

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

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

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

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

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

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

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

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

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

The Motion was put and agreed to.

INDIAN STEAMSHIPS BILL.

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

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

The Motion was put and agreed to.

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

R. J. CROSTHWAITE,
Additional Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 2nd March, 1883.

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