Tuesday,
13th March, 1883

# ABSTRACT OF THE PROCEEDINGS

OF THE

# Council of the Governor General of India,

# LAWS AND REGULATIONS

Vol. XXII

Jan.-Dec., 1883

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# Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

# LAWS AND REGULATIONS,

1883,

VOL. XXII.

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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.*

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The Council met at Government House on Tuesday, the 13th March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E.
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 Sir S. C. Bayley, K.C.S.I., 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 H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.

## BENGAL TENANCY BILL.

[The adjourned debate on the Bill was resumed this day.]

The Hon'ble MR. ILBERT said:—"My Lord, I propose to leave to my hon'ble friend Sir Steuart Bayley, in whose charge the Bill is, the task of replying generally to the arguments which have been urged against it; and the very able speech of my hon'ble and learned friend Mr. Evans has relieved me from the necessity of dealing with such of those arguments as appear to be of a specially legal character. I do not intend to pursue further the discussion as to the precise position and rights of raiyats and zamíndárs, respectively, at the time of the Permanent Settlement. The interest of that discussion is mainly antiquarian; and the most important of the practical questions connected with it are, how far we have redeemed the pledge given to the raiyats in 1793,

and whether what we now propose involves any violation of the contract entered into with the zamíndárs at the same time. I have endeavoured to answer both those questions to the best of my ability, and after listening very carefully to what my hon'ble friend Mr. Kristodás Pál had to say on the subject, I cannot help thinking that the argument based on the breach of contract is an argument on which he himself does not rely, and which, in fact, he does not even seriously urge. I may, however, be permitted to take this opportunity of removing some of the misconceptions which appear to be entertained as to the meaning of one or two expressions which I used in the course of my introductory speech. When I compared the use of the term 'proprietor' in Indian revenue language, to the use of the word 'owner' in English statutory language, I did not mean to suggest that the position of the former was or might be that of a mere agent or trustee. I merely meant to point out that in the one case, as in the other, the legislature had pitched upon one of several persons having an interest in land, and treated him as an owner or proprietor for certain State purposes, without entering into the question of the interests of other persons. Still less did I mean to suggest, as the Hon'ble Rájá Siva Prasád thought I suggested, that the zamíndár is not entitled to call himself proprietor, or to speak of his interest as his property. My hon'ble friend, as every other zamíndár, was fully entitled to describe himself as proprietor of his interest in the land, and to speak of that interest as his property; but that fact does not exclude the co-existence of any number of other interests of any number of other persons in the same land. I am afraid, from the way in which the hon'ble member spoke of the Bill, that he is irreconcilably opposed to its principles, as well as to its details. But, however that may be, I can assure him that any suggestions which he may make for the improvement of the provisions of the Bill will receive most careful consideration from the Select Committee. I entirely concur with him as to the expediency of affording every facility to the landlords for making improvements upon their lands, and I understand that for this purpose he suggests, among other things, that when a landlord has made, or has proposed to make, an improvement, such as a well, he should be enabled to go to the Collector or some other officer and obtain from him a certificate showing the description of well he has made, or is about to make, the area likely to be improved and the probable expenditure on the improvement (the hon'ble member will correct me if I am wrong); and that, upon the strength of that certificate, he should be entitled to make a corresponding increase in his rents. I think this a very useful suggestion, and it is one which is well worthy of consideration.

"Just one word about the *pattá*. I have not seen the Government form of pattá to which the hon'ble Mr. Kristodás Pál has referred,

and I daresay my hon'ble friend the Lieutenant-Governor will have something to say about it. But, of course, I never intended to suggest that each and all of the stipulations contained in the *kabúliyat* which I read out were illegal or unfair. On the contrary it was obvious enough that the zamíndár had taken a common form, and had engrafted on it some variations of his own, and it was those variations that were open to objection. It is all very well to say that stipulations for the payment of interest at an exorbitant rate, or for the payment of cesses imposed by the landlord, are stipulations which no Court would enforce. But it is precisely this fact which makes them so mischievous. These stipulations are, in fact, attempts on the part of the zamíndár to make the raiyat pay, under colour of a contract, what no Civil Court would ever force him to pay."

Major the Hon'ble E. BARING said:—"My Lord, before proceeding to comment on the important question upon which this Council is now called upon to deliberate, I should wish to make one preliminary observation. It is, I am aware, difficult to argue the issues involved in the discussion on this Bill, without appearing a partisan of either the zamíndárs or the raiyats. For my own part, however, I altogether deprecate any such inference. My wish is—and I am sure the wish of the Government collectively is—to preserve an attitude of strict impartiality, to consider carefully the arguments which may be advanced, whether in support of this Bill or in opposition to it, and ultimately to assist this Council in arriving at such decisions as may be most conducive to the public welfare and most just to the conflicting interests involved.

"My hon'ble friend Mr. Kristodás Pál commenced the able and interesting address which he delivered to the Council yesterday, by saying that he must not be regarded solely as an advocate of the zamíndárs, for that his sympathies and convictions were quite as much with the raiyats as with the zamíndárs. I was glad to hear that statement of my hon'ble friend, but I must confess that, although I listened with great attention to my hon'ble friend's speech, I did not hear any arguments advanced from the point of view of the raiyat. I do not at all complain of this. On the contrary, I think it is a matter of congratulation both to the Government and to this Council that the views of the zamíndárs should be so ably and fully represented in this Council, as they are by my hon'ble friend. On the other hand, I trust my hon'ble friend will not be surprised if to some extent I take up the converse of his situation, and that he will not think, if I dwell more specially on those views which are especially associated with the interests of the raiyats, that I have any bias in the matter. I have no such bias. The reason why on the present occasion I dwell more

especially on the claims of the raiyats is, because the superior education of the zamíndárs, and the fact that their interests are ably represented both in and out of this Council, enables them to bring forward their views to greater advantage than the circumstances of the case permit to the raiyats. It is, therefore, desirable that the arguments from the raiyats' point of view should be fully and publicly stated and examined.

"My hon'ble colleague Mr. Ilbert, in moving for leave to introduce this Bill, explained the circumstances under which the present Government has thought it its duty to undertake a general revision of the rent law in Bengal. It is not necessary, therefore, that I should dwell on those circumstances. I will only make one observation on the past history of the case.

"In the course of the discussions on this Bill, it may perhaps be said—and, indeed, outside the walls of this Council room it has already been said—that your Excellency's Government, finding the relations between the zamíndárs and raiyats in an unsatisfactory condition, resolved, *proprio motu*, to initiate legislation, with a view to placing those relations on a more satisfactory footing. A statement of this sort would very inaccurately represent the facts of the case. Whatever may be the individual views held by members of the present Government upon the important political, social and economic problems involved in the legislation now proposed, nothing is more certain than that those individual views have in no way contributed to raise the issues now under discussion, nor have they accelerated or retarded by one day the advent of the time when the reform of the land laws of Bengal must, perforce, have been undertaken.

"In order to appreciate the reasons, whether remote or immediate, which have rendered legislation on this subject an unavoidable necessity, it is necessary to look back to a time when the *personnel* of the Indian Administration —whether that of the India Office, of the Imperial Government of India, or of the Local Government of Bengal—was different to that which at present exists.

"The facts which the present Government of India found in existence were, first, that, after some tentative efforts at partial legislation, a Commission had been appointed as a preliminary measure to a general revision of the rent law of Bengal; and, secondly, that the majority of the Commission, backed by the concurrent testimony of a long array of high authorities in past years, were of opinion that such a revision should be undertaken. Lastly, the Government of Bengal urged that a general revision of the rent law should be undertaken, and submitted a draft Bill having that object in view. Under these circumstances,

I venture to think that it would have been a dereliction of duty on the part of the Government, if we had declined to undertake the onerous and responsible task which now lies before us.

"Independently, however, of this issue, which is one of comparatively minor importance, it remains to be considered whether the Government—in which term I include both the Government of Lord Lytton, which appointed the Rent Commission, and the present Government, which has to deal with its report—is justified in undertaking a legislative measure of such importance.

"It appears to me desirable that this question should be further examined, especially as the necessity of any general revision of the rent law has been denied by my hon'ble friends the Mahárájá of Darbhangá and Mr. Kristodás Pál.

"The necessity for legislation is urged from two quarters. The zamíndárs wish for certain amendments in Act X of 1859, their main grievance being that the existing law does not give sufficient facilities for the enhancement and recovery of rent. The grievances of the raiyats may conveniently be summed up in the phrase—borrowed from the discussions on the reform of the Irish land laws—that they desire, in a greater or less degree, the attainment of the three Fs.

"I am aware that my hon'ble friend the Mahárájá of Darbhangá stated yesterday that the zamíndárs of Bihár do not require any legislation at all. At the same time I think I shall be right in saying that very recently the desirability of amending the law in the sense of giving greater facility for the recovery and enhancement of rent was not generally disputed, and that even now a very large body of opinion is in favour of such legislation. I need not, therefore, discuss this branch of the question. But the necessity of any further considerable revision of the law beyond what is necessary to facilitate the recovery and enhancement of rent is disputed. It is alleged that the present system of land tenures in Bengal has not hampered the prosperity of the Bengal peasantry; that no sufficient evidence exists which would justify a general revision of the rent law, and that, before any such revision is undertaken, further detailed enquiry is necessary.

"Then there is another argument to which allusion has not been made in this Council, but which I have seen frequently stated outside the Council. It is well known that the advocates of legislation adduce the riots in Pabná and elsewhere as a proof of the necessity for legislation. To this it is replied that these riots were caused by Government officials. As regards this statement,

I will only say that there is a strong presumption that it is unfounded. I have certainly never seen any evidence in support of its correctness, and I observe that Sir George Campbell, speaking some while after the riots, said that he 'believed, speaking generally, it is certain that the law was, and, so far as the original matter of dispute goes, still is, with the raiyats.'

"I confess that an argument of this sort reminds me of those well-known lines in 'Rejected Addresses' which, I remember, have once before been quoted in this Council—

'Who makes the quartern loaf and Luddites rise?
Who fills the butchers' shops with large blue flies?'

"And then the author goes on to say that the Emperor Napoleon I was responsible for these things. To the best of my knowledge and belief, the officials in Pabná and elsewhere were no more responsible for the disturbances some few years ago than Napoleon I was for the flies in the butchers' shops, and they are, perhaps, less responsible than that potentate was for the high price of the quartern loaf.

"Turning now to the question of the prosperity of the peasantry, I wish to remind this Council that my hon'ble friend Mr. Kristodás Pál cited the rapid growth of the Excise revenue as a proof of the growing prosperity of the people. No doubt the Excise revenue has of recent years grown rapidly, and the growth of this revenue is an indication of increasing prosperity. But my hon'ble friend must pardon me if I say that this fact does not prove his case. The question to be decided, for the purposes of the present issue, is not whether the peasantry of Bengal are prosperous or the reverse. Prosperity is a relative term. The question at issue is, whether the existing laws regulating the system of land tenures in Bengal hinder the peasantry of that Province from being as prosperous as they otherwise would be.

"It may tend towards the elucidation of this question if I give some figures with a view to showing the measure of agricultural wealth possessed by the population in the principal Provinces of British India, more especially as this is a point to which my hon'ble friend Mr. Kristodás Pál alluded in the course of his very able and interesting speech of yesterday. In the Central Provinces, the yearly value of the crop, per head of population, is Rs. 21·6; the payments for purposes of Government and irrigation, per head, amount to Rc. ·72; the balance is Rs. 20·9. In Bombay, the yearly value of the crop is Rs. 22·4; the payments Rs. 2·2; the balance Rs. 20·2. In the Panjáb, the yearly value of the crop is Rs. 18·5.; the payments Rs. 1·4; the balance is

Rs. 17·1. In Mádras, the yearly value of the crop is Rs. 19·0; the payments Rs. 1·7; the balance Rs. 17·3. In Bengal, the yearly value of the crop is Rs. 15·9; the payments Re. ·81; the balance Rs. 15·1. In the North-Western Provinces and Oudh, the yearly value of the crop is Rs. 16·4; the payments amount to Rs. 1·6; balance Rs. 14·8. It would be easy to show that, of the total payments, including rent, made by the people of each Province of India, a great deal less finds its way into the Government Treasury in Bengal than elsewhere. Thus, in Bombay, where the land-tenure is nearly all raiyatwárí, eighty-eight per cent. of the payments made are devoted to purposes of Government, being either paid into the Treasury as revenue, or devoted to the support of establishments required for public purposes. In Madras, where about four-fifths of the country is under the raiyatwárí tenure, the proportion is sixty-nine per cent. In the North-Western Provinces and Oudh, under a zamíndárí system and temporary settlements, the proportion is sixty per cent. In the Panjáb, where there are a very large number of cultivating proprietors, the proportion is fifty-four per cent. In Bengal, under the Permanent Settlement, the proportion is believed not to exceed thirty-three per cent. This, however, is not the point with which I am immediately concerned. What I wish to show is the degree of agricultural wealth possessed by the several populations. I am aware how dangerous it is to place implicit reliance on statistical calculations of this sort. Notably, in this instance, it is to be observed that the produce of the cultivated area is not the only source of income to the cultivators. Milk, ghí, curds, hides, wool, live-stock and fuel have to be taken into account. For instance, the value of stock, dairy and forest produce in the Panjáb has been calculated at no less than twelve crores of rupees annually. At the same time, when we find that statistics, worked out without reference to any particular result,—for these calculations were not made with special reference to the measure now under discussion—lead to the same conclusion as those which would result from general knowledge of the subject, and from *à priori* inferences, it is, I think, impossible not to attach some importance to them. What, therefore, is the conclusion to which these figures point? They show, in the first place, that, under certain conditions, the raiyatwárí and zamíndárí tenures are consistent with an equal degree of agricultural wealth. Thus the agricultural wealth of the Central Provinces stands at the top of the list. The reason is obvious. In the Central Provinces, there is no keen competition between cultivators for land, but rather there is competition between landlords to get cultivators. But if we find a combination where the zamíndárí system exists, accompanied with great pressure of the population on the soil, but unaccompanied with any sufficient protection afforded to the cultivator against the landlord, it is there that we should expect to find the least degree of agricultural wealth; and that is precisely what we do find.

The degree of agricultural wealth in the North-Western Provinces and Oudh and Bengal is considerably less than that of the other Provinces of India, and the North-Western Provinces and Oudh are in a slightly worse position than Bengal, because we know that the pressure of the population on the soil in those Provinces is somewhat greater than is the case in Bengal.

"I have so far compared the agricultural wealth of Bengal and other Provinces. I now proceed to institute a comparison between different portions of the Province of Bengal itself. The circumstances incident to the tenure of land, and consequently the degree of agricultural prosperity attained in different parts of the Province, present some wide differences. Thus, in the Chittagong Division, we are told by the Commissioner that the landlords 'stand in awe of their raiyats'. In some other districts, Dinájpur for instance, there is evidence to show that 'the demand for raiyats by zamíndárs is more than the demand for the lands by raiyats'.

"Of course where any real competition for raiyats exists, the latter, if they are unduly pressed, move off to other estates. In other districts, where this state of things is reversed, and the congestion of the population leads to excessive competition for land, there is abundant evidence to show that, under the existing condition of the law, the agricultural prosperity of the country is hampered. Perhaps the best way of bringing this point out clearly will be to compare the condition of different parts of the Province, which present dissimilar features in respect to the system of land tenures.

"Many official reports might be quoted to show the prosperous condition of the people of Bákirganj and the adjoining district.

"Thus an official report written in 1868 speaks of the cultivators of the Bákirganj district as 'litigious' and 'very easily excited.' But the report goes on to say—

'Nothing strikes one more in going through a village in this district than to see substantial homesteads, well-kept gardens, well-stocked poultry and farm-yards. It is no uncommon thing for the substantial howaldars of this district to keep their own poultry, not only for sale, but also for home consumption.' Then again 'I do not think the raiyats of any other district would have borne the heavy losses in cattle, from the murrain which has raged here to a most appalling extent, so well as the Bákirganj raiyats have done. I have sometimes been really surprised to see how easily the raiyats have replaced their losses by the purchase of more cattle. * * * * In the steady social advancement of the people, in their independence and substantial comfort and well-being, Bákirganj, a district comparatively unknown, neglected and despised, is about the best illustration of the blessings enjoyed under our rule.'

"Many passages from recent reports might be quoted in corroboration of this description. Thus, in the annual report on the Dháká Division for the year 1877-78, the following passage occurs :—

'The great and astounding calamities which followed the cyclone have been met and tided over; the soil is fertile; the people self-relying, industrious and perfectly able to defend their own'.

"Why is it that, in Bákirganj and in some of the adjoining districts, such a remarkable degree of prosperity exists? The reason is not far to seek. 'Bákirganj,' an official report says, 'is essentially a district of peasant proprietors.'

'Almost all the actual cultivators,' another report says, 'have to a certain extent a proprietary right in the land they cultivate'.

"I do not say that this is the only reason why these districts are exceptionally prosperous. I am aware that the rise of the jute industry has poured considerable wealth into these districts. But when this wealth accrued, what was the first use to which it was turned? The cultivators knew well enough that the acquisition of a proprietary right in the soil was essential to their permanent welfare, and, accordingly, we find that the first use to which they turned their newly acquired wealth was to take every opportunity of acquiring such right. The statistics of registration show that, in the three years, 1877-78, 1878-79 and 1879-80, no less than 342,596 perpetual leases were executed in Bengal, by far the greater portion of which were executed in the districts of Jessore, Bákirganj, Faridpur, Noakhálí and Chittagong.

"I turn now to Bihár, and the contrast is indeed remarkable. There we find a peasantry which is described by Sir Richard Temple, speaking with all the weight of his great experience, as 'in a lower condition than that of any other peasantry with equal advantages which he had seen in India'. I see no reason to suppose that this description is in any way exaggerated. It is corroborated by the late Colonel Hidáyat Alí, himself a zamíndár, well acquainted with the habits and customs of the people of Bihár, and whose opinion is stated, on reliable authority, to be unprejudiced and valuable. 'The raiyats of this Province', he says, 'namely, the heads of families, and even the women and the male adult children of the agricultural classes, though they labour hard, are yet in a state of almost utter destitution, and that owing to the heavy assessments laid on them'. Let any one look at tables giving the average monthly wage of an able-bodied agricultural labourer, which are periodically published in the *Gazette*. He will find that the average wage in the Patna district is from Rs. 3 to Rs. 4 a

month; in the Gya district, from Rs. 2-8 to Rs. 3; in the Shahábád district, Rs. 4; in the Darbhangá district, Rs. 2 to Rs. 3. Elsewhere in the rural districts of Bengal, we find the wage of the agricultural labourers ranging from a minimum of Rs. 5 in the Murshidábád district, to somewhat over Rs. 9 in Bákirganj, Maimansingh, &c., the usual rate being about Rs. 7 or Rs. 7-8. These, I think, are very eloquent facts. If any further evidence be needed, it is sufficient to compare the remarkable recuperative powers shown after the disastrous cyclone by the cultivators of Bákirganj and the adjoining districts, with the feeble powers of resistance against famine shown by the peasantry of Bihár in 1874. Those who were concerned with the administration of India in that year are not likely to forget the fearful rapidity with which, in spite of every effort of the Government, scarcity was with the utmost difficulty prevented from turning into widespread mortality from starvation in those poverty-stricken districts. What is the reason of this condition of things? It is thus stated by two very able officials, Messrs. Geddes and MacDonnell, in their report of January 7, 1876:—

'The whole conditions of agricultural industry in Bihár,' they say, 'are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money or of credit. * * * The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry'.

"It is well known that in Bihár a large quantity of land is held under what is termed the *bhaoli* or métayer system of tenure. All who are conversant with questions of this sort know, generally, what there is to be said for and against this system of tenure. It has found an apologist in one of the most able economic writers of the century. I observe, however, in a series of articles republished from the *Hindú Patriot*, and in which the cause of the zamíndárs is defended with remarkable ability, that it is stated that 'the *bhaoli* tenant is as much secured in the possession of his holding as the métayer tenants are in Continental Europe'. A description is then given of the métayer tenancy in France. This description is taken textually from the pages of Arthur Young, who was a very acute observer on agricultural matters. It describes, not the métayer tenancy which now exists in some parts of Europe, but that which existed in France before the Revolution. It was in respect to this tenancy that Arthur Young said that:—

'there is not one word to be said in favour of the practice, and a thousand arguments that may be used against it. * * * * * Wherever this system prevails it may be taken for granted that a miserable and useless population is found'.

"It was strongly condemned by one of the greatest French administrators—Turgot. Mill has, indeed, defended the métayer system, but then, after alluding to the alleged prosperity of the people of Italy, where this system of tenure exists, he says:—

'I look upon the rural economy of Italy as simply so much additional evidence in favour of small occupations with permanent tenure'.

"Now, in the first place it is to be observed that Mill's account of Italian prosperity under the métayer system, which was based on the account given by Sismondi, is now believed to have been incorrect. It was refuted in a report by Mr. Herries on the land-tenures of Italy, which was laid before Parliament in 1871. And, in the second place, permanent tenure, which, as Mill says, will always generate considerable agricultural prosperity, even under the disadvantages of the peculiar nature of the métayer contract, is exactly what the Bihár tenant has not got. This is what the Bihár Committee said on this subject:—

'An examination of the *jamabandí* papers of Bihár estates has shown that, while sixty per cent. of the present raiyats have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. * * * This is an evil which is due to the general failure on the part of the landholders to comply with an obligation which the law has, from the earliest period of our rule, imposed upon them, namely, that of giving pattás to their tenants, specifying the boundaries and areas of their holdings'.

"The meaning of this is, I conceive, that the intention of the legislature in 1859, which was to facilitate the acquisition of occupancy-rights, has been completely defeated. But the whole of the report of the Bihár Committee should be read, in order to gain an accurate idea of the evils of the *bhaoli* system. It is shown by the report of that Committee that, when the raiyats decline to accept the zamíndár's terms as to the share of the produce, the zamíndár declines to make the appraisement. Further, when the appraisement is made, the zamíndárs do not allow the raiyats to take away the grain. 'It will be seen', the Committee says, 'that the zamíndárs of South Bihár practically take by way of rent as much of the crop as they choose to claim'.

"I think, with such facts as these before us, it is impossible to deny that the relative prosperity of the people of the Eastern districts in the one case, and the relative depression of the agricultural classes in Bihár in the other case, must to a very great extent be traced to the different systems under which land is held in those districts of Bengal.

"It is said that sufficiently detailed enquiry has not yet been made, and that sufficient evidence has not yet been accumulated, as to the necessity of any

general revision of the rent law of Bengal. I am unable to admit the validity of this contention. Abundant evidence might be cited to show that in some parts of Bengal greater facilities are required to enable the zamíndár to recover the tenant's rent. As, however, this point is not, generally speaking, disputed, I need not dwell on it any longer. Looking at the question from the raiyats' point of view, we have the concurrent testimony of a large number of experienced officials, both past and present. We have the further testimony of a Committee composed of experienced gentlemen, both official and non-official, on the condition of the affairs of Bihár. We have the very able report of the Rent Commission. We have the concurrent testimony of four successive Lieutenant-Governors. We have, moreover, as regards the levy of illegal cesses, the results of very careful enquiries instituted by Sir George Campbell in 1872, supplemented in many cases by abstracts of oral evidence, and a large quantity of documentary evidence.

"It will be borne in mind that, as could readily be shown by reference to contemporaneous literature, one of the chief objects of the authors of the Permanent Settlement was to prevent the levy of *abwábs*, or illegal cesses. Nothing is more clear than that this object has not been attained. I should like to read to the Council a list of the cesses which were reported by the Commissioner of the Presidency Division, in 1872, to be levied in the Twenty-four Parganas. They are no less than twenty-seven in number. They are as follows :—

(1.) *Dák kharcha.*—This cess is levied to reimburse the zamíndárs for amounts paid on account of zamíndárí dâk tax. The rate at which it is levied does not exceed three pice per rupee on the amount of the tenants' rent.

(2.) *Chánda,* including *bhikya* or *maugon.*—A contribution made to the zamíndár when he is involved in debt requiring speedy clearance. It will be seen, therefore, that if, as my hon'ble friend (Mr. Kristodás Pál) says, the raiyat goes to the zamíndár when he is in difficulties, it sometimes happens that when the zamíndár is in difficulties he goes to the raiyat.

(3.) *Parboony.*—This is paid on occasions of pujá or other religious ceremonies in the zamíndár's house. The rate of its levy is not more than four pice per rupee.

(4.) *Tohurria,*—a fee paid on the occasion of the audit of raiyats' accounts at the end of the year.

(5.) Forced labour or *begár.*—This labour is exacted from the raiyats without payment.

(6.) *Marucha* or marriage-fee,—paid on the occasion of a marriage taking place among the raiyats. It is fixed at the discretion of the zamíndár.

(7.) *Ban-salami*,—a fee levied on account of the preparation of gur or molasses from sugarcane.

(8.) *Salami*, including all fees paid on the change of raiyats' holdings, and on the exchange of pattás and kabúliyats.

(9.) *Khárij Dákhil*,—a fee commonly, at the rate of twenty-five per cent., levied on the mutation of every name in the zamíndár's books.

(10.) Taking of rice, fish and other articles of food on occasions of feasts in the zamíndár's house.

(11.) *Battá* and *Multá Kumrae*.—The former is charged for conversion from Sikká to Company's rupees; the latter on account of wear and tear of the same.

(12.) *Fines*.—These are imposed when the zamíndár settles petty disputes among his raiyats.

(13.) *Police Kharcha*,—a contribution levied for payment to police-officers visiting the estate for investigating some crime or unnatural death.

(14.) *Junmojattra* and *Rash Kharcha* are exceptional imposts, levied on occasions of certain festivals.

(15.) *Bardari Kharcha*,—a fee levied at heavy rates by a farmer taking a lease of a mahál.

(16.) *Tax or income tax*, levied by a few zamíndárs, to be reimbursed for what they pay to Government on account of this tax. (The list, from which I quote, was, it will be remembered, prepared in 1872 when the Income Tax was in existence.)

(17.) *Doctor's fees*.—This is levied exceptionally by a few zamíndárs on the plea that they are made to pay a similar fee to Government.

(18.) *Tautkur*.—A tax of four annas levied from every weaver for each loom.

(19.) *Dhaie mahál*,—a fee levied from every wet-nurse carrying on her profession on the zamíndár's estates.

(20.) *Anchora salami,*—a fee levied by persons carrying on an illicit manufacture of salt.

(21.) *Halbhangun,*—a fee paid by a raiyat on his ploughing land for the first time in each and every year.

(22.) *Mathurí jama,*—a tax levied on barbers.

(23.) *Shashum jama,*—a tax levied on muchís for the privilege of taking hides from the carcasses of beasts thrown away in the bhagar of a village.

(24.) *Punniah Kharcha.*—The contribution made by the raiyats on the day the *punniah* ceremony takes place.

(25.) *Bastu pujá Kharcha,*—a contribution made for the worship of *bastu purush* (god of dwelling-houses) on the last day of the month of *pous.*

(26.) *Rashad Kharcha,*—a contribution levied to supply with provisions some district authority or his followers making a tour in the interior of the estate.

(27.) *Nazráná,* or presents made to the zamíndár on his making a tour through his estates.

"I took this list at hazard from a number of others given in the reports addressed to Sir George Campbell in answer to his enquiry in 1872. It does not appear to represent an exceptional case. In some districts, fewer cesses are levied; in others, the evil has apparently attained even larger dimensions. Indeed, a case is cited in Orissa, as an example of the credulity of the raiyats, where the fixing of a line of telegraph posts was made an excuse for the levy of an additional cess.

"It is sometimes said that the raiyats themselves have not asked for any legislation. That statement is not correct. The raiyats have in some cases petitioned Government, and, if they have not come forward more fully on their own behalf, the reason is not far to seek. The Collector of Bhágalpur reported on the 15th May, 1872, that—

'if a formal enquiry were instituted, it would be almost impossible to make any raiyat come forward to divulge what he had paid; it is only incidentally that we come to hear of the exactions.'

"And, in forwarding the reports of 1872 to Sir George Campbell, the member in charge of the Board of Revenue (Mr. Schalch),—whose views, generally, were certainly not unfavourable to the zamíndárs—expressed himself in the following terms;—

'Even when the raiyats are aware of their rights, they very naturally prefer to bear the almost insupportable burden of oppression, rather than to follow a course of opposition which would probably result in even greater oppression,—nay, even in utter ruin.'

"I do not think that, under these circumstances, it can be any matter of surprise that the raiyats in some parts of Bengal have not spoken out more plainly than has been actually the case. Rather I think it a matter of surprise that they have spoken out so clearly as they have done.

"It appears to me, therefore, that the evidence upon which the necessity for a revision of the rent law is based is sufficiently conclusive.

"I now turn to the consideration of a wholly different point.

"It has been urged that legislation of the nature now proposed is contrary both to the spirit and to the express terms of the Permanent Settlement; in fact, that it involves a breach of the contract made in 1793 between Lord Cornwallis, on behalf of the British Government, and the zamíndárs. So much has already been written and said on this subject that I will not attempt to discuss it at any length. Nevertheless, the imputation of breach of faith is so serious, and the moral obligation on the part of the British Government to adhere scrupulously to any solemn pledges given to the Natives of India, of whatsoever class, appears to me to be so binding, that I should wish to state, as briefly as possible, why I consider that the argument adverse to the present Bill, based on the supposition that it involves a breach of contract, is wholly untenable.

"I do not know that the spirit in which, as it appears to me, the British Government should approach the question of dealing with the Permanent Settlement has ever been more clearly and comprehensively treated than by Sir James Stephen in his speech on the Local Rates (North-Western Provinces) Bill in 1871, and I wish to dwell briefly on Sir James Stephen's opinions, because, if I understood rightly, they were, I think, somewhat misapprehended by my hon'ble friend Rájá Siva Parsád in the address he delivered to the Council yesterday. Arguments had at that time been advanced to the effect that, as no one generation of law-givers can irrevocably bind another to a certain course of conduct, it was idle to object to any law on the ground that it was a violation of the pledges given at the Permanent Settlement.

"Sir James Stephen said that he had heard these arguments with regret, all the more 'because they undoubtedly have a certain *substratum* of truth.' 'The objection to the theory', he added, 'of which they are applications is, not that it is false, but that it is partial, that it applies to legal right and wrong, and does not deal with the question of moral right and wrong.'

"Sir James Stephen then pointed out that it was specially to be borne in mind, in considering the moral justice of making any change in the terms of the Permanent Settlement, that the Government of India was not a representative Government. 'A really representative Government', he said, 'may deal with the pledges of their predecessors in a very different way from a Government like ours.'

"I think these observations of Sir James Stephen must command universal assent. Occasions may arise in India, as elsewhere, when it becomes both necessary and desirable for the legislature of one period to modify, or even deliberately to reverse, the measures adopted at some previous period. But certainly, in dealing with so solemn a compact as the Permanent Settlement, the very strongest possible necessity would have to be shown in order to afford a moral justification for any legislation which might involve a violation of previous engagements. We are fortunately not called upon to decide whether in the present instance a sufficiently strong case exists for any modification in the terms of the Permanent Settlement, for I venture to think that it may be conclusively shown that the legislation now proposed is in strict conformity both with the letter and the spirit of the engagement taken by Lord Cornwallis.

"I say both the letter and the spirit, because high legal authorities differ in their opinion as to whether, in endeavouring to arrive at a decision as to the intentions of the legislature of 1793, we are confined to the text of the Statutes, or whether we may seek for a further exposition of those intentions in contemporaneous official literature. On a point of this sort the opinion of a layman is of little value. But I may perhaps be permitted to quote what so high a legal authority as Sir James Stephen said as to the latitude allowable in construing the text of the Permanent Settlement:—

'When I say,' he said, 'that in my opinion the Permanent Settlement ought to be scrupulously observed, both in letter and in spirit, I do not mean to exclude the right on the part of the Government, which is essential to the true interpretation of all such transactions, to take into consideration the gradual alteration produced by time and circumstance, and the influence of surrounding facts. A great public act like the Permanent Settlement is not to be interpreted, and can never have been meant to be interpreted, merely by reference to the terms of the document in which it is con-

tained. Its meaning must be collected from a consideration of the circumstances under which, and of the objects for which, it was made; and in considering what is, and what is not, consistent with its terms, we must look at the gradual changes which have occurred in the condition of the country since it was enacted. This is the only way in which it is possible to understand fully transactions of this kind, and it is peculiarly necessary in the case of a transaction which, however important, neither is, nor professes to be, a complete and exhaustive statement of the relations between the Government and its subjects. The Permanent Settlement regulates only one branch of one part of those relations, and it must be interpreted by reference to others.'

"Whether, however, we look for the intentions of the legislature solely in the text of the Regulations, or whether we admit contemporaneous literature as evidence of those intentions, it appears to me that, in so far as the immediate point under discussion is concerned, we arrive at the same conclusion.

"Looking first at the precise words which the legislature employed, the text of Regulation I of 1793 (clause 1, section 8) is sufficiently clear. It reserves to the Government full powers to interfere 'for the protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil.'

"It has, however, been urged that Regulation II of 1793, which was passed on the same day as Regulation I, qualifies the reservation in section 8 of Regulation I. This argument is based upon the fact that the preamble to Regulation II of 1793, after dwelling on the expediency of abolishing the Courts of *Mál Adálat* or Revenue Courts, and transferring the trial of suits which were cognizable in those Courts to the Courts of *Díwání Adálat*, goes on to say that—

'no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected.'

"I must confess that I altogether fail to see how the language thus used in Regulation II qualifies the legislative power expressly reserved by Regulation I on behalf of dependent taluqdárs, raiyats and other cultivators of the soil. If the whole of the preamble to Regulation II of 1793 be read, the intention of the legislature becomes perfectly clear. Prior to 1793, rent and revenue suits had been tried in what were then known as the *Mál Adálat* or Revenue Courts. In these Courts Collectors of Revenue presided as Judges. It was pointed out in the preamble to the Regulation that—

'the proprietors can never consider the privileges which have been conferred upon them as secured whilst the Revenue-officers are invested with these judicial powers * * * * * * The Revenue-officers must be deprived of their judicial powers.'

"Further, these officers were to be rendered 'amenable to the Courts of Judicature.'

"When this was done, the Regulation went on to indicate:—

'No power will then exist in the country by which the rights vested in the landholders can be infringed or the value of landed property affected.'

"In point of fact, it is quite clear that the sole intention of the legislature was to give further security to the zamíndárs in respect to the permanency of their revenue assessment by a separation of judicial and executive functions, instead of allowing them to be united in the same individuals as was heretofore the case. The explicit reservation made in Regulation I of 1793 does not, therefore, appear to be in any way qualified by the provision enacted in Regulation II.

"I have so far dealt only with the text of the Regulations of 1793, and I have endeavoured to show that full power to legislate, with a view to the protection of the interest of the raiyats, was expressly reserved by the legislature. If, however, we admit contemporaneous official literature as evidence of the intentions of the legislature, the case becomes even stronger. In the well-known letter to Lord Cornwallis of the 19th September, 1792, the Court of Directors express themselves as follows:—

'But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the raiyats or the sums paid by them, with any view of an addition of revenue to ourselves, we expressly reserve the right, which belongs to us as Sovereigns, of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and, instead of diminishing, will ultimately enhance, the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár, for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.'

"Again, somewhat later, but before Regulation I of 1793 was passed, the Court of Directors expressed themselves 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 landholders, 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.'

"Whether, therefore, we look to the letter of the Regulations of 1793, or whether we look to contemporaneous official literature for a further indication of the intentions of the legislature of that period, it is abundantly clear that power to legislate, in order to define the relations between the zamíndárs and the raiyats, was expressly reserved at the time the Permanent Settlement was made.

"I now turn to another cognate point. It is admitted on all sides that the *khudkásht* or resident raiyats had certain rights at the time of the Permanent Settlement. A great deal of learning and research has been devoted to enquiring into the precise nature of those rights. I do not propose to discuss this point. But I wish to say something about the rights of a certain important class of cultivators which accrued subsequent to the passing of Regulation I of 1793. At the time that Regulation was passed, a large tract of waste and unoccupied land existed in Bengal. These lands were not assessed to the payment of revenue. The whole of the rents payable in respect to these lands was left to the zamíndárs, under the terms of Lord Cornwallis's settlement. 'The rents of an estate', Lord Cornwallis said in his Minute of February 3rd, 1790 'can only be raised by inducing the raiyats to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste-land which are to be found in almost every zamíndárí in Bengal.'

"It has been argued on high authority that, under the Permanent Settlement, the zamíndárs were left free by the legislature to let these unoccupied lands to raiyats upon whatever terms they thought proper; that, in respect to these lands, they had almost as much freedom as English landlords; and that the terms upon which these lands were let were a matter of contract regulated by the ordinary principles of demand and supply.

"It would perhaps constitute a sufficient reply to this argument to say that the reservation made in section 8 of Regulation I of 1793, which I have already quoted, expressly declares that, if necessary, legislation will be undertaken

with a view to the 'protection and welfare of the dependent taluqdárs, raiyats and other cultivators of the soil'. No class of cultivator was excluded.

"But I venture to think that the argument admits of a further answer. It implies that the authors of the Permanent Settlement deliberately intended to introduce freedom of contract as the economic basis on which the relations between the zamíndárs and the raiyats in respect to a very large class of lands was to rest.

"Now all the evidence which has come down to us goes, I venture to think, to show that the authors of the Permanent Settlement never intended anything of the kind. Lord Cornwallis, in his Minute of February 3rd, 1790, after speaking of the privileges enjoyed by the raiyats in certain parts of Bengal, goes on to say:—

'Whoever cultivates the land, the zamíndárs can receive no more than the established rent, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving land to another would be vesting him with a power to commit a wanton act of oppression from which he would derive no benefit.'

"Moreover, section 5 of Regulation IV of 1793, which was passed less than a year after the Permanent Settlement, prescribes that, after the completion of certain formalities, 'pattás according to the form approved, and at the established rates, will be immediately granted to all raiyats who may apply for them.'

"The 'established rates', it is to be observed, apply under this Regulation to all raiyats. No exception is made in respect to raiyats who cultivate, or to raiyats who might subsequently cultivate, the lands unoccupied at the time of the Permanent Settlement. And yet it is surely not unreasonable to suppose that, if the legislature had intended to deal specially with the raiyats cultivating those lands, which then formed so large a proportion of the culturable area of Bengal, its intention would have been expressly stated. Lord Cornwallis and his contemporaries were not ignorant of the fact that rents in Bengal were universally settled with reference to general or local usage, and that freedom of contract, in the sense in which we employ that term, did not exist. On the contrary, abundant evidence might be adduced to show that they were fully aware of it. Indeed, perfect freedom of contract was expressly excluded from the legislation of 1793. Section 65 of Regulation VIII of 1793 runs as follows:—

'No proprietor of land or dependant taluqdár shall contract any engagement with any under-farmer, or authorize any act contrary to the letter and meaning of this Regulation.'

"It does not, therefore, appear to me that, in respect to the unoccupied, any more than in respect to the occupied, lands, it can be contended that the Permanent Settlement placed the zamíndár in the position of the English landlords, free to regulate their relations with the raiyats without reference to customs. As Mr. O'Kinealy has said:—

'All that the Permanent Settlement did, all that the great founder of the settlement ever intended it should do, was to give zamíndárs, subject to custom, a perpetual lease of the lands at a fixed assessment, and subject to the restriction of State intervention if the conditions of their leases were violated to the injury of the raiyats.'

"I have said that Lord Cornwallis and his contemporaries did not intend to introduce freedom of contract as the economic basis which was to regulate the relations between landlord and tenant in Bengal. I may add that, had they endeavoured to do so, they would almost certainly have failed in the attempt. It is sometimes said that an Act of Parliament can do anything. It would be more correct to say that an Act of Parliament may prescribe that anything shall be done. However omnipotent may be the voice of the legislature, whether of England or of India, there is one thing that cannot be accomplished, whether by an Act of Parliament or by an Act of the Indian legislature. The habits of thought and customs of a vast population cannot be changed by any legislative enactment.

"What has been the result of endeavouring to plant freedom of contract in respect to land on the uncongenial soil of Ireland? It is told by the Bessborough Commission, in words that would apply with but little change to Bengal.

'That condition of society', the Commissioners say, 'in which the land suitable for tillage can be regarded as a mere commodity, the subject of trade, and can be let to the highest bidder in an open market, has never, except under special circumstances, existed in Ireland. The economical law of supply and demand was but of casual and exceptional application. It is generally admitted that, to make it applicable, the demand must be what is called 'effective'; in this instance it may be said that, whatever was the case with the demand, the supply was never effective. In the result, there has, in general, survived to him (the Irish farmer), through all vicissitudes, in despite of the seeming or real veto of law, in apparent defiance of political economy, a living tradition of possessory rights, such as belonged, in the more primitive ages of society, to the status of the man who tilled the soil.'

"Again, the legislature of 1793 endeavoured to introduce into Bengal written engagements between landlord and tenant, but failed in the attempt. Neither can this be any matter of surprise. I conceive that, generally speaking, the

Bengal raiyats, like the Irish cultivator, regarded a written agreement, not as a means of acquiring something which he did not possess, but as a recognition that he might be called upon to sacrifice something which was already in his possession,—not as prolongation of his yearly tenancy, but as abridgment of the traditional tenancy which allowed him to hold his land as long as he paid the customary rate of rent.

"We know now a great deal more about the historical development of the idea of property in land than was known to Lord Cornwallis and his contemporaries. The researches of Sir Henry Maine, M. de Laveleye and other eminent men have thrown a flood of light on the subject. We know that the separate ownership of land is an economic idea of relatively modern growth; that in almost all countries the soil originally belongs to communities; and that, as society has advanced, a natural movement has taken place from common to separate property in land as in chattels. Without attempting to discuss the precise status of the cultivators of Bengal at the time when English rule was established, this much at all events may, I venture to think, be said with confidence, that the disintegration of the small societies holding land in common, which existed in other parts of India, and which still exist amongst the Slavonic races of Europe, was almost complete in Bengal. On the other hand, the idea of individual property in land, in the sense in which we are accustomed to employ the term in England, had not nearly been attained. An intermediate stage had been reached. Community of property no longer existed, but perfect freedom of contract in respect to the land was wholly foreign to the ideas of the people. Custom and not contract regulated the relations between zamíndárs and raiyats before the Permanent Settlement, at the time of the Permanent Settlement and subsequent to the Permanent Settlement; and custom, and not contract, regulates, to a very large extent, those relations still, and would, without doubt, regulate them to even greater extent, if the legislature of 1859 had not imported into the country the alien theory of prescription.

"I should certainly be the last to press for the interference of the State in the regulation of any matters which can, without detriment to the public welfare, be left to settle themselves without any such interference. I dislike State interference, and regard with some apprehension the modern tendency, not only in India, but in England, to call in the aid of the State on occasions when it appears to me to be scarcely necessary. I should be the last also to say anything which might appear adverse to the application of sound economic principles to the solution of Indian questions. But I conceive that nothing is more likely to check the advance of sound economic knowledge in India than the misapplication of the canons of political economy.

To quote a single trite instance of such a misapplication. If scarcity arises in any district of India, the surplus food from other districts will, provided there be roads, be poured into that district, in order to meet the demand. That is what political economy means when it says that the supply will follow the demand. But, if no roads exist, the supply will not, and cannot, follow the demand, and mortality from starvation will ensue, as it has before ensued. So also, when political economy speaks of freedom of contract, it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth. There are, according to the Famine Commissioners, 9,752,000 tenants in Bengal, of whom 2,789,000 pay a rent of from Rs. 5 to 20, and no less than 6,136,000 pay a rent of less than Rs. 5, which latter rate, I may observe, implies a holding of from two to three acres. Can anyone who is acquainted with the facts say, in respect to the majority of these tenants, that their education, their knowledge of law and the circumstances under which they till the soil are of a nature to admit of that free and intelligent choice which is in the essence of the economical, as it is of the legal, theory of freedom of contract? I venture to think that any such contention cannot be maintained. The mass of the raiyats are uneducated. In Bihár, with its population of 22½ millions, less than one and three-quarters per cent. of the population can read and write, and elsewhere in Bengal the proportion is under four per cent. Many raiyats are ignorant of their legal rights, and others, when cognisant of those rights, are afraid to make any attempt to enforce them. Agriculture forms, and must continue to form, their only means of gaining a livelihood.

'The raiyats', the Rent Commissioners say, 'cultivate for subsistence, not with the immediate view to profit. * * * There is no wages fund, there are no labourers paid from capital. There are practically no manufactures, no non-agricultural industries, no great cities of work where a surplus rural population can find employment.'

"Under these circumstances, it is idle for the present generation to think of establishing freedom of contract as the economic basis on which the relations between landlord and tenant in Bengal can be made to rest. The legislature must recognise the facts with which it has to deal, and the leading fact with which it has to deal is, that custom, and not contract, has in the main governed the relations between the zamíndárs and raiyats in Bengal from time immemorial, and that custom, and not contract, must in the main continue in the future to govern those relations.

"If the practical aspects of the situation are such as to necessitate the rejection of the theory of freedom of contract, and to force on the Government the obligation of interfering by legislative enactment in order to regulate the

incidents of land tenure in Bengal, it is on every ground desirable that that interference should be effectual to remedy the evils which it is intended to cure. Whether that interference will be effectual,—whether, on the one hand, due facilities will be given to the zamíndárs to make good their equitable rights; whether, on the other hand, tardy effect will now to a sufficient degree be given to the original intention of Lord Cornwallis and his contemporaries, in the sense of maintaining the raiyats in the enjoyment of their customary rights,—must mainly depend on the decisions which this Council will ultimately take. The Bill introduced by my hon'ble colleague Mr. Ilbert will, should it be passed into law, do much towards the accomplishment of these objects. It would, in my humble opinion, have done more, and it would have given greater hope of finality in the settlement of the difficult question now under discussion, if the land, and not the status of the tenant, had been taken as the basis of the recognition of the right of occupancy.

"But even as the Bill stands, it proposes a large and beneficial measure of reform. I hope and believe that it will be very generally regarded in this light, and that, both in and out of this Council, it will be discussed with the calmness and deliberation that the importance of the subject demands.

"In the remarks which I have addressed to the Council, I have confined myself to certain specific points. I trust that I have shown, first, that, so far as the present Government is concerned, it would not have been performing an act of public duty if it had declined to undertake a general revision of the rent law of Bengal; secondly, that, whether from the point of view of the zamíndárs or from that of the raiyats, the evidence upon which the necessity of a general revision of the law rests is conclusive; thirdly, that the legislation now proposed involves no breach of the contract made with the zamíndárs at the time of the Permanent Settlement, but may rather be regarded as the tardy fulfilment of the pledges given to the cultivating classes in 1793; fourthly, that the contention that freedom of contract must, under the terms of the Permanent Settlement, regulate the relations of the zamíndárs and the raiyats in respect to the lands unoccupied in 1793 cannot be maintained; fifthly, that custom, and not contract, has from time immemorial regulated the incidents connected with the tenure of land in Bengal; and lastly, that in view of all the circumstances with which we have to deal, the recognition of this fact should be made the basis of any measure which is now passed into law.

"I leave the discussion of the further very numerous points which arise in connection with this Bill to a later stage of the proceedings, when they will, without doubt, receive ample treatment at the hands of other and more competent authorities than myself."

His Honour THE LIEUTENANT-GOVERNOR said:—"It was impossible to listen to the admirable statement of the hon'ble member on the introduction of this Bill, or to the later speeches addressed to this Council on the subject, without feeling what must be felt by anyone, even the least conversant with the voluminous literature and controversies on the question, that we are approaching the public discussion and, I hope, the equitable settlement of a large question which intimately affects the interests of a great majority of the people of this Province. I am quite well aware that your Lordship's rule has been signalized by the consideration of many other very extensive reforms of political and administrative importance, and that these questions are still pending a solution; but though of the Local Self-Government scheme it may be asserted that it is taken up chiefly by the highly educated classes, and is with them rather a measure on which hopes and expectations are founded, and though we may lose our tempers over amendments of the criminal procedure to which the mass of the community is profoundly indifferent, here we are face to face with a problem in which nearly the whole of Bengal as an agricultural population is directly interested, and in which, therefore, to use the words of my hon'ble friend Mr. Kristodás Pál, the solution 'involves the life-problem of the people' of the country.

"Most who have preceded me have spoken as to the necessity for legislation. The statement made by the hon'ble and learned member in his opening address, the remarks which fell from the Hon'ble Kristodás Pál and the facts brought forward by the hon'ble member Major Baring confirm that necessity; and, if anything further was needed, it would be found in the annexure to the Government of Bengal's letter of the 21st July, 1881, which shows that, for the last ten years at least, a general revision of the substantive portions of the rent law has been regarded as inevitable, and has been advocated by every section of the agricultural community, including prominently the British Indian Association, which represents the zamíndárs of Bengal. This call for a revision of the Rent Code has, I admit, not found expression only among those who claimed for the raiyat a clearer and wider declaration of his rights and privileges, but has been pressed as often and as strongly by those who demanded, in the interests of the zamíndárs, a simple procedure for the collection of rents, and the abrogation of sections which interfered with enhancement. Before Act X had been very long in force, in 1864, Sir B. Peacock raised objections to section 6 of that Act, on the ground that, in these permanently-settled districts, the rights of occupancy had been improperly enlarged; and, in the amendment to the law proposed by Sir William Muir a year or two later, the same objection was taken, in the view that the law of 1859 was unreasonably

adverse to the proprietors of the North-Western Provinces. The demand, too, upon Government to reopen and examine the question as a whole is enforced again, not by isolated facts of a similar character from one part of this vast Province, but upon different and varying facts of a disturbing kind from every part of the Province. If the raiyats of the Eastern districts have learnt (mainly, I insist, by the exactions and oppressions practised upon them) the power they possessed in unions and combinations to resist the encroachments of the landlords and their agents, and have carried their opposition so far as to justify the plea of the zamíndárs that the refusal to pay the ordinary and regulated rents required the intervention of the legislature; if the agrarian disturbances in Bákirganj, Maimansingh, and notably in Pabná, disclosed the strained and hostile relations which existed between landlords and tenants, calling for special police arrangements for the preservation of the peace, what are we to say to the gross abuses which prevailed throughout Orissa, where specially, by the exaction of illegal cesses, the raiyats are described as the most impoverished and oppressed tenantry in India? and what are we to say to the systematized ignoring and nullification of the law in Bihár, because the cultivators were ignorant of their rights, and were subjected to the universal jugglery with holdings in the jamabandí papers, thus leading to the continual shifting of the raiyats from their lands, to prevent the accrual of the right of occupancy? In that part of the country, too, the peculiar system of ṭhíkádárí assignments, and the quasi-feudal compulsion of indigo cultivation, gave additional cause for fear, inasmuch as all official enquiries tended to show that the whole conditions of agricultural life in Bihár were precarious in the extreme, notwithstanding the existence of a large and industrious population, of a fertile soil and of many advantages of climate and position; so that, as the official report of the day said, 'the people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry.' All these were indications of a kind demanding the interference of the Executive Government, and we find through the whole of this period, which extended to some ten or twelve years, that successive Lieutenant-Governors of this Province, brought to deal with the excited state of the country which these revelations disclosed, attempted, each in his turn, to provide by legislation for a modification of the evils. There is little doubt that radical remedial measures would have been adopted at a much earlier period, if many disturbing circumstances in the country, and especially the famine in Bihár and other places, had not necessarily diverted immediate attention from the subject; and when at last, in Sir Ashley Eden's administration, recourse was had to legislation, and then mainly in relief of the zamíndár for the speedier recovery of his rents, it was found that, in every different branch of this large and complicated subject, the

controversies were so great, and the differences of opinion were so wide, that nothing satisfactory could be effected without a thorough re-examination of the questions connected with ejectment, distraint, instalments and deposits of rent, transferability of tenure and the numerous incidents involved in sub-letting. It was thus clear that the matter of the entire revision of the existing Rent Code had to be faced. Hence the Commissions in Bihár and, at a later period, in Bengal, and the amalgamation of the two proceedings with the one report upon which the late Lieutenant-Governor based his proposals, and upon which the Government of India submitted their views to the Secretary of State. The outcome is the Bill which we are now called upon to consider. I am sure no one, even looking at the mass of correspondence and reports which these volumes contain, can fail to see that it has been examined and discussed and reviewed, both officially and non-officially, with an industry, research and ability which few subjects have ever received even in this country. Official investigations have throughout been assisted very much by the independent labours of the Famine Commission, and, if I may be allowed to express now my hearty general concurrence in the measure presented to us, it is in the conviction that, while the right of the occupancy raiyat is maintained on the prescription which the twelve years' rule of Act X of 1859 established, provision has been made to enable the raiyat to maintain that right, to be certified exactly of the amount which he has to pay for it, to resist illegal distraint, illegal cesses and illegal enhancements, not simply by the clearer declarations of the law, but by the power which the Bill confers to secure the survey of every estate and the record of every right upon it.

"I think we all agree that it would be impossible, on an occasion like this, to enter upon any minute examination of the details of this measure.

"It is a large, bold and comprehensive measure; but it has yet to undergo, I am glad to know, the careful scrutiny of a Select Committee, and perhaps what is of more importance, before it reaches the Select Committee it has to pass the ordeal of a more thorough criticism at the hands, not only of the experienced and able officers of Government, but of those who directly are interested in the land, and whom it will more immediately concern. If the general principles of the Bill be accepted, and the vote of to-day will affirm that point, I have no doubt, when the Select Committee begin to consider it in November next, and further, when the Select Committee have finished their labours, we shall find the Bill changed and improved very much in its diction, definitions and, possibly to some degree, in its principles, by the attention which a wide collective opinion will bring to bear upon its contents. I am not careful, therefore, to follow the

example which some of the previous speakers in Council have set, of examining the precise details of its sections and chapters; and I will limit my observations to the two principal features which seem to me to mark, in an especial manner, this new legislation, namely, the resolution of the Government to give a clear and established prominence to the fixity of tenure, including, thereby, a limitation of rents, and the freedom of transfer, and, secondly, to secure that result, not by the declarations of the law alone, but by the power also of enforcing those declarations by executive action. Perhaps the principle of the position which the proposed Bill has now most prominently asserted is that the raiyat with the right of occupancy must hereafter be regarded as a co-partner in the land which he occupies and cultivates. To the extent of his holding, he is to enjoy powers and privileges which, whatever the past policy or practice in different parts of the country may have been, the zamíndár will be bound to respect. The practical enforcement and recognition of this position will depend, not only, as heretofore, upon what the law declares (for experience has too clearly shown that is insufficient), but upon the executive ascertainment and record of the fact. I can quite imagine that it may be difficult for the zamíndár to accept this proposal without demur, for his claim has always been to an absolute proprietorship, in which the right is put forward in one shape or another to do what he likes with his own. But, subject to the conditions that we are dealing here with the raiyat whom, in my judgement, the old Regulations of 1793 alone attempted to protect, who rejoiced then in the name of the *khudkásht* raiyat, and who was established as the resident raiyat with the right of occupancy in the Act of 1859, I believe myself that such a raiyat has as strong a claim to the help of the Government and of the law to maintain and secure him in his position as long as he pays his rent, as the zamíndár has to be maintained and secured in his estate as long as he pays his revenue. The contention of the Government here is, I think, unassailable. It is supported by the positive declaration of the Regulation of 1793 which affirmed the Permanent Settlement; it is proved by its survival through all the controversies and struggles of more than half a century, up to 1859, and this against the always increasing predominance of the zamíndárí influence, and, I may truly add, of the culpable negligence of the Government throughout that period: and it is established definitely, notwithstanding the strongest opposition from the zamíndárs all over the country, by the substantive declarations of Act X of that year.

"It seems to me that it would be utterly unreasonable to attempt now to go behind the law of 1859. If, as your Lordship is aware, I have contended strenuously in the past discussions on the subject, that the legislators of 1859 were justified, under all the circumstances of the case, in fixing the status of a

raiyat with a right of occupancy by the twelve years' prescription, and that it would be unreasonable and inequitable to extend the benefits and privileges of the right of occupancy to every raiyat in the country, on the theory that Act X was a mistake, and that the intentions of Lord Cornwallis and his advisers included all raiyats in their benevolent protection, I am equally urgent in the present case that we cannot go back upon any discussion as to whether the occupancy right and such privileges as it carries with it must be limited, by the supposed intention of Lord Cornwallis and the Regulations of 1793, to the few *khudkásht kudimí* raiyats of that day, and those who can now establish themselves as their direct descendants: our new point of departure must be the law of 1859. The despatch of the Government of India showed that their aim was, in recognition of the constitutional claims of the raiyats, to provide that 'the great body of cultivators shall be restored to the position which they held under the ancient law and custom of the country,' and it is seen from the reply which the Secretary of State has given to that despatch that the object could be attained by the maintenance of the principle of the twelve years' rule, as supporting the distinction deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent, and the non-resident or temporary, cultivator. In the justice and wisdom of this decision I most cordially concur; because, whether we look at the case from the position of the Government in 1793, or the position of Government in 1859, the rule laid down in the last-named year has always appeared to me a just and equitable adjustment of the question, though I am ready to admit that, in some respects, it must be regarded as a compromise. I suspect that our judgment is warped too frequently in this matter by the tendency of looking upon present circumstances from the stand point of a very remote and different period. It has been urged more than once in this debate, and it is beyond dispute, that the position of landlords and tenants was in 1793-94 altogether different from that of the present day. In Lord Cornwallis' time, there was more land than there were people to till it. The competition was among the landlords for tenants, and not among the tenants for land. Under such conditions, every cultivator was welcome to clear the wastes. He was welcome, further, to remain upon his holding as long as he pleased; and, so far from eviction and enhancement being in vogue, the rivalry between landlords was to attract people to their zamíndárí by more favourable terms than were recognized under the pargana rates. As the Permanent Settlement receded, and the pressure of population upon the soil increased, this condition of things was very gradually reversed. The peace and order of British rule helped to promote the change. In Bengal (the Lower Provinces), wars, and even violent disturbances, have for long ceased. Pestilences and famines are yearly brought more under control, and the result has been an

enormous increase of the population. According to the computations of the last census, it may be said that during the last century the population of Bengal has increased three-fold. But all this while the actual area of the land has stood still, and the surplus population, dependent almost entirely upon agriculture for its livelihood, has been forced either to fall back on inferior soils, or to crowd each other within the old margin of tillage. Both these processes have taken place, and both processes have led, by the operation of economic laws, to an increase of rent. As far as can be ascertained, the Government of the country never took any practical steps to act up to its earlier reservations in favour of the cultivator. Indeed, such interference as it did exercise was in the direction of the right of the landlord to enhance rents (Regulation V of 1812), and by the sale laws of 1841 and 1845 to declare his power of eviction of all but the settled resident cultivators. It was only when, some twenty-five years ago, the oppressions of the landlords threatened an agrarian revolution that the Government stepped in by a legislative enactment to arrest the natural increase of rent in Bengal, and the result was the land law of 1859.

"It is the fashion now-a-days to disparage the value of Act X of 1859; though, when it was passed, itwas recognized as the Magna Charta of the raiyats. It is talked of now as a very inadequate instalment of what was due to the peasantry; and its imperfections and defects are imputed to its limitation of the benefits of the right of occupancy to a particular class of tenants, while the zamíndárs have always condemned and opposed it as an infringement of the Permanent Settlement. Here again, it seems to me, we ignore the position and circumstances with which the Government and the legislature had to deal when it undertook the rent legislation of that year. The fact is that, whereas ninety years ago the State divested itself of most of its rights as landlords, and created a proprietary body, and although it very carefully reserved to itself the power to take such measures as might seem expedient for the protection of the raiyats, no kind of attempt was made to act upon that reservation by a positive definition or declaration of the right till 1859. In that interval of sixty-six years, that is, between 1793 and 1859, while the proprietary body grew in strength and prospered in wealth, village communities perished, the 'pargana rates' (by which the assessment of the resident cultivator's rent was limited) disappeared, and almost every vestige of the constitutional claims of the peasantry (if ever such existed beyond a small privileged class) was lost in the usurpations and encroachments of the landlords. In that interval, all that Government had ever done was to confirm and consolidate the position of the zamíndárs as absolute owners of the land. They had done so by their legislation and by their executive orders and arrangements. The zamíndárs were

made every year more and more responsible for the peace and order of the districts in which their estates were situated. They had to supply provisions for the military expeditions and marches of troops passing through their properties; they had to maintain at their own cost the rural constabulary required for the public tranquillity; they were chargeable at their own expense for the performance of many duties which, if they relieved the Government, enhanced the zamíndár's influence and independence; and, while the zamíndár's power grew and strengthened, the rights of the cultivators of the soil gradually diminished, and almost disappeared. This is no exaggeration of the state of things upon which the rent law of 1859 supervened. Feudalism on the one side, serfdom on the other, was the problem Government had to deal with, and that in a case in which its most solemn pledges had been given for securing to the cultivators their rights and the enjoyment of the fruits of their industry. I cannot describe the position more effectively than in the words which Sir William Muir used, when considering the amendment of the law some six years later.

'There is', he wrote, 'a very general consent that in the Native state of things, the resident raiyat, simply as such, is throughout the Continent of India possessed, as a rule, of a right of hereditary occupancy at the customary rates of the vicinity. This may easily be conceived as the normal condition of the cultivator, where there is no proprietary right, properly so called; or where the zamíndár and village communities possess (as under Native rule) the proprietary right only in their own fields, and the remainder have merely the right of management. But the question arises whether such a condition is compatible with the system under which we have recognized a proprietary right in the zamíndárs over the entire area of their estates, or have conferred it upon strangers. It is true that the proprietary right has nowhere been created without the stipulation that all other rights existing by the custom of the country shall be maintained. Everywhere the subordinate rights in the soil have been strictly guaranteed. But it is conceivable that a right immediately accruing from the simple occupation of land,—when that land is claimed by no proprietor,—should not accrue, at least so simply and easily, where a proprietary title in the land already vests in another. The change of circumstances would naturally require, at any rate, a longer and stronger prescription. From the proprietor's point of view, it has been urged that no hereditary title can accrue at all by prescription subsequent to the creation of his property. From the raiyat's point of view, it is urged that the title of the resident cultivator is one of the subordinate rights which the Government has bound itself to maintain, as before, inviolate. Every shade of opinion exists between these extreme views. The doubt and difficulty surrounding the question has arisen from the natural endeavour of the British Government to combine the benefits of a full proprietary title with the maintenance of the rights of cultivators as customary throughout the country.

'In the course of time this question was answered, but very indefinitely, by enactments recognizing the privilege of hereditary occupancy, as created, no longer by simple residence, but by residence of *long* duration. Long residence was held to confer the old hereditary right

of the country. But no attempt was made till the passing of Act X of 1859 to define by law what precise length of residence was requisite for the purpose.

'The first draft of that Act contained a provision which constituted *three* years as the term of prescription for a resident raiyat.* The section was criticised on the one hand as too narrow, because confining the privilege to 'resident' raiyats; on the other as too wide, because not requiring a longer period to establish the prescriptive right. A general consent of opinion was found to prevail, both in the North-Western Provinces and Bengal, that twelve years would be a more appropriate term; and that was, accordingly, adopted in section 6 absolutely and without reference to residence.'

* 'Resident raiyats cultivating land not previously in their occupancy shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same—for a period of three years.' (Section V of Bill read a first time on 10th October, 1857.)

"Now this twelve years' prescription was no arbitrarily selected period. It was originally proposed that a three years' rule should be made as the term of prescription for a *resident* raiyat. It is observable that the search was always for that which would most fairly and accurately describe the resident raiyat, because it was to the resident raiyat, and to him alone, that any ancient privileges and rights appertained. But the enquiries of the time most clearly established that a twelve years' prescription would more appropriately define the class to whom the benefits should be declared by the law. I think, therefore, myself we should have committed a great error if we had given up this rule of twelve years. It has now been in force for nearly a quarter of a century, and is generally understood and accepted, and we cannot lightly ignore what I believe to be the long recognised custom of the country, sanctioned by the policy and laws of the Government.

"Frequently we have heard in the course of this discussion that the zamíndár considers it a great grievance that facilities should be afforded for the accrual of the right. Now, I have never been able to understand on what motive, except that of an immediate temporary gain, the zamíndárs have insisted on any right of unlimited enhancement, or of the prevention of the growth of the right of occupancy. Certainly, it is a very short-sighted policy, and whenever it has been practiced by the high-handedness of the zamíndár, it has found its retribution in a hostile tenantry, in combinations and leagues to repudiate rents altogether, and, when times of scarcity or famine come, in the utter ruin and desolation of the peasantry, on whose exertions depend the effective cultivation of the soil and the payment of the rent to which the zamíndár looks for his income. Let me read to you the description of a peasantry whose rights in these directions have been respected. We had to make enquiries the other day into the question of the preparation of the table of rates, and through the courtesy of the Mahárájá of Dumraon, one of the areas selected was a portion of his property in the

Shahábád District. Regarding this, the Collector of the District, Mr. Nolan, wrote as follows:—

'The peculiarity of the selected tract is, that it is cultivated by raiyats of whom a considerable proportion have these *guzastha* rights, while nearly all have occupancy rights, and that the same leniency of the landlord which permitted such privileges to grow up and continue has prevented him from generally enhancing rents on other lands. It is not, therefore, a good example of the general condition of the district, and I objected to its selection for these enquiries, on the ground that it was not typical, and that there was no prevailing rate. But, if in these respects it affords less information than could be wished, its condition is worthy of the attention of the framers of the Bill on other grounds. It is the object of some of the framers of the present Bill to secure for the raiyats of Bengal, as a body, rights of occupancy at moderate rents, which, they contend, would insure superior cultivation through the improvements to be expected from those who enjoy security of title, a certain prosperity in ordinary times, with the credit necessary to enable cultivators to tide over periods of famine, without becoming a burden on the taxes, and which would also, it is urged, tend to give to the tenants the independence and manliness of character generally found among peasant proprietors. On the other hand, there are many who believe that low rents and security end in sloth, the sale of the land to speculators, and in the end to sub-letting at a rack-rent. It would be most important to ascertain whether, in the selected tract, the conditions which it is proposed to create elsewhere have led to the results anticipated by the one school or the other.

'I think that there can be no doubt on such a question. Sub-letting is not unknown in Bhojpur, and some of the cultivators are in debt; but these are exceptional cases. The general rule is that the raiyats cultivate their own lands with their own small capital, and, where they sell their holdings, it is to others of their own class. Their industry is marked and has resulted in the clearing of the jungle with which much of the land was covered fifty years ago, and the creation of a cultivated area as well planted with fruit trees, as well irrigated from wells, and as well fenced, as any I have seen in India. No one can encamp for a day in the tract without being struck with its exceptional prosperity, which contrasts strongly with the backward state of three parts of the district in which rents are high and occupancy rights unknown. The credit of the cultivators is so good that, as you informed me, they generally borrow at the rate of twelve per cent., that is, on as good terms as their landlord. There would, therefore, be no anxiety whatever as to their surviving without assistance a period of ordinary famine. As to their character, the objection I generally hear to it is that it is *too* manly and independent. The Bhojpur wrestlers have a name throughout the country, and every man carries the large Bhojpur *láṭhi*, which he can use with great skill. They are equally ready to defend themselves in law Courts with which the complication of rights inseparable from any system where the majority possess interest in land has rendered them familiar. I have always found them open, communicative, ready to deal or to serve, and their honesty is proved by the low rate of interest demanded from them; but they have another side of their character for any one who attempts to oppress them.

'I think that these facts should be brought to the notice of Government as having a certain bearing on the general policy of the Bill. In the area to which your enquiries are

confined, it would, I submit, appear that rights of occupancy at easy rents have been followed by comparative industry and prosperity, and with their usual effects in the moral character of those who enjoy them.

'With regard to your remark that the low rents may be due to mismanagement, I may say that it has been the misfortune of the Indian raiyats that so many have considered the raising of rents a proof of business ability. In this instance, the raiyats have not, as in most estates, been transferred from one purchaser at an auction sale to another, until they fell into the hands of some speculator in land who could enhance the old rents to excess. They remain under the Dumraon family, who have owned the land for centuries. That such a family, wealthy even with existing rents, should have allowed them to remain at a rate consistent with the happiness and prosperity of the dependents, I consider a proof of excellent management, and presume it was under such an impression that Government conferred titles on the late Mahárájá and the present manager. I think the Rájá must be better off, surrounded by contented and loyal peasantry, than he would be if his family increased their income at the expense of alienating the feelings of their tenantry, as others have done. I do not say this as imputing an opposite view to you, but because I think it of real importance that, in any public correspondence, conduct which contributes to the happiness of the country should be recognized. The opinion of the older families, as to whether they should respect their own good traditions in this respect, may be represented as wavering under the influence of the example of the new auction purchasers, and an impression that Government regarded their leniency as weakness and mismanagement would have a bad affect.'

"I cannot help thinking that there is a great deal in this rather long extract which I have read from a district report, which is pregnant with facts which the zamíndárs of the country would be wise to lay to heart. If they do so, we may realize the hope of a successful adoption and practical application of a measure which, in its primary object of securing fixity of tenure on reasonable and equitable rents, will give to the country a contented, peaceable and thriving agricultural community.

"Now, my Lord, to come to my second point. I am free to confess that, in my belief, the enactment of even such a liberal measure as that now before your Lordship's Council will not produce these desirable results, if unsupplemented by executive action of a kind to which I think hardly sufficient attention has been paid in the course of this debate. I am very glad to find from Mr. Evans' remarks that he is quite in accord with me on this matter. If there be any who think that the rights of the many millions of people who subsist on the soil of Bengal can be defined and secured by the enunciation of inflexible rules of law; if there be any who, heedless of the lessons of the past, trust for the welfare of the community to the resolutions of this Council alone, I certainly am not of them. Rather, I am among those who believe that, in such a momentous undertaking as this Council is now concerned with, the battle is

but half won when the legislators' work has been successfully accomplished. He only reaps the full fruits of victory who pushes his advantage; and, unhappily, the history of this Council is not free from cases, where legislative successes not followed up by executive action have resulted in administrative failure. By the Bill now before us, the declaration of liberal principles in dealing with rent, and the recognition of tenant-right, have been carried, if I do not say too far, certainly as far as the circumstances of the case demand; but I have no hesitation in asserting that, if the Government of Bengal were to rest satisfied with the sanction which the Bill, when passed into law, will confer on these principles, this controversy would in a very few years be re-opened afresh, with far slighter chances of a peaceable solution than now exist. We cannot alter the state of the country, nor amend the abuses of generations, by a stroke of the pen. The utmost that this Council can do is, by wise legislation, to create a tendency towards improvement, which, if followed up by well directed and persistent executive action, may, in course of time, lead to better things. This Bill undoubtedly possesses potentialities for good. But so did Act X of 1859 in the opinion of all the able men who assisted at its enactment. If this Bill, a quarter of a century hence, is not to be exposed to the animadversions levelled to-day at Act X, then the Government of Bengal must adopt active measures to enforce its provisions. It must, by a detailed record of rights and liabilities of all interested in the land, provide against the continuance and renewal of abuses which now weigh on the springs of industry and check the prosperity of this Province. Such a record-of-rights is no new panacea for the agrarian difficulties by which we are now surrounded, neither is it an untried experiment. In his Minute of the 8th December, 1789, Sir John Shore recommended such a procedure to Lord Cornwallis, who, though acting, as all know, from the most benevolent motives, unfortunately rejected the counsels of his sagacious adviser. That Lord Cornwallis's rejection of Sir John Shore's advice was unfortunate most men now admit; for, wherever circumstances have since permitted of the enforcement of the principles then advocated by Sir John Shore, whether in permanently or temporarily settled estates, such enforcement has been followed by complete success. Wherever it has been ignored, difficulties and troubles have been the consequence. I find some apposite illustrations of these circumstances in the papers now before the Council. For instance, in a letter from the Collector of Ghâzipur, dated 15th December, 1881 (written in answer to some enquiries originated by the Revenue and Agricultural Department of the Government of India), the following important passage occurs:—

'We have had a record-of-rights (in the Ghâzipur district) for the last forty years, which, though prepared with extreme haste, has been throughout that period the touchstone of all rights. So far as tenant-right is concerned it is incontrovertible, for there is nothing to pro-

duce to contradict it. Both zamíndárs and tenants appeal to it on all occasions as to the ultimate criterion of the rights. With regard to village boundaries, the details of the plan then adopted left an opening for a good deal of vexatious litigation, which is not quite yet extinct. As to proprietary right, the record is not very full, although it was in this direction that the greater number of contests arose during its preparation. On the other hand, the said record, prepared by Messrs. C. Raikes and W. Vynyard in 1840-41, has been *the salvation of the tenants' rights*, especially of those who claim to hold at fixed rates.'

"That, my Lord, is evidence of undoubted authenticity. Comparing the state of affairs in Gházipur, a permanently-settled district, as described by that evidence, with the state of affairs in the adjoining district of Sáran, as described in the rent papers, the difference at once challenges our attention, and proclaims the efficacy of the procedure which can compass such admirable results.

"Nor is the testimony of facts wanting in Bengal itself to the same effect:

'Had a work of the sort', says Sir Henry Ricketts, referring to the settlement of Katak, 'never been accomplished, there might be misgivings and hesitation before commencing such an undertaking. But such a work has been accomplished, and the success has been greater than was expected, even by those who expected most. Previously to the settlement of Katak, the Province deteriorated each year, the people were discontented and embarrassments and difficulties increased. Since the settlement, the Province has flourished, the inhabitants have been among the most peaceful and well disposed of our subjects; there has been less agitation than in any other part of the Empire. Let Bengal be treated in precisely the same manner, and there is no reason why there should not be the same result.'

The passage I have now quoted was written twenty years ago; and it was written by a gentleman, one of the ablest revenue-officers in the country, who was the author of the settlement and who had a parental fondness for his work. But there was the fatal fault in Katak, that no proper provision was made for the maintenance of the record, and the result was what we find described in the 9th paragraph of the Government of Indias' despatch of the 21st March, 1881, namely, the loss of all the advantages by the utter failure to keep up the records in order and accuracy.

"If it be, as it ought to be, an admitted principle of revenue administration in India, that the rights of the several classes interested in the soil shall be expressly declared and recorded by some method or other, in documents accessible to all, then it must be confessed that the revenue administration of this Presidency is defective. Settlement proceedings, involving records-of-rights, secure in many portions of India that essential condition of agricultural prosperity, but there is no such assurance in Bengal. Having rejected the wise counsels of Sir John Shore, to which I have already alluded, the framers of the Permanent Settlement sought to secure the objects at which he aimed—objects recognized by them, as well as by him, to be of the utmost im-

portance—by inculcating the necessity of an interchange of lease and counterpart between zamíndár and raiyat. How far they were successful, even when an interchange was effected, the case 'from real life' cited by my hon'ble friend Mr. Ilbert, when introducing this Bill, will satisfy the Council; and I am afraid what he has brought forward is only illustrative of what takes place in many portions of this Province. This is how the case stands—I quote from the report of a respectable pleader, himself a zamíndár, which the Council will find among the Bihár papers:—

'The law entitles the Bihárí raiyat to a pattá and receipts, yet he seldom, if ever, gets any. The law declares the exaction of *abwábs* as illegal, yet how numerous and heavy are the *abwábs* that we zamíndárs exact from him.'

"My hon'ble friend Major Baring gives us a very instructive list of the irregular cesses levied in Bengal. The quotation proceeds—

'His hereditary tenures are altogether exempted by law from liability to enhancement yet how, at each stage in the transfer of the zamíndárí, and how easily, when he sets up his head against us, we, without regard to law and justice, add something to it every year. The law protects him against ejectment, yet how often without any (effective) opposition from him, or without resorting to law and procedure, we turn him out of his and his father's land. It is illegal and a criminal offence to extort rent from him by duress, yet our *gumáshtas* (agents) and *herabils* (runners) sit at the door of his house preventing egress and ingress, and deprive him of the use of the village well (the writer might have added of every other convenience of life) until he pays off our rent. How frequently, for the same purpose, we bring him to our Kachahrí and detain him there against his will till he satisfies our demands.'

"Such, from the lips of a Native zamíndár, appears to be a faithful account of what happens in many portions of Bihár, where no written contracts are exchanged; and, if Bengal claims exemption from such an indictment, I would point to a register of petitions from raiyats to Government (a copy of which I hold in my hand), showing that every form of complaint of oppression and illegalities has been represented to Government from every part of the country.

"I might, with extracts of a similar character, detain this Council for many hours longer, but each later fact would be in substance but a repetition of each earlier one, and all would point to the same conclusion, namely, that no matter how excellent and liberal the rights provided for by a law may be for such a population as we have to take count of, it cannot be doubted that, until a record-of-rights shall have been completed, the peasantry will, to use Sir John Strachey's words, 'remain the victim of chicanery and oppression, and that our Courts will be systematically made use of for the perpetration of injustice.' 'We shall probably,' says Sir George Campbell in 1873, 'have the whole of the real question in our hands, if we make an attempt to settle any

considerable part of it; and we shall scarcely be able to stop till we have made a settlement of Bengal, adjusted and recorded all rights and all incidents of tenure, and created a machinery for perpetuating and continuing the record-of-rights and keeping accounts by public officers under a system such as the framers of the Permanent Settlement designed, but their successors wholly abandoned,—a very long, difficult and expensive, but a necessary, process it will be.' Long it undoubtedly will, and expensive it may, be, though not so expensive as some may think. But the duration and the cost will be as nothing compared with the manifold blessings such a measure would confer on this Province. It will be a permanent possession, restoring peace and preserving peace; for, thenceforward, all will know that nothing can be gained by disagreement. Your Lordship will, therefore, understand what high value I place on those provisions of the Bill which provide for a field survey, a settlement of rents and record-of-rights, and how anxious I am that those provisions should be hedged round with no needless limitations.

"So far, my Lord, I have dealt with the main points of principle to which in my opinion especial attention is necessary. I have not attempted to enter upon any discussion of the details of the Bill. In my judgment, the Select Committee must do that after the full consideration the measure will receive during the next few months. But I cannot help saying that, as at present advised, I am unable to accept the provisions of chapter VIII of the Bill, which bears upon the question of compensation for improvements and for disturbance. I think, too, though I myself have suggested a twenty per cent. limitation, that it may be impossible to enforce a uniform limitation of that kind in all parts of the Province, and the proposal, I understand, is only suggested tentatively, and will come up for the full deliberation of those who will have to consider the Bill in Select Committee. So also with the chapter dealing with the procedure for the realization of rents; it requires in my opinion very much more examination than it has yet received. In India, it is said, as in Ireland, it has been too much the custom to assume that the landholder is exclusively to blame for the existing state of things as regards the generally unsatisfactory condition of the agricultural districts; but, while the wrongs of the raiyats are freely discussed, the case of the landlord is hardly ever thought of; and yet there is a zamíndárí side to the question, which it is impossible to ignore. I know that the landlords of these Provinces have been very often to blame; many of them deal harshly with their tenants, and but few have done much to improve their estates. From all,

however, that has come out in the published papers, it is certain that remedial measures in the interests of the tenants must be accompanied by some provisions to secure the interest of landlords as well. The existing system of coercive processes, and the agency through whom they are served, requires thorough reform. The execution of decrees for instance, which is a most important part of the process for realizing the demand, is inefficiently directed. The whole of this branch of the subject is of extreme importance, both from the zamíndár's and the Government point of view. The Government is the possessor of large estates of its own, which it manages through its own officers, and any means to facilitate the collection of rent will be of great advantage. But the importance of the matter goes further, and it is one which has an especial interest for the Financial Member, that the Government depends for its revenue upon the punctual payment of the rent to the zamíndár. If we cannot give facilities for the realization of one, we incur some risk of losing the other.

"It remains to me, my Lord, to refer to one other point, and that is the statements which my hon'ble friend Mr. Kristodás Pál made yesterday in reference to the kabúliyat to which the Hon'ble Mr. Ilbert took exception in his opening speech. I understood my hon'ble friend to say that the kabúliyat which fell under censure was simply a reproduction of the form of kabúliyat which the Government used on its own estates, and that, at any rate, any censure which might be passed on the zamíndár must fall in the same measure on the shoulders of the Government and its officers. I am not here to defend the Government, as an immaculate body which is above suspicion; much less to defend all the mistakes of my predecessors. But I really do not think, when we come to examine the matter, that my hon'ble friend has in this instance made out any case for condemnation of Government. I may say that, before this subject was referred to in this Council, I had heard something about it from an anonymous petition which I received on the subject. As a rule I do not deal with anonymous petitions, except to throw them into the waste-paper basket; but the statements made on this occasion were so very definite with reference to the alleged malpractices of an officer of Government in his dealings with his raiyats, that I thought it my duty to ask the Collector of the Twenty-four Parganas whether there was any truth in the charge which the anonymous writer had brought to notice, namely, that a criminal information had been laid against the agent of the zamíndár on a charge of cheating, and that several cases were pending in the Courts regarding these particular kabúliyats. The reply which I got from the Collector was that the statements were quite true, and that the raiyats had a strong case. It was alleged that the

kabúliyat given to the raiyats was entirely different from the arrangement which had been made between the parties pending the exchange of agreements; that this charge had been tried and had fallen through; but, as the writer of the anonymous petition said, not from entire disproof of the correctness of the charge of cheating, but from want of sufficient proof for a conviction.

"Now, as regards the Hon'ble Mr. Kristodás Pál's statement in respect to the condemned kabúliyats, that they differ in a small degree only from similar documents issued by the Government, I have taken some pains to ascertain what the facts were. The facts are these: Sir R. Temple having wished to encourage the exchange of pattás and kabúliyats, and to facilitate the general registration of such documents, caused a form of pattá to be prepared which would contain all the ordinary stipulations in such cases, together with those of an exceptional nature. A printed form, general in its application, it was thought, would save all parties a great deal of trouble, and would secure other advantages. The form was not put forward as a perfect form, which the Government, if it could have its way, would have always enforced. The object was chiefly to facilitate registration, and as such a form must provide for a diversity of customs in various districts, it consequently embraced some provisions which were contradictory; and when his hon'ble friend quoted the eleventh provision in the form as being discreditable to the Government, he ought in fairness to have stated that an alternative provision was before his eyes. The Government was only anxious that whatever provisions were adopted should be expressed in the document, so as to induce a freer recourse to registration. I have before me a translation of the form of kabúliyat which the Government issued, and all I can say is that if anything can be different from the form of kabúliyat which my hon'ble friend Mr. Ilbert read out, it is this document. To make this clear to the Council I will read out this translation:—

'*Kabúliyat.*

To the noble (landlord's name).

I (tenants name) son of inhabitant of village , execute the following kabúliyat:—

In the district subdivision tháná within the confines of your honour's estate situated in the village I acknowledge to hold a plot of land measuring bighás in extent as specified below, and to be responsible for the payment of an *annual* rent of rupees in the instalments specified below. For the privilege of cultivating (this land) during the period specified below I, of my own free will, execute this kabúliyat and agree to perform the undermentioned stipulations except those that have been excepted. To this I shall not object. If I do, my objection shall not be admitted.

Duration (or term) of kabúliyat.

*Conditions.*

(1) I will pay each month interest on arrears at the rate of per cent.

(2) I will maintain the boundaries.

(3) I shall enjoy the produce of the trees.

(4) I will not fell trees without permission.

(5) I will not alter the (character of the) land by excavation or otherwise.

(6) The landlord shall be at liberty to measure and charge rent at current rates for excess lands.

(7) Should the measurement show that I hold less land (than specified in this kabúliyat) I shall be entitled to abatement of rent.

(8) The landlord shall not be at liberty to measure during the currency of the lease.

(9) I shall not dispose of or mortgage my jote.

(10) The jote, on my decease, shall descend to my heirs.

(11) On my death, the landlord shall dispose of the jote or make any other arrangement he pleases.'

"It will be observed that Nos. 6 and 8, and Nos. 10 and 11, are mutually contradictory.

"It will be observed, further, that the rate of interest is left to be filled up as might be agreed in each case; that all payments are to be *annual;* and that it is only from month to month that interest on arrears is stipulated for. I understood from my hon'ble friend that in the Government form of pattá the Government declined to entertain applications for remission on the ground of diluvion. The seventh clause of the Government kabúliyat expressly contains a stipulation for abatement of rent where measurement shows a diminution in the area of the land held, and the tenth is in direct contradiction to the contents of my hon'ble friend's kabúliyat. But I have to go further. This is the form of kabúliyat which Sir Richard Temple introduced in 1876, with the view of securing wider registration; but the success of the measure was not very great, and I understand that, in 1878, this form of kabúliyat was entirely abandoned. The form of kabúliyat for rights in Government and wards' estates which was adopted in 1876 remained in force for two years. It was superseded in 1878 by two forms which were then sanctioned by the Board of Revenue; these forms are quite unexceptionable and are in force now. They correspond in no sense with the document adduced in the case which has given rise to this

discussion, and if anyone wishes to study them, or better, if any zamíndár wishes to see what a model form of kabúliyat should be, he will find it recorded under Nos. 23 and 24 at page 58 of the Board of Revenue's manual. It is impossible for anything to differ more widely from the indefensible document which was brought forward yesterday; and I may add that within the last few weeks we have issued, through the Board of Revenue, strict orders showing that the right of occupancy is to be strongly protected, and, with the permission of the Council, I will read the circular. It runs thus:—

'I am to remind you that it is no longer open to a manager or to local officers to discuss the policy of allowing raiyats to acquire a right of occupancy in their holdings. The policy has been fully adopted by the legislature and the Government that it is good that raiyats should have the right of occupancy. If the raiyats of the estate do not understand the right of occupancy used in its legal sense, the sooner they cause it to be explained to them the better. The Board expect that the officers engaged in the present settlement proceedings will take the opportunity to dispel their ignorance of legal rights, and they desire that you will take care that no misunderstanding on this subject is allowed to exist among managers of estates in your division. It should be made a distinct instruction to them that there is to be no attempt to discourage the growth of legal occupancy rights; and that, when they have accrued, they must be fully recognised in all zamíndárí papers.'

"The only other question I have to refer to is the question to which my hon'ble friend Mr. Kristodás Pál has referred as to the management of Government estates. Here I cannot appear as the defender of all that has been done in the past. I believe myself that there is a great deal in our khás mahál administration which is capable of improvement, and, therefore, I have interested myself in the subject and have called for a special report from the Board of Revenue on the subject. Indeed, in the case of one large Government estate, to the charge of which I have recently appointed a Covenanted Civilian, I am trying, by way of experiment, to learn whether we cannot introduce a better system of management, by spending more money in the opening out of more roads in the backward parts of the estate, and by inducing immigration to promote the extension of cultivation. The subject has received my personal and careful attention. But my friend went on to say that the khás management of Government mahál in Tipperah and Chittagong and Mednípur was so bad as to create a scandal. I am not aware of the particular cases he referred to in Tipperah and Chittagong; but if he will bring them to my notice afterwards, I shall investigate the matter. I am however acquainted with the circumstances of the cases which occurred in Mednípur. They refer to two temporarily settled estates in which the last settlement was made about forty years ago. After regular settlement proceedings, the rents were enhanced in

these two estates to the extent of fifty per cent., and the raiyats objected. This happened three or four years ago. Some people have taken exception to the settlement as exorbitant and unjust to the tenants. But, having regard to the long interval since the last settlement, and to the enormous rise in the value of produce in that period, the revenue authorities maintain that the new demand is not unreasonable. The raiyats, however, would not pay at the enhanced rate and, thereupon, the Government proceeded in the matter constitutionally and according to law, and not as has been done by some zamíndárs without any reference to law. The Government sued the raiyats in the Munsif's Court and obtained decrees: appeals were made to the Subordinate Judge's Court and were dismissed. The raiyats again went up from that decision on special appeal to the High Court, and the order of the Lower Courts was again confirmed. So far it may be assumed that the action of the Government had justice and moderation on its side. I understand that the raiyats in these two Parganas spent a lákh of rupees in contesting what seemed a moderate enhancement; and it may be thought that, after the decision of the High Court was given against them, they would have submitted. But that was not the case. We have had to send a special officer to ascertain the circumstances under which the raiyats refuse to pay the rent which is now legally demandable from them, and the matter is still under enquiry. In the meantime, to show the leniency with which these raiyats have been treated by the Government, I may mention that one and a half years' rent of the whole body of the raiyats has been remitted; but not satisfied with this concession, they claimed the remission of three years' rent. So far from a case being made out, of oppression and hardship or abuse of the law, I most positively affirm that our revenue-officers have acted here, not only in strict accordance with the law, but with moderation and indulgence. But the result remains that, even after the enhancement, the rents of these estates were under the prevailing rates of rent paid by neighbouring raiyats. And as regards the recusancy of the raiyats, it is only another argument in favour of giving the Government, as well as the zamíndár, some assistance in realizing the rates of rent which the Courts have finally decreed."

The Hon'ble SIR STEUART BAYLEY said:—"My Lord, in replying to the objections which have been offered to this Bill in its present stage, I may as well begin by saying that it is my intention only to reply at present to objections offered on the ground of the principles of the Bill, not to points of detail. In the first place, time would not permit, on such a long and elaborate Bill, of my entering into criticism of its details; but, more than that, I wish it to be distinctly understood that, on many points of detail, the provisions of the Bill are only put

forward tentatively, in order to elicit criticism, and that we are quite prepared to reconsider and amend them in Committee, on sufficient cause being shown. I may, moreover, say that I came here unprepared to throw a doubt on the intelligence of my audience, by again examining the necessity of the introduction of some such Bill as the present one. I fully endorse every word my hon'ble friend Mr. Ilbert said on this score in his opening speech, and if there is anyone still unpersuaded of the necessity of legislation by the arguments he has used, neither would he be persuaded though one rose from the dead. Certainly nothing that I can say would convince him. Yet we are told that in Bihár neither landlords nor raiyats want legislation; that in Bengal landlords do indeed want it, but not for these objects; that landlords and raiyats are on most friendly terms; that there is no rack-renting, no eviction, no enhancement; that the zamíndárs have peopled the jungles, dug tanks once upon a time and had made roads; that they subscribe largely to education, to dispensaries and to other charitable objects; that the Bihár zamíndárs gave land free for road making, and behaved well to their riayats in the famine, for which they received the eulogium of Sir R. Temple. Well, though some of these facts require considerable modification, I am not going to traverse this description of the typical zamíndár. I have to oppose their interests in the interests of a more helpless class; but this line of policy can be justified without vilifying the zamíndárs. I have no doubt they merited Sir Richard Temple's somewhat generous compliments as much as I did myself, or as a good many other officers of Government did. I have no doubt that as a class they are just what their environments make them, and there are many good ones among them. I know that their liberality and usefulness are great, but while I am far from saying they make a bad use of the money they collect from the raiyats, I do wish that the sums thus extracted should be regulated by law and not left to the arbitrary discretion of the zamíndár. No, if the zamíndár is as considerate and merciful as he is said to be by my honourable friend, then this Bill can have no terrors for him. The law is a terror to evil-doers, not to them that do well. If they neither enhance the rents of their tenants exorbitantly, nor threaten them with eviction in case of their refusal, the prohibition against such practices cannot affect them; but, unfortunately, all landlords are not of this type, and, certainly, all landlords' agents are not so, and I shall, in the course of my speech, I fear, bring ample evidence that there are landlords who require to be restrained. As I have said, I am not going over the ground which has been already fully occupied in Mr. Ilbert's speech, as to the demand which the landlords themselves made for legislation. I need only refer on this point to the memorandum published as Appendix I to the Bengal Government Report. But to show that the state of things is not quite as Arcadian as has been described, Mr. Thompson

has told us that he has a list of no less than 80 petitions addressed by raiyats to the Government of Bengal in the last three years, complaining of acts of oppression on the part of zamíndárs. Most of these petitions are complaints of undue enhancement of rents; others of the exaction of illegal abwábs; others of measurement by an illegal standard; others of dispossession of occupancy-rights. We have been told that there are no evictions in Bengal. Though eviction through the Courts is not frequent and, consequently, statistics are not forthcoming, our police registers tell a very different tale. In one district, a Magistrate (Mr. Edgar) tells me he compiled from these registers a list of no less than 500 such complaints in two years, and the complaints to the Bengal Government of dispossession of occupancy-rights mean the same thing. Eviction in itself is of little value. It is of value as a weapon for enforcing enhancement. I also have a list of applications for the quartering of additional police during the same period, on account of disputes between landlord and tenant. They amount to 16. These applications were all made by the Magistrates; they came from Bákirganj, Jessore, Kalna, Farídpur, Mednípur, Maimansingh, Noakháli, Nadá, Pabná Rajsháhi, Tipperah, and Orissa; they cover a force of 410 constables, besides officers, all applied for for the purpose of keeping the peace between zamíndárs—and in zamíndárs I must include the Government itself—and their raiyats. It will be noticed that none of these come from Bihár, not, I fear, because there is less oppression in Bihár than in Eastern Bengal,—in fact we know the case is the very reverse of this,—but because the oppression has been so effectual that the raiyats are incapable of resisting, and there is no fear there of disturbance. In one part of the country, we have disputes requiring an armed force to prevent their culminating in disturbances; in another, we have a peasantry too helpless to resist oppression, and in both, I say, there is urgent demand for legislation which shall enable such a state of things to cease.

"The two main objects of the Bill are described to be, in the words of Mr. Ilbert,—

'(1) to give reasonable security to the tenant in the occupation and enjoyment of his land; and

(2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.'

"The objections taken in regard to the manner in which the first of these two objects is dealt with in the Bill group themselves naturally round—

(1) the extension of the right of occupancy;

(2) the limitations to enhancement;

(3) the transferability of the raiyatí tenures;

(4) the overriding of contract.

"The objections taken to the extension of the right of occupancy are, mainly, that this extension goes beyond what was the customary right at the time of the Permanent Settlement; that it certainly goes beyond what Act X of 1859 defined to be the right; that it will, taken in connexion with the power to transfer, do no good to the cultivating classes, while it will do unwarrantable injury to the zamíndár. I am not going at any length into the question of the position of the resident raiyat at the time of the Permanent Settlement. After the admirable exposition of the question which we, or at least some of us, enjoyed yesterday from my hon'ble and learned friend Mr. Evans, this is not necessary. I was in hopes that this controversy was settled, but after what we have heard from the hon'ble gentleman opposite, from Rájá Siva Prasád, as to the indefeasible rights of property conferred on zamíndárs by the Permanent Settlement, I feel bound to touch on the argument. While it is admitted that raiyats who received pattás at the Permanent Settlement (or who otherwise had their rents at the time fixed), and their representatives, had the right of occupancy, by which I mean the right to hold on undisturbed so long as they paid established rates (I am not here referring to the question of enhancement), it is asserted that outside that class, the raiyats had no rights at all, except those which they derived from the zamíndár. It is singular that this controversy should still be deemed an open one. Only the other day, in studying the literature connected with this subject, I came across a paper published as an Appendix to the Select Committee's Report of 1832, written by Mr. Campbell of the Madras Civil Service. He says, after noting that the partial extension of the permanent zamíndárí system to Madras had not in that Presidency succeeded in materially impairing the prescriptive rights of the tenants, that 'in Bengal, on the contrary, though a mass of evidence exists in support of similar right on the part of the cultivators in 1793, and though some of the oldest servants of the Company, such as Mr. Harington, Mr. Colebrooke, with many of their most distinguished civil officers examined before the Committee, have most strenuously advocated them, there are others of great experience who declare that the raiyats in Bengal have no rights and never had any.' This was published fifty years ago. The description of the controversy might equally be applied at the present day.

"But can anyone who has read the papers circulated with this Bill resist the light thrown upon the question in those papers, especially by the annexures

to the Report of the Rent Commission, and by the researches of Messrs. Mackenzie and O'Kincaly?

"These gentlemen give in every instance their authorities, and there is an overwhelming balance of testimony in favour of their view, that all resident raiyats once admitted to the village, whether before or after the Permanent Settlement, had a right of occupancy in their lands so long as they continued to pay the established rent, and they had a right to have that rent fixed by the ruling power. The position of the raiyats and zamíndárs after the Permanent Settlement is clearly declared in Regulation VIII of 1793, sections 7 and 8, and Regulation VII of 1822, section 4. Their rights were the old customary rights, except where changed by the Regulation. That is, in addition to the old customs, they were bound to confine their contracts to the terms of the Regulations (section 65, Regulation VIII of 1793). They must frame their leases conformably to the circumstances of the estate and submit them for the Collector's sanction; none else were valid (section 58, Regulation VIII of 1793); they could make no lease for more than ten years, could not exact more than the customary rate of rent (section 7, Regulation IV of 1794), or for doing so were liable to a penalty of three times the amount (Regulation VIII of 1793, section 55). The raiyats on the other hand had a right to perpetual renewal at the customary rate (Regulation XLIV of 1793) wherever and whenever they were once let in as cultivators of the village. The only power to eject was that afforded by the sale law of 1822 to auction-purchasers in regard to unprotected tenancies, and this, though renewed in 1845, was taken away by Act X of 1859. They quote, as their authorities, Sir John Shore, Lord Cornwallis, Mr. Colebrooke, the Government letter of 7th October, 1815, Mr. Sisson's letter of 2nd April, 1815, Lord Moira, Mr. Holt Mackenzie's Evidence of 1832, and Mr. Harington's *passim*, and they show that, whatever the practical result of Regulation V of 1812, which was admittedly a new departure, the intention, as shown by the preamble and by the Sadr Court's circular of 1816, was expressly to maintain existing restrictions as to the rights of raiyats to a renewal of their pattás at the established rates. They also show that these views were in the main held by the great majority of the Judges on the Bengal rent case, especially by Messrs. Trevor, Campbell, Norman, Kemp, Morgan and Seton-Karr.

"I feel confident that no one who has carefully studied their notes, and certainly no one who, as I have done, has gone back and studied the original references themselves, can doubt that they have made good their propositions. I will content myself with showing that this view has been also consistently maintained by the Court of Directors and by the Secretary of State. One

hon'ble gentleman yesterday expressed a wish that he had been born in Lord Cornwallis's time. I was almost tempted to re-echo the wish, for I am sure he would have had a much more correct appreciation of what the Permanent Settlement did and did not do for the zamíndárs than that which he put forward yesterday. The first quotation I will read is from the Court's letter of the 19th September, 1792, the early part of which has already been quoted by Major Baring. It runs thus :—

'Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zamíndár, for otherwise such a rule would be nugatory; and, in point of fact, the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.'

"My next quotation is from the Government letter addressed to the Court of Directors on 7th October, 1815—

'We consider it as a principle equally applicable to all the Provinces immediately dependent on this Presidency, and we believe we might safely add to the whole of India, that the resident raiyats*

* (1815.)

(and recollect that Sir J. Shore defined a *resident* cultivator as anyone who cultivated the land in the village in which he lived)

*have*, by the Government letter of 1815, an established permanent hereditary right in the soil which they cultivate so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different Governments of India, that the quantum of rent is not to be determined by the arbitrary will of the zamíndár, but that it is to be regulated by specific engagements, or, in the absence of such engagements, by the established rates of the parganas or other local divisions.

* * * * *

'With these impressions respecting the rights of the peasantry, such parts of the provisions contained in Regulation XLIV of 1793 and XLVII of 1803 as declare that pattás shall not be granted to raiyats or other persons for a term exceeding ten years, appear to be fundamentally erroneous. The natural and obvious tendency of that rule was to limit and restrict those rights which the peasant possessed in a much more extended sense by virtue of the constitution of the country itself.'

"In reply to that letter, the Court of Directors, writing on 15th January, 1819, went into the whole question. They began by saying that, 'though the

use of the terms 'actual proprietors', 'landed estates' and 'under-tenants', has contributed to impair and, in many cases, to destroy the rights of individuals, yet it is clear that the rights which were actually conferred on the zamíndárs, or which were actually recognised to exist in that class by the enactments of the Permanent Settlement, were not intended to trench upon the rights which were possessed by the raiyats.' They quote Lord Cornwallis's Minute, their own order of 1792, the distinct provisions of Regulations I of 1793 and VIII of 1793, and then ask, how it is 'that our institutions are so imperfectly calculated to afford the raiyats in practice that protection to which on every ground they are so fully entitled, so that it too often happens that the quantum of rent which they pay is regulated neither by specific engagements nor by the established rates of the parganas, but by the arbitrary will of the zamíndárs.' They quote with approval the statement of Mr. Cornish, Judge of the Patna Court of Circuit, to the effect that—

'the raiyats conceive they have a right to hold their lands so long as they pay the rent which they and their forefathers have always done. The zamíndárs, although afraid to avow, as being contrary to immemorial custom, that they have a right to demand any rent they choose to exact, yet go on compelling them to give an increase, and the power of distraint vested in them by the Regulation soon causes the utter ruin of the resisting raiyat.'

"They then say—

'We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long established rights as it is to maintain the zamíndár in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him.'

"They then condemn Regulation V of 1812 as a very '*imperfect corrective*' of the evils which it was intended to remedy, and especially condemn it in reference to the construction put upon it that it gave zamíndárs power to demand from the raiyats any rent they think proper, without regard to the customary rate of assessment in the pargana.

"The discussion goes off into the measures requisite to avoid a repetition of these evils in the temporarily settled Provinces, and finally led to the enactment of Regulation VII of 1822 and to the draft Regulation drawn up by Mr. Harington in 1826. But I have quoted enough to show the opinion arrived at by the Court of Directors in the early part of the century, after a discussion scarcely less exhaustive than that recently accorded to the question of the raiyats' rights in Bengal. Before leaving this part of the question, I will

ask you to hear the conclusion come to by the Secretary of State after perusing the discussions of the Bengal Rent Commission. He says :—

'Whatever may have been the exact position, actual or legal, of the bulk of the Bengal raiyats prior to the Permanent Settlement, there can be no doubt, after the exhaustive investigation which the question has now undergone, that their customary rights at least include the right of occupancy, conditional on the payment of the rate current and established in the locality.'

"To this extent His Lordship authorized us to endeavour to restore the raiyats to their original position, and it is to this aim that those portions of the Bill which deal with the growth and incidence of the occupancy-right is devoted. I have left untouched the argument derived from Regulation II of 1793 and the quotation of the preamble 'that no power will then exist', &c.; because this has already been disposed of by my hon'ble friend Major Baring, but I may point out that in quoting the preamble of Regulation II of 1793 my hon'ble friend opposite, Rai Kristodás Pál, omitted to quote that part which would have upset his view of the complete and absolute proprietary right of the zamíndárs before and after the Permanent Settlement. It said :—

'The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the raiyats or tenants for each bígha of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom, or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury.'

"So much for the Permanent Settlement. The question remains—Are we, as a high authority tells us, unwarrantably extending the right of occupancy as settled and defined by Act X of 1859? In the first place, I may observe that, if the present discussion has brought out nothing else, it has very prominently made manifest the fact that Act X neither did nor was intended to settle and define the right of occupancy. It is admitted by the same high authority that the Act of 1859 did not affect the right of raiyats to establish, by custom or otherwise, a permanent title. It only fixed a period of prescription. In other words, it was an additional and not an exclusive enactment. The history of

Act X of 1859 is very clearly summarised in the Minute of Mr. Justice Cunningham. He says—

'No one can understand the true position of the several parties to the controversy, who has not studied the original frame and language of that Bill. Its object was, not to codify the law, but to amend one particular branch of it,—that relating to the recovery of rent At the same time it was thought expedient, as its mover* explained, 'to re-enact in a clear and distinct form the provisions of the existing law connected with rent suits, and sections 3, 4 and 5 accordingly set forth what had been the law since the time of the Permanent Settlement'.

*Mr. Currie, 10th October, 1857.

'Section 3 provided that 'hereditary raiyats' at fixed rates were entitled to pattás at those rates; 'all other raiyats and cultivators' were entitled to pattás *at the rates established in the pargana for similar lands, or, if no such rates could be discovered, at the customary rates for similar lands, in the vicinity.*

'Section 4 provided that 'every resident raiyat and cultivator has a right of occupancy', except in the cases (1) of *sír*-lands leased for a term, or year by year, and (2) lands sub-let by an occupancy-tenant to a resident cultivator.

'Section 5 reserved express agreements as to rent, clearing leases and right of re-entry, and provided that resident raiyats cultivating lands not previously in their possession, without a pattá, should not acquire a right of occupancy till they had paid rent for three years.

'The Select Committee reported that no alteration in the principles of the Bill was necessary; but they recommended, in the case of raiyats at fixed rents, that twenty years' holding at fixed rates should raise a presumption of having held from the time of the Permanent Settlement; in the case of other raiyats the Committee reported that they were entitled to hold at pargana rates'; that this had been admitted to mean 'customary and fair rents'; that 'khudkásht raiyats were spoken of as possessing rights of occupancy', and that 'khudkásht' was held synonymous with 'resident'; but that it had been pointed out that 'residence' is not always a condition of occupancy, and it appears that after much inquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with general practice and recognized rights, that a holding of the same land for twelve years should be held to give a right of occupancy. We have followed this precedent.

'This was the origin of the rule that twelve years' continuous holding creates a right of occupancy.

'It was, however, from the twelve years' rule that the most serious consequences to the raiyat's position resulted. This appears to have been adopted, not only without due consideration of its necessary results, but under actual misapprehension of the real purport of the rule which the Select Committee considered themselves to be adopting. The admitted law was that all resident raiyats had rights of occupancy; but then it was found that some non-resident raiyats had such rights, and it was proposed to meet these cases by adopting a rule in force in the North-Western Provinces, that an ousted tenant could, by a summary process, recover possession by showing twelve years' occupation. The effect of converting this rule into a

general definition of occupancy-rights was that on the one hand many undoubted occupancy-tenants found their title endangered by not being able to prove twelve years' continuous occupancy, and, on the other, that tenants not otherwise entitled to occupancy-rights were able to claim them whenever they could show residence for the required period. The results were, in the language of the Lieutenant-Governor of the North-Western Provinces, 'wholesale enhancement of rents and ejectment of raiyats who had a customary claim to occupancy.'"

"My answer then to the question must be that we have undoubtedly gone behind the letter of Act X; nay, more, we have endeavoured to undo some of the injury which that Act unwittingly brought about, but we have on this point of occupancy-rights carried out, as nearly as circumstances permitted, the intentions which the framers of Act X deliberately and expressly set before themselves. We have not got rid of the twelve years' prescription, though in the opinion of some of us the maintenance of a fixed period of prescription is neither historically correct, nor practically convenient; in fact, as Mr. Cunningham has said, 'you can never have peace between two parties, one of whom will, at a certain period, become entitled to a privilege at the expense of the other'; but we have got rid of the anomaly by which a resident cultivator would be ousted from his prescriptive rights by the mere device of his landlord shifting him from one patch of cultivation to another. We are told that the practice of shifting cultivators is not common in Bengal, but so convenient a device is not likely to be long left a monopoly in the hands of the zamíndárs of Bihár, where it is common, and we are legislating for Bihár as well as for Bengal. Allow me to quote to you the resolution arrived at on this point by a meeting of landholders in the Shahábád district on the 30th October, 1880. They resolved, with reference to the original proposal to confer modified rights of occupancy on three years' raiyats, that—

'This concession is strongly deprecated. At present land-owners prevent the growth of occupancy-rights by granting leases for five years only, *or by changing* lands, or by managing so that a raiyat shall never hold at the same rent for twelve years.'

"Now what Mr. Cornish said in 1815, that the raiyats conceive they have a right to hold their land so long as they pay the rent, is equally true of the present day. Mr. MacDonell, writing of Darbhanghá says—

'Illiterate, and in the hands of the zamíndár as far as accounts go, the raiyats cannot prove the status required of them, though the universal sense of the Province believes this status to exist. Our registration offices show that these occupancy or kashtkari rights are now mortgaged; our Civil Court records and our registration offices show that they are sold.'

"Mr. Edgar, writing of Bihár generally, says—

'I hold that the vast majority of raiyats in Bihár have, at the present moment, strong occupancy-rights in the land which they cultivate; that these rights are based, in the first instance, on the living custom of the country, a custom which no Court of law could ignore, if it was properly pleaded before it * * I freely acknowledge that this right has, in many cases, been destroyed by the illegal action of the zamíndár, most of them acting through thíkádárs, whether European or Native; that great sweeps of land, once held by raiyats with rights of occupancy, have been turned into indigo zarats; that lands have been arbitrarily taken from one raiyat and given to another; that holdings have been changed at the pleasure of the zamíndárs.'

"But over three-fourths of the land of the Province, he says unhesitatingly, occupancy-rights are the rule. Are we to allow such rights to be broken by the simple device above alluded to, or by what Mr. McDonell declares to be equally frequent, 'the manipulation by patwáris of the village jamabandís to prevent the identification of the plot held this year with the plot held five years ago,' or by the custom confessed to, with cynical naïvete, by the Shahábád landholders, in the paper from which I have already quoted, namely, that 'all lands becomes *zarat* (or private land), when taken into the landlord's hand'? No. The evidence throughout these papers is overwhelming that there is a strong and increasing tendency among landlords to break down occupancy-rights by every possible device, and we are bound to do our best to protect these rights; and the provision formulated by the Secretary of State for giving these rights to every cultivator who has held land for twelve years within the same village or estate, is quite the minimum protection that can either be accepted for the rights that have been acquired in the past, or to enable the raiyat to have some fixity of tenure in the future.

"On the economical side of the question I need not detain you long. The argument of the opposition on that point is more directed against the transferability, than against the accrual, of these rights, though I have seen references to Mr. Ross's Minute of 6th March, 1827, arguing that by protecting raiyats you do not make the ground more productive, but only increase the number of mouths deriving subsistence from it. Well, I think Major Baring has sufficiently answered the point, and you have heard also what the Lieutenant-Governor has said about the condition of the *guzashtadárs* of Bhojpur; but I may also add the following testimony from the Famine Commission to the same effect. They say—

'In the case of these large cultivating classes, security of tenure must have its usual beneficial effect, and, as a rule, the cultivators with occupancy-rights are better off than the tenants-at-will. Whenever enquiry 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, 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 occupation 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 members 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 improvement.'

"This, I think, is the view that all sensible men must take of the benefits given by fixity of tenure, and all the best zamíndárs to whom I have spoken take the same view. I quite believe what the Mahárájá of Darbhangá told us yesterday, that good landlords do not, as a rule, object to a raiyat being secure in his tenure, and it may safely be said that the power of ejectment is valued, mainly, if not entirely, as a means of extorting enhanced rent, and to this desire, having otherwise provided a reasonable means and measure of legitimate enhancement, the Government should, I think, make no concession.

"And this brings me to the question of limitation of enhancements. To those who wish that enhancements should be left to the discretion of the parties, in other words that there should be neither restriction of ground, nor limitation in amount of enhancement, the Bill will certainly not be satisfactory.

"We are told that enhancements do not take place in Bengal. I can only say that the experience gained by Government officers in managing Wards' estates is the reverse of this. I could easily show from a recent resolution of the Board of Revenue that the great difficulty the Government officers have in these estates is to collect rents, because these rents all include illegal abwábs and undue enhancement. Witness Salkhira, with an arrear of 6½ lákhs against a rental of Rs. 3,50,000, and in Kassimbázár and in Chándal in Máldah. But without going further into this question as it exists in Bengal, I do not think anyone can doubt the frequency of excessive enhancement in Bihár; and in the face of these facts, if we accept the view of the authors of the Permanent Settlement, that the resident raiyat had a right to hold his land at rates not higher than the pargana rates, the necessity of some limitation is apparent. Whether, before Act X of 1859, the landholders had any legal right to enhance on the ground of

increase in the value of produce, has been shown to be exceedingly doubtful; but any way the right to enhance on certain grounds was allowed by that Act, and the present Bill, so far as the grounds on which enhancement can be demanded, makes no material alteration in them: we have, it is true, not confined ourselves to the rule of proportion which the majority of the Judges of the High Court accepted as the best means of giving effect to the intention of Act X, but we have maintained that rule as a maximum. The real innovation which we have introduced is the limitation we have applied to the enhancement of money rents. These are, in regard to occupancy-raiyats, that the enhancement shall not do more than double the old rent, (this does not refer to area, but to rates); that the enhanced rate shall not exceed twenty per cent. of the gross produce; that the rent shall not be enhanced a second time within ten years. To all those provisions objections have been taken. It is urged that, if a raiyat's land can bear a rent enhanced more than one hundred per cent., there can be no reason why the landlord should not get it. There *is* a very good reason—a reason which is constantly preached and very generally (I wish I could say universally) practised in framing revenue rates in temporarily settled provinces,—and that is, that a great and sudden increase to this extent means such a great and sudden diminution in the cultivator's income, as must, in most cases, destroy his means of proper cultivation, in other words, must injure the agricultural prosperity of the country.

"Then, in regard to the other, and probably the very much more important, limitation of the enhanced rent to a fixed proportion of the gross produce of the soil, there are very numerous objections taken. Some of these, I confess, are not quite easy to answer. Mr. Ilbert explained last week that the limit of twenty per cent. had been substituted at the last moment for twenty-five per cent. at the request of the Government of Bengal. This exact percentage is for the moment tentative. I can only say that twenty-five per cent., besides being the *reba* of the Muhammadan administration, was the percentage suggested by the British Indian Association in 1875, and that twenty per cent. was the limit suggested by the landholders of Eastern Bengal, and in that part of the country the landholders at present, as a rule, get nothing like that proportion. But the objection to the special fraction taken as the percentage is of less importance than the objection, on principle, to taking a percentage of the gross produce at all, as a test of the rent rate. It is obvious that, in fixing a rent rate for special fields, not the gross produce, but the nett produce should be the test. Expenses of production vary enormously, and, whereas on some soils twenty per cent. of the gross produce may be the true economic rent, in others it may be really a beneficial rent, and in others again it may be a rack-rent or more, trenching on the actual labour-wage

of the cultivator. This objection, which would be fatal to a scheme for actually deciding the rent of each holding by this standard, and which is fatal in my opinion to the proposal made yesterday, that a fixed proportion of the gross revenue should be substituted for the table of rates, is not of the same force when the percentage is taken, not as a standard, but as the maximum. Our scheme starts from existing rents, which shall, in the absence of evidence to the contrary, be taken as fair and equitable, and the twenty per cent. maximum is itself balanced by other limitations, such as doubling the present rent, and by the proportion-rule in those cases where increase of prices is the ground of enhancement. There is yet another ground of objection, namely, that the use of this test will work very unequally in different parts of the country: whereas, in some parts of the country, money rents expressed in staple produce do not at present exceed ten to fifteen per cent. of the gross produce, we know that in other parts of the country they rise as high as thirty per cent. In fact, we were told yesterday, what I hope is only true of produce and not of money rents, that in Bihár they range from forty to sixty per cent. of the gross produce. Well we do not propose to bring down existing rents anywhere by the application of this standard, a decision quite in accordance with the existing law on the subject, and with the distinctly declared intention of Sir A. Eden, but we do definitely say that there shall be some security that the rents of occupancy raiyats shall not be enhanced beyond a point which shall leave them no margin whatever, and the percentage test is the proposal which has found most favour as the means for giving effect to this decision.

"If I am told that no such minimum at all is required, the description of the Bihár peasantry as given in the Hon'ble Major Baring's speech is surely a sufficient answer. There we have the fact stated that over a great part of the country rents have been doubled in sixteen years. But, as Mr. Ilbert said, an ounce of fact is worth a ton of theory. The hon'ble gentleman yesterday quoted from a paper by Mr. Finucane, who has been deputed to prepare experimental tables of rates on the Nurhan Property in South Tirhút. Allow me to refer also to the same paper. He says:—

'Take the instance of village Jaezootee. The present proprietor of this village, Bábú Nandan Lál, has inherited it from his adoptive father, Bábú Bri Behari Lál, who was in possession when the Permanent Settlement of the mahál was made in 1247 F. S. (1840 A. D.). The area then under cultivation was 106 bíghás, the then gross rental, which was taken as the basis of settlement, being Rs. 151, and the average all round rate being Re. 1-7 per bíghá. The Government revenue was fixed on the basis of half assets: and, as the settlement records, which I have examined, show, the very moderate amount thus fixed was objected to by the present proprietor's father, on the ground that the rental of Rs. 151 taken as the

amount of assets, was more than the raiyats really paid. The objection was, however, overruled, and the settlement was accepted in 1247 F. S. (1840 A. D.)

'(*a.*) After the lapse of forty-three years, what do we find in this village? We find that the area under cultivation has decreased by four bighás, while the rental is now* almost exactly six times the rental of 1247 F.S. (1842 A. D.). In other words, the average rates all round have been enhanced by *five hundred per cent. in forty-three years*, the rise in prices during the same period being at most *seventy-three per cent.* There is reason to believe that the state of things existing in Bábú Nandan Lál's property is not very materially different from what exists in other properties in the Darbhangá, Muzaffarpur and other North Gangetic districts of Bihár.'

* Area under cultivation in 1847, 106 bighás.
Area now under cultivation shown in the jamabandí, 102 bighás.
Rental in 1247 F.S., Rs. 151.
Present rental, Rs. 905.

"And how is this brought about? He gives the history of recent enhancements in various villages, of which I will read only the three first,† beginning with Tubka Khás.

† Tubka Khás, Tubka Maghribi, Mahomedpur Sunhara.

'TUBKA KHÁS.

'2. *Past history of the village.*—The jeṭh raiyats say that Máhtáb Singh was ṭhíkádár in the time of Ram Narain Singh, who was the present minor's grandfather. He took half an anna karcha (*abwáb*) on the old rates. He was succeeded by Bechuklal Misser, ṭhíkádár, who incorporated with the rent the half anna taken as karcha by his predecessor, and then realized an anna in the rupee as karcha on his own account. Bechuklal's lease having been renewed, he similarly again incorporated previous karcha with the rent and levied an anna per rupee as karcha in addition. On the expiration of Bechuklal Misser's lease, the village was leased to the Dalsing Serai Factory in 1270 F.S. (1863 A. D.). The first lease to the factory was for seven years. This lease was renewed for a further period of seven years, and was again renewed for a term of nine years, which term will not expire before 1292 F. S. (1885 A.D.).

'The factory enhanced the rates by one and a half-annas in the rupee during the currency of its first lease in 1275 F.S. (1868 A.D.), and again enhanced the rents by half an anna in the rupee last year. This so-called enhancement consisted in simply ordering the patwárí to enter the amount as a demand in the village papers against each raiyat.

'TUBKA MAGHRIBI.

'3. *Past history.*—The mauza was leased to Bekram Lal from 1250 to 1256 F.S. (1843 to 1849 A.D.). The rates prevailing in this period are not known. From 1257 to 1274 F.S. (1850 to 1867 A.D.) it was leased to Máhtáb Singh. He raised the rates by four annas per bighá in 1257 F.S. (1850 A.D.).

'From 1275 to 1283 F.S. (1868 to 1876), the village was leased to Dalsing Serai Factory. This lease was renewed for a further period of nine years, which will expire in 1292 F.S. (1885 A.D.).

'The factory raised the rates by one and a quarter annas in the rupee in 1275 F.S. (1868 A.D.). In 1284 F.S. (1877 A.D.) part of the village was again given in lease to the Dalsing Serai Factory and the rest was leased to Tirguman Misser and Medini Ṭhákur, who are themselves raiyats.

'The factory has, during the currency of its last lease, demanded an enhancement of a half anna in the rupee, and entered this demand in the jamabandí.

'MAHOMEDPORE SUNHARA.

'5. *Past history.*—This village was leased to Dalsing Serai Factory for three years, 1267 to 1269 F.S. (1860 to 1862 A.D.), at Rs. 850. The jeṭh raiyats say that the rates then were from Rs. 2-8 to 8 annas.

'From 1270 F.S. to 1276 F.S. (1863 to 1869 A.D.) it was leased to Behari Raout at a jama of Rs. 1,151. During this period the ṭhíkádár raised the jeṭh raiyats' rates by eight annas per bígha in 1275 F.S. (1868 A.D.), and the raiyats' rates by four annas.

'From 1277 to 1285 F.S. (1870 to 1878 A.D.), the lease to Behari Raout was renewed for nine years, at a jama of Rs. 1,600. During the currency of this lease, the ṭhíkádár again raised the jeṭh raiyats' rate eight annas and the rayiats' rates twelve annas per bígha. In 1285 F.S. (1878 A.D.), finding he could not realize rent at the above rates, Behari Raout reduced them by two annas and three pies per bígha. From 1286 to 1292 F.S. (1879 to 1885 A.D.), the village was again leased to Behari Raout at Rs. 1,900. He has this year relinquished the lease, being apparently unable to realize his enhanced rents. His relinquishment has been accepted. The present jama, inclusive of Tola Jagarnathpore, is Rs. 2,889. It thus appears that the reserved rental payable by the ṭhíkádár to the proprietor has been more than doubled in the course of twenty years. Further, excluding Tola Jagarnathpore, for which the materials for comparison are not available, it appears, as already noted, that the mufassal jama of the remaining portion of this mauza was Rs. 1,648 in 1275 F.S. (1868 A.D.), while in 1279 F.S. (1872 A.D.) it was raised to Rs. 2,600, and was reduced in 1285 F.S. (1878 A.D.) to Rs. 2,435; in other words, an increase of fifty per cent. was made in the gross rental in the course of the past fifteen years, the cultivated area remaining the same, or rather having decreased by two bíghás.'

"And this is the conclusion he comes to as to the average enhancements in this part of the country:—

'That, while the average rise in prices of staple crops for the past forty-five years have been only seventy-three per cent., the increase in rent rates in these villages has been respectively one hundred and eighty-eight and one hundred and sixty-four per cent.

'That, as regards all the villages in this tract appertaining to the Narhan Estate, there has been an average increase on rates of one hundred and thirty-six per cent. during the past forty-five years, the rise in prices or staple products during the same period being only seventy-three per cent.'

"Recollect these are increases on rent *rates*. The actual increase in the rental, allowing for increased cultivation, is much greater. In the two villages

for which data of comparison are available, he shows that in one, while cultivation has extended by forty-seven per cent. in the last half century, the rental has increased by three-hundred and twenty-one per cent. In the other, where cultivation has increased by thirty-nine per cent., the rental has increased by two hundred and sixty-nine per cent.

"I will give one more instance from another part of the country. Two years ago, Mr. Edgar had occasion to make an inquiry of a similar nature, but for a different object, in the west of the Champáran District. This is what he says in his report:—

'Tuppeh Dohosoha was settled in perpetuity in 1850. The area of the five maháls at the time of settlement was ascertained to be 15,888 bíghás, of which 9,690 bíghás were cultivated or temporarily fallow. The rental was then calculated to be Rs. 17,342, of which one-half, or 8,671, was fixed as the Government demand. After the conclusion of the settlement, the Bábú seems to have begun enhancing the rents, and the process was carried on so effectually through thíkádars, that in the road-cess returns of 1873-74, the rental of the five maháls was shown as Rs. 86,175, that is, five times the settlement rental and ten times the Government demand. The cultivated area at that time had risen to 10,827 bíghás.'

"In other words, in less than a quarter of a century the rental had been increased to five-hundred per cent.; the cultivated area had increased by about eleven per cent. The same report says that there was no real change in the condition of the land between those years, and the same means of irrigation as existed in 1872 had been in existence at the time of settlement. We have been told that similar enhancements have been made in Government estates in Chittagong, Chutiá Nágpur, &c. I am informed that in regard to Chittagong this is a mistake. The rent rates of the raiyats have been actually reduced, though owing to increase of area the *revenue* assessed upon the taluqdárs or contractors has been increased. The Chutiá Nágpur increased rates, I am informed, have not as yet been sanctioned, but I am not here to defend the system of management in Government estates. It has, doubtless, been bad in the past, though since Sir George Campbell's time not nearly so bad as has been stated. Anyway, in regard to enhancements, the raiyats of Government estates will have the same protection as other raiyats, and what I hope I have succeeded in showing is that, if the occupancy-right is to be of any value at all, it must be protected by some limitation of the maximum amount of enhancement. With the method of enhancement and the table of rates I shall deal at a later period of my reply.

"Turning now to the question of the transferability of occupancy-rights, we are told that this is an innovation which will ruin the landlord while it will do no good at all to the cultivator. In the first place, as the Commission have shown, the transferability of occupancy-rights is in most parts of the country

an absolute fact. It is stated then that the registers of the Courts show it to be so in every district, save Sáran and Champáran. Mr. MacDonnell, in a paragraph which I have already quoted, says the same. His testimony, it is true, refers to Bihár. Let me quote then from Bábú Parbati Rai, on special duty in Murshidábád. He says:—

Transfer of occupancy-rights prevailing custom in the selected tract.

'Another circumstance brought to light in the course of the present enquiry also deserves mention in this report. It is often alleged on behalf of the zamíndár that the proposal to make occupancy-rights transferable is an innovation. But without going to discuss what the custom in other places is, I beg to state that the custom of buying and selling *jotes* is here very general, and that the zamíndárs themselves also put up such *jotes* for sale at execution of rent decree. Bábú Bepin Behárí Mookerjea, Munsif of Kandi, to whose kind assistance I am greatly indebted for several things in connection with the present enquiry, tells me that it is seldom that the zamíndárs object in Court to the transfer of jotes by raiyats. I have, in paragraph 6 of this report, spoken of raiyats having more than one *jote* in their possession. The jamawásil papers of Gopináthpur show that this custom of buying and selling *jotes* has been very general in the pargana. But though custom is thus in favour of the raiyat, a legal enactment declaring its validity will, no doubt, be productive of very great advantage, as it will prevent the litigation that occasionally crops up at present. The fear that is generally entertained that the effect of making the right of occupancy transferable will be that all such *jotes* would gradually pass into the hands of the money-lenders is, so far at least as this part of the country is concerned, quite unfounded. On the other hand, I find as a fact that all old *jotes* which have changed hands are still in the possession of cultivating raiyats.'

"I have a good deal of evidence to show that so strong is the belief in the inherent right of the actual cultivator to a possessory status in the soil, that even korfa or sub-tenants' holdings are frequently brought to sale in execution of a decree. I have by me a statement from a single Munsifí in Central Bengal, showing that in the last six years no less than 40 of these holdings have been sold in execution, with a rental value varying from Rs. 38 to a few annas, and bought in for substantial sums, in many cases equal to ten, twelve, and even fifteen times the rental. Moreover, there is ample testimony to the effect that the tendency to recognise occupancy-tenures as transferable is increasing, and the real question was whether the facts, as they stand, were to be ignored or recognised. Mr. Field points out that:—

'Alienability is in every country, sooner or later, annexed to everything that is made the subject of property, and that here, in Bengal, this tendency has spontaneously shown itself in a very marked manner in respect of these very holdings.'

"It is also clear that transferability is the only alternative to unlimited sub-letting, a practice which we cannot, in face of universal custom, forbid, but which we should be very glad to discourage. Nor can it be really

doubted, except by those who look upon human nature in Bengal as guided by quite other motives than those which influence human nature elsewhere, that the desire to acquire land can only have free play when there is a power to transfer, and that in the end the capacity for saving must thus be stimulated. But if, as I have shown, occupancy-rights are every day, and all over the country, put up for sale, surely the legal recognition of this fact gives the landlord the best security for, and the best means of recovering, his rent. The power to transfer gives a value to the right of occupancy which is always available as a means of enforcing payment to the landlord; and though it opens up undoubtedly some room for letting in hostile or objectionable tenants, we have done our best to guard against this by giving the landlord the right of pre-emption at a fair rate, to be fixed, if necessary, by the Court. And let me here point out that the right of pre-emption is not the dead loss to the landlord that has been represented. If the right of occupancy is of any value, it will not be of less value to the incomer than to the outgoer. In other words, the practical operation will be, that the landlord will recover the price he has paid in the shape of a bonus or premium from the incoming tenant whom he prefers to the private purchaser. Mr. Field, in discussing the argument in favour of transferability from facility of execution of decree, says:—

'The strongest point of the complaints urged against the proposed rent-law procedure is concerned, not with the delay in obtaining a decree, but with the delay and difficulty in getting the decree executed once it has been obtained. The experience of the Courts entirely corroborates this. The average raiyat is too poor for process against his moveables to be productive of much result. His cattle are easily got out of the way, or, if attached, are made the subject of false claims by third parties. He seldom or never possesses immoveable property. To take him on body warrant is merely to add to costs, the chance of realizing which is thereby diminished. If the raiyat's holding were saleable in execution, and would fetch at least sufficient to satisfy the decree and costs, the landlord's execution difficulties would at once disappear.'

"We have, accordingly, made the occupancy-right saleable in execution of a decree, as well as transferable and heritable, but we have not made it saleable by the landlord summarily and without decree. This was proposed tentatively as a privilege which might be granted to those exceptional landlords who keep their books and accounts in such a way as to satisfy the Board of Revenue, but it became obvious on consideration that such a privilege must either be accorded to all landlords or to none; and it must be admitted that, in the present state of affairs, neither are the landlord's accounts so accurate and trustworthy, as a rule, as to make it safe to bring the occupancy-right to sale on their *ex parte* evidence without hearing the raiyat, nor is he in such a position (as the patní holder generally is) as to be able to save himself from injustice, or to obtain redress for it afterwards, under the *patní* procedure. Whether the right of

occupancy thus made transferable will remain for many generations in the hands of the same class as now possess it, is a subject on which many persons are disposed to prophesy. I don't know, and, therefore, I won't prophesy; but certainly no arguments which have hitherto been brought forward have convinced me that this cause *alone* will bring about any great revolution in the position of the occupiers of the soil. In the meantime we shall, I think, with fixity of tenure, fair rents, and the power to transfer, have given to the present generation some security for enabling them to maintain their position as cultivators, to do justice to the soil and to be able to resist the pressure of one or two bad seasons; and, in doing this, I verily believe, we are really doing the zamíndár more good than if he were left the absolute master of an impoverished, hopeless and therefore thriftless, tenantry.

"I come now to another point to which very great objection is taken, namely, the overriding of contracts, or rather the provisions preventing a raiyat from contracting himself out of his status. We cannot of course prevent a raiyat making what contract he likes, nor can we prevent his adhering to it, only we say that in certain cases the Court will not give effect to such contracts.

"Mr. Ilbert dealt with the matter in his opening speech, and explained the general considerations which led the Commission, the Government of Bengal and the Government of India to decide that this provision was absolutely necessary. We do provide for moderate enhancements being arranged by private contract, because we do not wish to force all such cases into Courts; but we do not allow any force to contracts which would deprive the raiyat of his occupancy status and make him liable to arbitrary ejectment or arbitrary enhancement. Mr. Ilbert read out a specimen of the kind of document by which, he said, we could not allow the provisions of our legislation to be overridden. I may mention that this was not a single or a solitary document. In the case in which this document was put in, I am informed that the zamíndár's agent urged in its behalf that 1,000 or 1,200 raiyats had given similar *kabúliyats*, and I wish to draw attention to the fact that these details overriding the law are only entered in the *kabúliyat* which remains with the zamíndár. They are not entered in the counter-part pattá which remains with the raiyats. Allow me to offer a few more reasons to the same effect as Mr. Ilbert's patta. One of the causes of the Pabná riots was the endeavour on the part of the landlords to force from the raiyats *kabúliyats* which, besides incorporating illegal *abwábs* in the rents, provided for the landlord changing arbitrarily the legal standard of measurement, and for his ejecting the raiyat in case of the latter having the misfortune to quarrel with him. Is it possible for us, where the pressure of population on the

land is so close, where no other occupation is available, where a raiyat must cultivate or starve, where there is no sort of equality in wealth, or intelligence, or position,—is it possible, I say, for us to allow our Courts to treat such documents, made in direct contravention of the law, as contracts made on equal terms between the parties? Then look at the quotation I have read already from the proceedings of the landholders' meeting held at Arrah. At present, they say, land-owners prevent the growth of occupancy-rights by granting leases for five years, or by changing lands, or by changing the assessment. And how is the assessment changed? Mr. Finucane's report has shown us. One year one anna is added to the rupee of rent as 'kharcha', an illegal *abwáb*. The next year that is incorporated in the rent: after a few years' rest another kharcha of two annas is added, and that is similarly incorporated, or in some cases even this process is not gone through. 'This so-called enhancement consisted simply in ordering the patwárí to enter the amount as a demand in the village papers against each raiyat.'

"The hon'ble gentleman opposite endeavoured to show that the Government had adopted or permitted equally oppressive contracts. We have heard the Lieutenant-Governor's reply to this, and it is clear that the hon'ble gentleman mistook altogether the nature of some of these forms, and that the pattá which Government allowed to be sold for convenience sake at registration offices, was by no means so oppressive as he would have us believe. A gentleman once undertook to compile a dictionary, and he had in the course of it to explain the word 'crab'. He described it as a red fish that walks backward. Fortunately, he showed his description to a scientific friend before publishing it. His friend said it was excellent, admirable, perfect; only, unfortunately, the crab was not a fish, it was not red, and it did not walk backwards. Similarly, the Government pattá did not, as the hon'ble gentleman opposite seemed to suppose, provide either for preventing the accrual of occupancy-rights, or for ejectment, or for oppressive interest. But, even if he had made out his case, I should still hold that it would be an argument rather for than against overriding of contract. As Mr. Evans pointed out yesterday, if these things are done in opposition to the well-known principles and wishes of the Government by their own officers, what will not be done by the unsupervised ámlá of zamíndárs? If these things are done in the green tree, what will be done in the dry?

"I will show you what will be done by reference to another *kabúliyat*, appertaining to the estate of one of the most enlightened landholders in the country, but which positively bristles with provisions for evading or nullifying the law, and this is the point I wish to enforce—not that such contracts are oppressive, but that they are a deliberate attempt to override the law.

"It is to this effect :—

'I, *A. B.*, by profession a *jotedar*, do execute this kabúliyat in respect of a temporary *jote jama*. I held a temporary *jote* comprising 109 bíghás, 19¾ cottas of land, at a *talab jama* of Rs. 167-12-11,* inclusive of *Batta* and *Isswar Britti*, or charges for religious expenses. The term of the aforesaid *jote* having expired, I applied to obtain the land under a fresh settlement. According to my application, you have inducted me as a *temporary*† *raiyat* for a term of five years, extending from the year 1287 to 1292, on following terms, into the aforesaid *jami jama*, as per boundaries given below, measuring 109 *bíghás*, at a rental of Rs. 182, minus Rs. 12-5-10, kept apart as *hajut*; that is, at a rental of Rs. 170-4, added to Rs. 7-15-14, the amount of *Batta* and *Isswar Britti*, at the rate of 3 pie per rupee, according to the custom of the pargana—in all at a total rental of Rs. 178-3-17-1 cowri. I engage myself to hold the land on payment of the rent fixed, year by year, according to the *kists* specified below, and by keeping intact the borders and boundaries of the land, as they have been since before. I shall not make any plea of payment of rent without producing printed rent-receipts. Should I make any such plea, *it would not be admissible*. Should I fail to pay rent according to the *kists* fixed I must pay interest at the rate of five per cent. per mensem. In case I do not pay rent at the proper time, you shall be competent to resort to legal means, and realize the same with interest, costs and damages, by bringing a suit; and I shall pay the same without any objection. It is further stipulated that should the rent due by me fall into arrear at the end of the year, you shall be competent to eject me from the *jote jama* and bring it under *your khás* or direct possession *without the help of the Court;* and none of the terms herein stipulated shall be sufficient to prevent you from doing so; that I shall not be competent to *relinquish* the *jote* as long as the term fixed herein does not expire; that in case I do relinquish the *jote* before the term expires, I shall have to pay rent for the entire period, and then relinquish the *jote*; that whenever, within the term specified herein, you may be pleased to have the land measured, I shall cause the measurement to be made, and shall, without any objection, pay rent for the quantity of excess of land over and above the rent already fixed, according to the rate of rent for the different sorts of land found to be in excess; that in case the land be found by measurement to be less in quantity, I shall be entitled to an abatement of rent, according to the rate aforesaid; that I shall not be competent to make any objection regarding inundation, drought or any objection as to the land being *patit*, or waste, or covered with sand, or occupied by *kháls* and so forth; nor shall I be competent to claim abatement of rent within the term fixed herein; that I shall not be competent to let out the land to anybody under a *durjote*, or to transfer it in any way; that in case I do let out the land, or transfer it, you shall be at liberty to take at once *khás* possession of the land herein mentioned; that after the expiration of the term fixed, I shall not retain any concern whatever with the land; that you shall then be competent to resettle the land with me, or to let it out to anybody as you may please; that when-

* These are abwábs, and to avoid the penalty imposed by section 11, Act VIII of 1869, they have been included in the rent.

† To destroy any claim to be an occupancy-raiyat.

If a raiyat is now ejected, except under an order of Court, he has a possessory action under section 9 of the Specific Relief Act. This is to get rid of the Act.

This is to get rid of section 20, Act VIII of 1869,—allowing a tenant to relinquish.

To destroy right of occupancy accruing: he had already held it previously.

By sections 52 and 55 of the Permanent Settlement, the landlord enforcing this would be liable to pay three times the amount, and by section 11 of Act VIII of 1869 (B. C.), he is liable to pay twice the amount.

ever you should find it necessary to take any portion of the land into your *khás* possession, I shall give up that portion without any objection, and get abatement of rent; and that I shall pay separately the new cess already imposed by Government, as well as that which it may impose hereafter. On these conditions, I execute this *kabúliyat* for the temporary *jote*. Dated the 1287.'

"Can anyone say that, in the face of such endeavours as these to override the law by means of contract, the legislature has any choice but to maintain the law in spite of the so-called contracts.

"The objections with which I have been dealing hitherto apply mainly to the provisions of the Bill concerning the occupancy-tenant; but we have heard some very strong objections to the protection given to the non-occupancy, or, as the Bill calls them, ordinary, raiyats. Under existing law, raiyats not having a right of occupancy are entitled to pattás at such rates as may be agreed upon between them and the persons to whom the rent is payable. The term of such pattás is exclusively at the discretion of the landlord, and such a raiyat cannot against the will of his landlord, retain possession of land in which he has not a right of occupancy; but, if he has entered into possession otherwise than for a specific term, or, having entered for a term, has held over with the consent of his landlord, express or implied, he cannot be ejected without service upon him of a reasonable notice to quit. His rent can only be enhanced after service upon him of a notice of enhancement, served by order of the Collector. If, after such a notice has been served upon him, such raiyat elect to remain in possession of the land, he cannot be compelled to pay more than a reasonable rent therefor. (I am taking this statement of the law from Mr. Field's Digest). The alterations which the Bill proposes to make in the law are these. Subject to the general maximum, we leave the rate of rent to be fixed by contract; we leave, the raiyat subject to enhancement without a suit, but we provide that, if in consequence of his refusal to accept the enhancement the landlord wishes to eject him, he shall pay him compensation for disturbance. The compensation to be made will be in proportion to the enhancement demanded, so that, if the enhancement is moderate, the raiyat will probably prefer to pay it; if it is excessive, the landlord will have to pay for ejecting him. The object is two-fold—to keep the landlord to reasonable enhancement, and to prevent his making use of his power to enhance as a means for ousting the raiyat so as to prevent his acquiring a right of occupancy. I was quite prepared for strong opposition on this point. It is in principle a return to the modified rights of occupancy which the Commission proposed to give to the three years' tenants; in other words,

it aims at giving some security of tenure under which occupancy-rights can grow up to all cultivators. It is admittedly an innovation or experiment which has never been tried in India, and at first sight is open to the charge brought against it of being an invasion of the landlord's rights. Now it is pointed out in Mr. Ilbert's speech that a high authority has computed that 90 per cent. of the raiyats of Bengal have occupancy rights. The Bihár Commission computed that between sixty and seventy per cent. were in a condition which would enable them to claim occupancy-rights under the present Bill. Still there is an important residuum, and the question at issue is—does public policy require us to protect the position of this residuum at the expense of the powers now held by landlords? The reasons which led the Government to answer this question in the affirmative may be gathered from the following extracts from their despatch No. 16 of last October to the Secretary of State. They said, with reference to the very subject—'We have first to consider the proportion of cultivators whom the scheme leaves unprotected', and, after referring to the figures quoted above, the despatch goes on—

'The proportion is at best conjectural, and we are not concerned to insist on its accuracy; but the important point to be remembered is that the number of unprotected raiyats, whatever it may be at the moment when legislation is completed, will, under your Lordship's scheme, be thereafter a constantly increasing number. Every acre of land which becomes vacant, whether by purchase or pre-emption on the part of the landlord, by death without heirs, or by abandonment of the occupant, falls out of the protected class, and instantly becomes a subject for a renewal of the evil contest. The landlord's interest is immediately concerned in preventing the settlement on such land of any existing cultivator of the estate or village, and in defeating, as regards tenants from outside, the accrual of occupancy-rights by twelve years' prescription on such land; the old series of litigation, enhancement and ejectment will recommence, and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.

'In the meantime, it is abundantly manifest that the position of this unprotected residuum will be infinitely worse than that of unprotected raiyats under the existing law. At present, the landlord can effectually prevent the accrual of occupancy-rights by merely shifting his tenant from one patch of cultivation to another; under the proposed rule it will be incumbent on him to turn the tenant out of the village altogether, out of his house and homestead as well as out of his land, and we have every reason to believe that this power, which, even as a threat *in terrorem*, would be productive of the worst consequences, would in many cases be actually put in force.'

"And they added—

'fence round the twelve years' rule as we may, any rule which makes it to the interest of the landlord to prevent the growth of prescriptive rights leaves of necessity to him both the

power and the inducement to put such pressure on his raiyats as cannot fail to become intolerable.'

"They explained, therefore, to the Secretary of State that it would be in their opinion necessary, in introducing a modified twelve years' rule, to combine it with a system of compensation for disturbance to unprotected raiyats.

"There is another point to be considered. It is admitted that the definition in Act X does not override occupancy-rights which may have accrued by custom outside that Act. I have quoted from Messrs. McDonnell and Edgar, and might adduce much similar testimony as to the general existence in some parts of the country of a customary right of occupancy quite independent ? of any fixed limit of time. I have given the evidence supplied from one Munsifi in Central Bengal of the transferability of the rights of korfa raiyats,—evidence consisting of the fact that no less than 40 such holdings have, in the course of the last few years, been brought to sale in execution of decree, and fetched very substantial prices, as much as ten and fifteen years purchase of the rental. I have here a table supplied from another Munsif in Jessore, showing that in his Court, in the course of two months, some 35 under-tenures, many of them technically korfa tenures, and all coming under the ordinary head of non-transferable rights, had been sold.

"Now, if such under-tenures can be sold for substantial sums in execution of decree, does it not follow that the holder has in them a property worth protecting ? And, if we are to carry out the accepted policy of establishing 'the occupancy-tenure on a broad and permanent basis,' of securing 'a substantial tenantry free from debt and in a position to save and bear the pressure of occasional bad seasons,' are we not justified in taking steps to protect within reasonable limits the non-occupancy-tenant from arbitrary evictions, and so to render possible the accrual of full occupancy-rights which the law aims at ? As to the special method by which this should be done, there may well be differences of opinion. Whether you can, by fixing a nominal maximum of rent, practically diminish the value of the power of sub-letting is, I confess, questionable ; and whether, in the case of non-occupancy-raiyats, competition will not overcome legislative restrictions on rents is no less doubtful. I admit also that compensation for disturbance is untried and may be open to objection, but while we must affirm the principle of giving this class a reasonable measure of protection, the particular method of arriving at this result is a subject for discussion in Select Committee, and it is one on which we shall be particularly glad to receive suggestions.

"While dealing with this question of ordinary raiyats, it behoves me to say something on the subject of sub-letting. We have been asked to prohibit sub-letting, and have been told that in the extension of sub-letting lies a danger which may involve a new departure in another generation or two, as a new class of *rack-rented* raiyats grows up on the soil; but it is impossible, as has been pointed out, to ignore the universal custom of sub-letting, or to change the status of all existing occupancy-raiyats and their sub-tenants. We have done what we can to discourage this habit. In the first place, by making occupancy-rights transferable, we take away one of the great inducements to sub-letting. In the second place we put a limit on the rent which can be legally demanded from a sub-raiyat, and so leave but a margin of about ten per cent. between what the raiyat has to pay his landlord and what he can receive from his sub-raiyat. Ordinarily, therefore, it would be better worth his while to cultivate himself, or to sell, than to sub-let. In the third place, we make it part of the law that the tenant should obtain his landlord's permission before sub-letting; otherwise the sub-tenant's crop is liable to the landlord's distraint, and this right the landlord is not likely to abandon. Whether these provisions will really check the habit of sub-letting, I cannot say. I am quite sure direct prohibition would be ineffectual, and I am also quite sure that the question is one which depends on economic causes, and which legal checks can only very partially regulate; but it seems to me that, until the difference between what he receives from his under-tenant and what he pays to his superior landlord becomes so large as to enable the occupancy-raiyat altogether to divorce himself from the soil, the custom of sub-letting will not be encouraged, for the occupancy-raiyat can, in the present state of affairs, find no other means of occupation; in the meantime, therefore, the tendency of our legislation will be to keep the great bulk of the occupancy-raiyats on the soil, but more able to subsist comfortably and to resist adverse circumstances than at present: anyway, I don't think legislation can wisely go further in this direction than we are doing, and, as Mr. Ilbert said in his opening speech,

'sufficient for the Statesman if he can grapple with the problem of the day; for the distant future he must leave posterity to provide.'

"And now I come to the point against which the main attack of the opposition is addressed, namely, that while we have done everything to increase the security of the raiyat, we have done nothing to carry out the two objects for which legislation was originally demanded, namely, to facilitate the recovery of his rents by the zamíndár, and to give him a sure and satisfactory method of enhancement. Many of the objections were answered in advance by Mr. Ilbert. He has shown what we have done and why we have been unable to do more. In the matter of procedure for recovery, he showed that there was no royal road

to the discovery of facts; and by shortening the code of procedure you do not shorten procedure itself; that you cannot, without danger of gross injustice, shift in these cases the burthen of proof, and that the real reason why rent suits take time is that there are generally substantial issues to be tried, and substantial injustice, especially in executing *ex parte* decrees, to be guarded against. What we have done is to give a modified power of distraint, which is really a form of attachment before judgment, and should in very many cases take the place of a suit altogether. Doubtless, as has been urged upon us, many zamíndárs would wish to be able to exercise this power of distraint directly and of their own authority, instead of through the intervention of the Court. This is what is now very generally practised in Bihár, and it has been defended by certain zamíndárs in the papers before us, as well as in this Council, as being less tedious and less expensive to the raiyat than the regular process. Doubtless a creditor might say, it would be much shorter, and perhaps less expensive to his debtor, to take the purse out of his pocket than to sue him for the debt, but neither the law nor the debtor look at the matter from this point of view. The law calls it robbery, and the debtor is likely, either to resent it by violence, or by getting the law to enforce the penalty for robbery. In other words, we cannot allow one of two disputants to be the judge in his own cause,—no, not even judge in a Court of first instance, and though his decision be open to appeal, for this is the plain meaning of giving him summary powers of distraint and leaving the raiyat to contest it by suit. In ordinary suits, where distraint through the Courts is not had recourse to, Mr. Ilbert has described the procedure, based very much on that of the Small Cause Courts, and abolishing all unnecessary delays, and disallowing appeals in petty cases, and has explained our readiness to consider in Select Committee any further simplification, should such simplification appear consistent with justice to both parties.

"But it is not merely a shortened procedure; it is a summary procedure, which is wanted,—a procedure, in fact, which will give the landlord the benefit of the presumption in his favour, and place on the raiyat the onus of proving that the presumption is erroneous.

"Now, there are only two forms of summary procedure—one through the intervention of our Courts, the other through executive authority, like the certificate or patní procedure.

"Summary procedure through the executive authorities has long been tried in India. There are numerous examples of failure. Up to 1859, a zamíndár could enforce payment of rent either by distraint or summary suit before the Collector. This was discontinued by the framers of Act X. The raiyat had

no remedy but by a regular suit, and this, the framers of the Act declared, was 'almost tantamount to refusing him any remedy at all'. The abolition of these summary powers was objected to then by the British Indian Association, much on the same grounds as those now put forward (as indeed were all the restrictions on the zamíndár's power, including that of arresting their raiyat); but these objections were deliberately overruled. The question of a summary procedure through the executive authorities was then definitely settled in the negative, after an experience dating back to 1799. Nor has summary procedure through the Court been found more satisfactory. I believe the experience of the proceedings under section 530 of the old Procedure Code fully justifies this assertion. The hon'ble gentleman opposite now asks that we should give to the zamíndárs the same summary procedure (that of the Certificate Act) which the Government use in recovering public demands. In the first place, let me point out that under this Act, in Government estates, the Collector is himself the Court, and may be trusted to decide with reasonable fairness between the manager of the estate and the raiyat, and only with his sanction, after hearing objections, can a certificate be executed. What similar security can zamíndárs offer? But I will, in answer to the hon'ble gentleman's demand for this procedure, quote no less an authority than that of Rai Kristodás Pál, Bahádur, himself. When it was proposed to apply this procedure to the recovery of arrears of rent due on estates under the Court of Wards, speaking in the Bengal Council, he said—

'That would be opposed to right principle. Rent-suits sometimes involved questions of right and other complicated matters which were best left to the Civil Courts. It was observable that the certificate of the Collector under this Bill, in respect of this class of cases, would not be absolute but conditional, and that liberty was given to the aggrieved party to apply to the Civil Courts for redress within a year of the making of the certificate. If, then, it was considered necessary that the ultimate remedy should be sought for in the Civil Court, he did not see the necessity of providing for that class of cases the summary procedure of a certificate; it would only lead to additional expense, trouble and harassment, and he considered it much better that the procedure should be simplified, and suits for recovery of rent dealt with by the Civil Court at once, than that the certificate procedure should be first gone through as provided in this Bill, and the same thing should be gone over again in a regular way before the Civil Court.'

"I think the objection is sufficient, and I wish no better justification for our refusal, either to imperil justice by the adoption of a summary procedure without redress, or, by giving the redress of a regular suit, to open the way to 'additional expense, trouble and harassment'. I am grateful to my friend for the plume which wings my shaft. At the same time I must admit that we are bound to provide the speediest and easiest method of recovery that can be

devised, provided it is quite consistent with the security and protection of the raiyats; and, if anyone can devise a more expeditious method, which shall not jeopardize greater and more important objects, I shall be very glad indeed to receive the suggestion. And now, is it the case that we have done nothing to enable zamíndárs to obtain readily a reasonable enhancement of their rents?

"In 1867, again in 1875, and still at the present day, the landlords have complained that, though Act X of 1859 gives them the power to enhance, yet, owing to defects in procedure, they cannot put that power into effective action. So far as enhancement through the Courts on the ground of increased value of produce goes, they say the law is a dead letter. We have to admit that to a great extent this is true. The application of the law requires the Courts to ascertain a series of economic facts, concerning which it is impossible for the landlord to put before them in most cases the requisite evidence. Well, we have made a real endeavour to grapple with this problem. We have provided a scheme by which tables of rates corresponding to the old pargana rates should be fixed by the Revenue authorities, and we have provided for the Civil Courts applying these tables to the individual suits brought before them. In other words, the economic questions which have paralysed their action hitherto will now be solved for them by the Revenue authorities, and all they will have to do will be to apply them, or to decide upon special pleas put forward to show why they should not be applied. But we are told that these tables of rates will be unworkable. I think in some parts of the country it will be found that the existing rates are so multifarious, and depend so little on the quality of the soil or value of nett produce, and so much on other considerations, that the preparation of those tables will be difficult, if not impossible. In other parts of the country, there will be much less difficulty in their preparation. But the scheme is admittedly experimental. I hear that Mr. Finucane finds pargana rates, never changed since the Permanent Settlement, still existing in parts of Jessore, as Mr. Westmacott found them still existing in Dinájpur. Preliminary enquiries are now being conducted by experienced officers under the instruction of His Honour the Lieutenant-Governor, and, when the Select Committee meet in November, we shall be in a better position than we are now to judge of the chances of success. If it succeeds, there cannot be a doubt that the solution of the vexed problem will afford the zamíndárs a far more satisfactory method than they have ever had before, of legally obtaining a fair share of the increased produce, or increased value of the produce, of the soil, and they at least will have little cause to complain. If it fails, we provide another method on which they can fall back, and that is the regular settlement of rents by a revenue-officer, the procedure for which will be found in Chapter XI.

This procedure is not applicable, it is true, to single suits; it only provides for those cases where large numbers of tenants have to be dealt with; but it is these cases that most require to be provided for, and which most lead to disturbance. Here again I may say that we are most anxious to receive criticism and suggestions.

"I feel that, both in this matter and in that of a speedy recovery of arrears really due, the zamíndárs are entitled to ask of us whatever assistance consistent with the interests of justice it is in our power to give them, and it is a matter of regret to me that the inherent difficulties of the problem are so great as to render a thoroughly satisfactory solution of them impossible. I have alluded to various abuses to which the raiyat is liable, but I am not at all insensible to the other side of the question, and I hope that further discussion may enable us to hit on some method of improving on the proposals of the Bill in this respect. I have now said all I have to say in reply to the objections taken to the leading principles of the Bill. I have purposely passed over many objections taken to minor points, and I feel that an apology is due for having, as it it is, trespassed so long on the time and attention of the Council. But there is one subject in connexion with the history of the Bill on which, though it has not been mentioned either in Mr. Ilbert's opening speech, nor in the course of the debate, except cursorily by His Honour the Lieutenant-Governor, I have still a few words to say. It refers to Bihár. Now, though the origin of the Bill, as regards Bengal, was the demand of the zamíndárs for greater facility to collect rents and to enhance;—a demand which, as soon as it was looked into, showed also the necessity of simultaneously securing greater fixity of tenure and limitations to enhancement; in regard to Bihár the genesis of the Bill was different. There the primary object was to secure the tenant in the rights which were fast slipping from his grasp, and the facilities required by the landlords were a secondary object. If we look to the draft Bills forwarded by the Bihár Committee at Bankipore, this difference is very apparent, and I may be asked, what has become of the suggestions of the Bihár Committee? Well, their work was referred to the Rent Commission, which remorselessly eliminated many of their suggestions. They refused to deal with the filing of zamíndárí accounts, to exclude from evidence the loose sheets that now take the place of village-records; they refused to make the interchange of pattás and kabúliyats compulsory, though they partly provided for this by making a decree take the place of a pattá; they refused to insist on counterfoil receipt-books; in other respects, they conceived that the measures proposed for Bengal would suffice for Bihár, except in regard to bhaoli rents, for which they made specific provision. The Government of Bengal, acting on Mr. Reynolds' suggestions,

made specific provision for measuring and recording zarât, and preventing the growth of occupancy-rights therein, and also for preventing raiyati land being further absorbed into zarât. It followed the North-Western Provinces rules as regards appraisement and division of the crop, and allowed commutation of grain into cash rents at the request of the raiyat. It also provided a rule, which the Government of India have tentatively eliminated, for restricting thíkádárs from enhancing, a restriction which can easily be evaded, and finally it vested possession of the crop in the raiyat, so as to make the common restraint and interference with it on the part of the landlord criminal trespass. They also proposed to have a cadastral survey and record-of-rights undertaken experimentally in the Patna Division, and this subject, as we have heard, is now under the Lieutenant-Governor's consideration.

"It will be seen, therefore, that while some of the special sections intended for Bihár have been made general, some of the general sections have been so altered as to be made applicable to Bihár. Thus the provision for measuring and recording the zamíndárs' private lands has been made permissive for the Lieutenant-Governor to introduce into those districts where it appears needful; the maximum limit of produce rents in staple crops has equally been made of general application. On the other hand, the general provisions about making receipts full and complete in themselves has been accepted as sufficient to meet the requirements of Bihár. So also has the principle of allowing distraint only through the Court. This, and the provision for vesting the possession of the crop in bhaoli land in the tenant (which is merely a distinct statement of the existing law, I believe), will do much to remove the special evils of the illegal distraint on crops, which, I am afraid, in spite of what was said yesterday, is still very common in Bihár. I must not detain you longer on this subject.

"What has now to be done is this. The Bill is to be referred to a Select Committee at once, but we do not propose that the Committee should meet till the Council re-assembles in November. In the mean time, there will be ample time for discussion, and we hope, before that time comes, to receive the matured opinion of the Government of Bengal, and its most experienced officers, and of the various associations and individuals interested in the subject. We cannot have too much light. You may have heard of a comparison in which, in the present state of medicine, nature and the disease are likened to two men fighting, and the doctor to a blind man who strikes in with a stick, but whether he helps nature or helps the disease is a matter of accident. Of course such a comparison is most unjust, but I have often thought that, if not applicable to medicine, it was not wholly inapplicable to such legislation as introduced the

twelve years' rule of Act X. At least, we must endeavour to avoid that error; we must get as much light and as much criticism on the Bill as we can. I hope that during the Simla sessions much of this criticism will be digested and considered by the Government, and that, when the Select Committee meet in November, much of the ground will have been cleared, and we shall be able to throw overboard at once any provisions which may be decisively and on good grounds condemned as useless and unworkable.

His Excellency THE PRESIDENT said:—"The full discussion which this question has received, and the able speeches which have been made by those hon'ble members who have addressed the Council, leave me but little to say. And yet I should not like to allow this debate to close without making some observations on the subject, which has engaged the attention of the Council for the last two days. I need say nothing in regard to the history of this question down to the present time. That history has been very fully laid before the Council by my hon'ble and learned friend Mr. Ilbert, by Major Baring and other hon'ble members. And they have shown that the direct intervention of the Government of India has only been called forth at the last stage of these proceedings, after every point connected with the matter has been examined, considered and threshed out by one of the most complete enquiries that any question, I believe, has ever undergone in this or in any other country. As far as the present Government is concerned, they took no official steps in the matter until they received the letter of Sir Ashley Eden in June, 1881. And, indeed, for myself, all I had done in regard to it up to that time was to commence a study of the voluminous literature already accumulated on the subject. When that letter of June, 1881, was received, containing the clearly expressed and matured views of the Government of Bengal, it then became our duty to take up the question, carefully to consider all the information which was supplied to us and to determine the course which we should take. Now it seems to me that it cannot by any possibility be denied that, after the long discussions which have taken place on this subject, extending over many years, over the tenures of office of successive Viceroys and Lieutenant-Governors of Bengal, the time has fully come when it is absolutely necessary in the interest of all parties that a settlement should be arrived at. That some legislation on this subject is required has long been admitted by the zamíndárs, and it was not denied yesterday by my hon'ble friend Mr. Kristodás Pál, in his able speech. Legislation on this subject is necessary. But I strongly hold that you cannot legislate on one part of a question of this kind alone. Various attempts to do so have been made, but I am of opinion that the Select Committee on Sir Ashley Eden's Bill of 1878 were perfectly right when they

came to the conclusion that they were unable to deal with one part of the question, and that no satisfactory solution could be found unless it was taken up as a whole. That decision was approved by the Government of Lord Lytton, and the Rent Commission was issued, and I can only add my testimony to the ability, the zeal, the industry and the intelligence with which the members of that Commission discharged their duty. As has been truly said, we have in this case to deal with very different states of things in different parts of Bengal. In some parts of the Province the raiyats are strong and the landlords are weak; in other parts of the Province there is an opposite state of things, inasmuch as the raiyats are weak and the zamíndárs are strong. And that very diversity of circumstance of itself seems to show that if you are to treat on this subject, you must deal with it for Bengal as a whole. You must look to the interests of both zamíndárs and raiyats; you must consider what is the position of the landholders, and what is the position of the tenantry. You are bound to consider broadly and generally the interests of both parties to this great controversy. But then the preliminary objection is often taken that, on a wide view of this question, the Government and the legislature have no right to interfere between the zamíndárs and the raiyats in Bengal. Now, I was much struck by the line which was adopted by my hon'ble friend Mr. Kristodás Pál in regard to this branch of the question. He did not urge directly that the Government (and by the Government I mean both the Executive Government and the legislature—the Government in its largest sense) is not entitled, in consequence of the Permanent Settlement, to deal with the question at all. He approached very nearly at times, in his speech, to that assertion, but I observed that he never actually made it, and I was not surprised that one so skilful as he is, and so practised a debater, should have steered clear of that assertion. He knows the question well, and he must feel the force of the arguments which can be, and which have, in the course of this discussion, been ably urged to show that the claim which has been set up by and on behalf of the zamíndárs, to the effect that the legislature and the Government are debarred by the agreement of 1793 from interfering on behalf of the cultivators of the soil, is not tenable. The clause of the Permanent Settlement which bears on this subject has been read to this Council more than once in the course of this discussion, but, nevertheless, I must read it again, because it is of the greatest importance that in a matter in which there is even an insinuation that a question of good faith is involved, there should be no mistake whatever. These are the words which have already been quoted in this Council, and which it is essential that this Council, in dealing with this question, should bear in mind—

'It being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most 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 taluqdárs, raiyats and other cultivators of the soil, and 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.'

"Now, as it seems to me, nothing can be clearer or more precise than that language. In those days, in many public documents, clearness and precision of language was frequently wanting; but I do not think that the most able draftsman in the world could easily have devised language which is more perfect and more absolutely clear than that which is contained in this passage. And it appears to me that that passage dispels at once all idea that the Permanent Settlement prevents the Government from coming to the assistance of the tenants. I hold, on the contrary, that it shows that the Government, in 1793, gave to the raiyats and all the cultivators of Bengal a distinct and binding assurance that they should look to them for protection and for the promotion of their welfare. It appears to me that under these words the Government gave a distinct pledge that they would protect the raiyats and promote their welfare. My hon'ble friend Mr. Kristodás Pál said, in the course of his speech yesterday, that he regarded the Permanent Settlement as the charter of the landlords and tenants in Bengal. I am willing to accept that statement; but if it is so, it is a charter given by the Government to the landholders on the one hand, and to the tenants on the other. Now let us for a moment look at the mode in which the engagements of that so-called charter have been fulfilled. From the moment when it was promulgated, the zamíndárs and other landholders of Bengal, as a class, obtained substantial benefits, which have subsequently been growing in value and importance from year to year; while, on the other hand, the cultivator of the soil received nothing but an assurance which, for long years of gradual depression, through what His Honour the Lieutenant-Governor of Bengal called to-day the culpable negligence of the Government, has been permitted to be wholly barren. Act X of 1859 was an honest attempt to give effect to that assurance. It was an attempt wholly unjustifiable, if the contention that the Government is precluded from interfering between landlord and tenant is a sound contention. But it is obviously clear that the Government and the legislature who passed Act X of 1859 did not for one moment admit any contention of the kind. That Act has undoubtedly done good, and I am not in the least inclined to decry it; still less am I inclined to think lightly of the purpose and intention of those who framed and passed it. But that Act has failed to fulfil all the objects for which it was introduced, because its authors did not foresee the mode in which their intentions might be set aside and rendered nugatory. I have heard it stated that the late Mr. O'Connell is reported to have said that

he could drive a coach-and-six through any Act of Parliament. Whether he could perform that feat or not I cannot say; but I will say this, that a coach-and-six has been driven, at all events, through the intentions of the Act of 1859, and that measures have been devised for evading what I cannot doubt to have been the object with which that Act was passed.

"But it has been suggested that we have no right to touch this question; because the zamíndárs have been called proprietors and owners of the soil, it has been contended that it follows necessarily that they have a full and absolute right in the property, and that no one else has any interest in the soil at all. On the meaning of the words 'proprietors and owners', this question very largely depends. My hon'ble friend Mr. Kristodás Pál, and still more Rájá Siva Parsád, if I followed him, appeared to contend that no man could be called a proprietor who had not the most absolute and complete right to do in every respect whatever he pleased with the land. That certainly is not the notion which we entertain of an owner or proprietor of land in England. A great deal has been said about the zamíndárs having been made proprietors after the English fashion. If that is so then I must point out that the vast majority of land in England is held by people who are owners in only a limited sense, who cannot sell or mortgage the land without the sanction of somebody else, and who very often cannot sell or mortgage at all. And it is quite a mistake to suppose that, because a man who has a limited interest in land is called a proprietor and owner, therefore he becomes an absolute proprietor and owner, and is given an absolute fee-simple right to the land to do what he likes with it. So far as I am able to judge by all the evidence which I have seen on this complicated and much contested question of land-tenures in India, I am led irresistably to the conclusion that there never has been in India an absolute owner of the soil in whom every possible kind of right of property is vested. It appears to me indisputable that the raiyats and cultivators of the soil have always had, or at least a great proportion of them have always had, rights in the soil more or less perfectly secured to them according to the circumstances of the time and the position of the parties, that rights of this description have been at all times recognised, and that they have never been abandoned by those who believed that they possessed them. And it must be remembered that, if it be true that ninety per cent. of the tenants in Bengal are occupancy-tenants now, or, to take the lower estimate which I have seen put forward upon good authority, that seventy per cent. only of them are now occupancy tenants, it is perfectly clear, at least as regards nine-tenths or seven-tenths of the landlords of Bengal, that they are not absolute owners in the sense in which the words have been used by the opponents of the Bill in the course of this discussion. And, as I have spoken of the position of the zamíndárs, I

should like, in passing, to say that no man can recognise more fully than I do the truth of what was stated by the Mahárájá of Darbhangá yesterday, whose presence in Council, I am sure, we all welcome, when he said, in modest terms, that the landholders of Bengal were not all bad landlords; I have not the slightest intention of asserting that they are, and if you want any proof to the contrary, you will find it in the facts brought forward by the Lieutenant-Governor of Bengal in regard to the estates of the Mahárájá of Dumraon.

"It is not a question of the personal character of individual zamíndárs, but it is a question of what are the rights of two parties—both having some rights in the land—the stronger of these two parties, the zamíndárs, in many instances, resisting the rights of the other, who, on account of their weakness, are entitled to receive protection from the Government. Now the Hon'ble Kristodás Pál, in speaking on the Bill, described it as a measure which involved the redistribution of property. I confess it seems to me that, looking at the past history of this matter, looking at the gradual lessening of the rights of the raiyats since the Permanent Settlement, looking at the extent to which their position has, from a great variety of circumstances, been weakened since that date, and at the manner in which they have lost rights, which, to my mind, it is clear that they originally possessed, it would be much more true to say that this Bill is a Bill for the restoration, rather than for the redistribution, of property. But it does not go so far; we do not propose to restore to any portion of the cultivators of the soil the position in which they would now stand, if the system which was in force at the time of the Permanent Settlement had been unaltered down to the present time. What this Bill does is to leave the landlord, broadly speaking, all the advantages which he has acquired during these ninety years. It leaves him the rent which he now receives. All it says to him is 'Your power of enhancement and eviction shall be, to a limited degree, brought back in the future to the position in which it stood ninety years ago'. To my mind, then, so far as regards any question of right, we have to-day a most plain right—a right which was asserted and exercised in 1859—to deal with this question, if we consider it necessary, for the purpose of protecting the interests and promoting the welfare of the cultivators of the soil. And we propose to take steps for that purpose which will fall very far short of restoring the cultivators of the soil to the position in which they originally stood. To attain this end, so far as can now be done, is the principle and the main object of the Bill which we are now considering. I will now pass, therefore, from the point which is really the only point under discussion at this stage, namely the principle of the Bill, and I will consider, as briefly as I can, some of its leading provisions more in detail.

"And, first, with regard to the question of occupancy raiyats. All that this Bill will really do, will be to render more effectual what was the true object and intention of Act X of 1859. As I have said, I do not believe that the framers of that Bill anticipated the mode in which the proposal which they then made would be evaded, and I feel no doubt whatever that, if they were here to-day to speak, they would accept, upon this point at all events, the legislation which we are now proposing as the most effectual means of carrying out their original intention. I was very much struck yesterday by a reference which was made by my hon'ble friend Mr. Evans to a letter, which I think he said he had seen in a newspaper, from a Bengal zamíndár, in which the writer said that he recognised that the great body of the raiyats had a moral right of occupancy in their holdings. The law cannot deal with a purely moral right; but the moment you get so far as to say that a man has a moral right to an occupancy tenure, you are very near the day when the legislature will say 'We will convert that moral right into a legal one'; and that is all we propose to do here now. It is admitted, upon all hands, that Act X of 1859 was intended to preserve all customary rights, and the twelve years' rule was introduced for the purpose of giving rights over and above those which existed under the customary rules. In fact, the twelve years' rule was not intended, whatever may have been its practical effect, to exclude from the right of occupancy any *khudkásht* raiyats, or, as they were called 'resident' raiyats, but, on the contrary, to bring within the benefits of that right certain other tenants, not resident raiyats, who, under the original definition of the Bill, would have to be excluded. Unfortunately, as I have said before, this Act has been so worked, that what was meant to give additional security has had the contrary effect, and has deprived many resident raiyats of what would have otherwise been their clear rights. Now, for my own part I confess that, in considering this question, I cannot altogether divest myself of the fear that, so long as you have a fixed limit of time at the expiration of which the raiyat will obtain a right of occupancy, there will be more or less danger of a continuance of the proceedings which have been resorted to under Act X of 1859. My own view on this subject has been very ably stated by Mr. Justice Cunningham in his Minute on the Rent Bill. Mr. Cunningham says:—

'But this happy state of things becomes impossible when the legislature enacts that, at the end of a stated period, the tenant shall change his status, and the landlord lose a considerable portion of his rights. The two parties are throughout necessarily at arms length, and, as soon as the period approaches, the landlord naturally does something to prevent the accrual of the prescriptive right, and is always on the look-out to prevent the growth of occupancy-rights, and to destroy them where they now accrued.'

"That was the reason, the desire to avoid that source of differences and possibilities of contention, which led me, in common with my colleagues, to submit to the Secretary of State the proposal which is contained in our despatch of March last. Lord Hartington did not approve of our proposal on that point, and preferred that the Bill should be framed in the manner in which it has been drawn up and is now before the Council. I certainly do not doubt that the Bill in this shape will have a very beneficial effect. I am not at all sure that it may not, in the first instance, go nearly as far as the proposal which we made; and all I have to say on the subject is, that it will be the duty of the Government very carefully to watch the proceedings taken under this Bill, if it becomes law, in order to see that the process of shifting raiyats from village to village, from field to field, does not spring up under this measure; and to stop what will be any clear and distinct evasion of the intention of this law.

"Now, passing from the subject of occupancy-rights, I have a few words to say on those provisions of the Bill which render void any contracts inconsistent with the general scheme of the measure. When you have to deal with a matter in which the practice of contracting out of the law (legally contracting, I admit) has been very largely resorted to, so as to show that those who have the power have not the inclination to conform to the obvious intentions of the legislature, it becomes a very serious question, at all times and in all countries, to what extent the legislature should allow their intentions to be overridden by an arrangement between two parties who stand towards each other in such very different relations in point of strength and position as the raiyat and the zamíndár. I will give you an instance drawn from my own experience. Some years ago, an Act of Parliament was passed in England, on the subject of giving compensation for improvements to English tenants. It was wholly a permissive Act; it showed clearly the mind of the legislature, but it was left to the parties, or really to one of the parties concerned,—the landlord,—to decide whether he would be bound by the Bill or not. The majority of English landlords, the majority even of those who supported the Bill, proceeded at once to render it inoperative, and it had very little practical effect; so little that I was one of the very few people who did act under it. And what was very much like some of the proceedings complained of in some Government departments here, the Government themselves, under their own Bill, gave notice to all their tenants that they would have nothing whatever to say to the Bill. What has been the consequence? why, at the present moment Parliament is about to take up this question again, and to pass a Bill which will make it compulsory upon both parties to enter upon these arrangements, and will prevent them from contracting themselves out of them. The

general principle of making the Bill compulsory on both parties is pretty well agreed upon on both sides of the House of Commons. The case here is very similar. We have parties contracting out of the provisions of the law, and if that law is to have any effect at all the only process by which it can be made effectual is to say to these parties, 'You shall not be permitted to contract yourselves out of the law'. Surely it is high time to do so when we find men contracting themselves out of this and many other laws which impose cesses upon landlords, and which forbid the imposition of illegal cesses upon tenants, such as *abwábs* and other forms of illegal taxation. Upon this point I can only say that we are acting upon principles generally recognized in cases where the legislature finds itself in the position of having no alternative except to make the provisions of the law imperative upon the two contracting parties; for it is useless to pass this or any other measure unless it is determined that its provisions shall be enforced, and that the parties shall not have the power of escaping from them.

"Something has been said about the conduct of Government officials in Court of Wards" estates and in other estates. His Honour the Lieutenant-Governor has told you to-day of the orders which have been recently issued on that subject, and I can only say that these orders are entirely approved of by the Government of India, and that we have taken steps of a similar kind in regard to the other parts of India.

"Now, with respect to the question of transferability. The evidence appears to me, I confess, to be overwhelming, that in the greater part of Bengal the practice of transfer exists under a custom which the Courts have recognised. The Government of Bengal in one of the papers—I think it is the letter of Sir Ashley Eden—says 'that the weight of opinion received is in favour of recognising in the law what is an almost universal custom of the province,' that is the custom of transfer. If it is an almost universal custom in the Province it is only right that it should be recognised, and it appears to me that it is in the interests of the zamíndárs that it should be recognised in the mode in which we propose to recognise it; because where this custom exists now the landlord can put in no claim for pre-emption. If we are going to reduce the right of anybody in regard to transfers, we are going, practically, to limit the right of the tenant, and not of the landlord, by giving the latter a power to come in and say: 'I claim to buy what you want to transfer,' and at a price to be settled by a Court instead of at the highest price which the tenant would otherwise obtain. There is a great deal to be said against giving the landlord this power, on the ground that the Court might adjudicate a price very much below the price which the tenant could get under the existing custom.

"The Hon'ble Kristodás Pál seems to think that the result of these provisions will be to force both parties into Court; but they may agree out of Court if they like. Would my hon'ble friend prefer that the landlord should be obliged to give whatever any other person offered the tenant for the holding? That is an amendment which may be considered in Committee, but it would not, in my judgment, be in favour of the landlord. It appears to me, I must say, that it would not be fair to the landlord to proceed in that way, because it would be very easy for the tenant to have a collusive sale and to get some friend to come forward and pretend that he was willing to buy at a very high price his occupancy-tenure, and thus to make it almost impossible for the landlord to exercise his right of pre-emption; and besides this, I am told that it happens in many parts of the country, that neighbours who are not on good terms with a zamíndár are often ready to pay a fancy price in order to annoy the landlord. This, I think, ought to be prevented, even at some risk of diminishing the rights which exist in many parts of the country under the custom of the present day, and we ought, therefore, to give the landlord the right of pre-emption at a rate to be fixed by the Court. If it is true that the system of transfer, as the Bengal Government has stated, is an almost universal custom of the Province, this provision is rather in favour of the zamíndár than otherwise, and I observe that the Mahárájá of Darbhangá was inclined to take that view.

"Passing from that point, I come to the question of enhancement. Now, the position of the law with regard to enhancements is this. The Hon'ble Kristodás Pál has told us that enhancements are now practically at an end, and it is, I believe, generally admitted that, under the law as it stands at present, it is extremely difficult for a landlord to get even a just and reasonable enhancement. Notwithstanding that absolute right of property which we hear so much about, the landlord cannot now enhance, except under certain conditions laid down in the Courts. The practical effect of our proposal would be, I believe, to make just and reasonable enhancements more easy and not more difficult to obtain than at present; and I know very well that many persons who feel very strongly on the subject take objection to the Bill as now framed, because they think that it will have the effect of rendering it practically easier to enhance than at present. At the same time we do take, and deliberately intend to take, ample provision against unfair and unjust enhancement, against rack-renting and against depriving the tenant of his fair share of the produce. That we deliberately intend to do; but we are ready to render it easier than at present for the landlord to secure such enhancement as the law declares to be right. I won't detain the Council now with any

remarks upon the subject of the tables of rates. The Hon'ble Kristodás Pál seemed to deprecate that part of the Bill. It will, no doubt, receive the careful attention of the Select Committee, and by the time the Select Committee meets we shall have a great deal of practical evidence upon it, and it will then be for the Select Committee to consider how far the principle can be applied. I think the principle would be useful, but it is not essential to the system of the Bill. It may be applied to one part of the country and not to another. I said just now that we did not intend to permit the rents of these occupancy tenants to be unduly enhanced, and that is why we have fixed a maximum. The question of the amount of that maximum is undoubtedly an important one, requiring the consideration of the Select Committee. The difference between twenty and twenty-five per cent. is not very great; and the Lieutenant-Governor has before him evidence which shows that twenty per cent. is as far as we ought to go.

I come now to what the Bill calls the ordinary raiyat. We have thought it right to give a man in that position a certain amount of security, a very much less amount of security than is given to the occupancy tenant, but still some degree of security, and we propose to give it in two ways: first, by fixing a maximum similar to, but higher than, that fixed for occupancy tenants; and, secondly, by providing compensation for him in certain ways. I must say that I have found it by no means easy to get a clear idea of what is the position of these tenants at present. Mr. Field, in his Digest, that very able work for which we owe him so many thanks, and of the accuracy of which we have so many proofs,—lays it down, in the 51st article ——

'The rent of a raiyat not having a right of occupancy can be enhanced only after service upon him of a notice of enhancement in the manner provided by article 45. If after such a notice has been served upon him, such raiyat elect to remain in possession of the land he cannot be compelled to pay more than a reasonable rent therefor.'

"Well, reading that, you would suppose that the intention was that this tenant should have the right to sit on the land at a reasonable rent; but on the other hand the landlord has power to give him notice to quit, and if he does the tenant has to go; so, while it would appear that the law recognises, to a certain extent, the right of the tenant-at-will to sit on the land at a reasonable rent, it gives him no practical means of securing that right. I am not inclined to put this man in a worse position than he is in now, or than the law intends him to be in, and it appears to me, therefore, that it is quite impossible for us to overlook his position and leave him altogether under the operation of a law which,

as far as I can understand, is very vague and uncertain. The tenant in this position is regarded and spoken of as a tenant-at-will, and I believe the Courts regard him in that light; but at the same time I am, I think, right in saying that the idea of a tenant-at-will is a purely English idea, and that, according to indigenous Indian ideas, no person can strictly be described as a tenant-at-will. Now, with regard to compensation, we propose to give him compensation of two kinds—compensation for improvements and compensation for disturbance. As to compensation for improvements I have little to say; because if a tenant makes *bonâ fide* improvements which add to the letting value of the land, and, therefore, enables the landlord to obtain more money for that land, then I say here, as I have always held at home in regard to my own tenants, that it is only common honesty that that man should be compensated for those improvements. It is, of course, necessary that the improvement should be a *bonâ fide* substantial improvement, and not anything of a purely temporary character, or which forms part of the ordinary processes of good husbandry. I am told that there are banks made between one field and another, and *kacha* wells which are made one year and renewed the next; but these are not permanent improvements, and it will be for the Select Committee to decide for what improvements compensation should be paid. All that I say is, that when a man leaves my land he is entitled to be paid for anything he has done from which, when he leaves, I shall reap benefit. As regards compensation for disturbance the main objection urged against it is that it is unknown in India. I do not deny that that is a *primâ facie* objection to the system, and if those who do not like it will produce before the Select Committee any better proposal that gives fair and reasonable protection against arbitrary evictions, all that I can say is that we shall be perfectly willing to consider it, and that if it is better than our plan, and more in accordance with Indian customs, we shall accept it. But I must say that the argument that it is a system unknown in India does not lie altogether in the mouth of those who have been arguing in the course of this discussion in favour of the theory that the land-owners of Bengal are land-owners after the English fashion, and that the tenants in Bengal are tenants-at-will according to the English meaning of the term. You cannot introduce English arguments into one part of this controversy, and then object to their importation into another part; if any other plan can be suggested more in accordance with the habits of the people than that proposed it will be fully considered. But I am most desirous that something should be done for this class of men which will render real the security which the law appears at present to contemplate. The Hon'ble Kristodás Pál appeared to think, if I did not misunderstand him, that the class of persons to whom I am now alluding were in the same position as the *paikásht* raiyats. It seems

to me that the position of the two is very different. What I understand by a *paikásht* raiyat is a raiyat who had less security and, therefore, paid less rent. Now, the position of these tenants is that they have less security and pay more rent. That has come about through the operation of those economic laws to which the Hon'ble Mr. Hunter alluded yesterday. When the *paikásht* raiyat paid less rent the land was looking for tenants, now the tenants are looking for land, and that is why, instead of paying less rent, they have to pay more. But that only brings them more and more into the category of cottier tenants, and any one who has studied the land question in any part of the world knows that a system of cottier tenants holding at competition rents is the worst land system that can be conceived. The Select Committee should bear in mind how desirable it is that we should not permit, under this Bill, a future up-growth of tenants of this description; that is one of the points which the Select Committee should keep carefully before them. These men may be few in number now, but, as Sir Steuart Bayley said, there are reasons why under this Bill they may increase, and, if they increase largely, the result will be that this Bill will not prove a settlement, but that thirty or forty years hence we shall have to go further still. I do not think I need trouble the Council with any further remarks on the details of this Bill. All the matters which are really matters of detail are matters for the Select Committee. The Government invites the assistance of the Council, of the Select Committee, of the parties interested, of their representative associations, and of the public, in regard to this measure. They will on their part give their fullest and best consideration to any suggestions which may be made. We are about to give eight months for the consideration of this important subject, which is ample time, considering how long the matter has been under consideration. I have no doubt at all that the Bill is capable of improvement in many respects, and our only wish is that it should be made, during its passage through this Council, as good as possible for the purpose for which it is intended. I hope that all those who are interested in the matter, and who have studied it, will aid the Government and this Council by giving them their opinions during the time which will elapse before we resume the consideration of the Bill. I have only further to say that the desire of the Government in introducing this measure is to bring to a close a long continued controversy, to carry on and to complete the work of 1859, and to redeem, as far as it is still open to them, the assurance given to the cultivators of the soil in 1793. All the changes which have taken place in the agricultural condition of Bengal—the great increase in the area of cultivation, the growth of the population, the substitution of English for Native ideas on the subject of landed property, the advancing prosperity of the country—have tended to raise the

rents of the landlord, and many of them to weaken the security and reduce the status of the raiyat. All these advantages gained during the last ninety years will remain to the zamíndárs; broadly speaking we do not touch them, but, starting from what we now find, we have endeavoured to make a settlement which, while it will not deprive the landlords of any of these accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement, and which we believe to be urgently needed, in the words of that settlement, for the protection and welfare of the taluqdárs, raiyats and other cultivators of the soil, whose interests we then undertook to guard, and have, to our shame, too long neglected."

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA;
*The 13th March, 1883.*

D. FITZPATRICK,
*Secretary to the Government of India,*
*Legislative Department.*

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