Wednesday,
4th March, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

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Council of the Governor General of India,

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

The Council met at Government House on Wednesday, the 4th March, 1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*
His Honour the Lieutenant-Governor of Bengal, K.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.
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 T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D.,C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanatha Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble the MAHÁRÁJÁ OF DURBUNGHA said :—"The Council will perhaps permit me to make one or two general observations upon the amendments which stand in my name. I have determined to withdraw a very considerable number, because I am unwilling to take up the time of the Council in urging amendments which I see from the course that the debate has taken would have very little chance of being accepted. The remaining amendments are, I think,

reasonable ones, and such as I may fairly hope this Council to accept. The Bill, as Your Lordship is aware, has made very serious inroads on the rights and privileges of the zamíndárs. A very general but most erroneous impression prevails that the Select Committee have made great concessions to the zamíndárs. The zamíndárs are certainly indebted to the Select Committee for resisting certain novel proposals, which, as the hon'ble member in charge of the Bill has told us, were urged with all the authority and ability of the Government of Bengal. But it is difficult to understand how the successful resistance of these proposals can be considered as concessions to the zamíndárs. There is hardly a clause of the Bill which does not change the law to their disfavour. Now the object of my amendments is not to ask for concessions to the zamíndárs, but to maintain the existing law as it stands at present. Those who advocate change are bound to show the necessity of the proposed innovation. Where serious alterations have been made in the existing law, and where these alterations could only be carried in the Select Committee by a narrow majority, this Council ought, I conceive, to reject such alterations, unless their necessity is clearly and conclusively shown. I hope therefore that the Council will give to me a fair and impartial consideration, and that, as moderate men, you will vote for the maintenance of the existing law, unless you are satisfied of the absolute necessity for innovation."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA then by leave withdrew the following amendments :—

That in line 1 of section 1, clause (2), of the Bill, after the words "on such date" the words and figures "after June, 1885" be added.

That in line 5 of clause (3) of the same section, for the words "Town of Calcutta" the words "limits of any Municipality" be substituted.

That in the same clause, after the words "the Division of Orissa" the words "the Division of Bhagulpore" be added.

That in the same clause the words "the Division of Chittagong" be added.

That in the same clause the words "the Division of Dacca" be added.

That in the same clause the words "the Division of Rajshahye" be added.

That in the same clause the words "the Presidency Division" be added.

That in lines 8 to 12 of the same clause the words "and the Local Government" to the end be omitted.

That to the same clause the following proviso be added:—

"Provided that, in case the greater portion of an estate is situated in a tract to which this Act does not apply, the whole of such an estate will be deemed for the purposes of this Act to be included within such excluded tract."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that to clause (3), section 1, the following further proviso be added:— "Provided that this Act shall apply only to land which is the subject of agricultural or horticultural cultivation, or is used for purposes incidental thereto." He said:—

"MY LORD,—The entire justification for this measure of legislation, it may be granted, has been the supposed necessity of strengthening the position of the cultivator. The Act now in force, Act VIII of 1869 (B. C.), and its predecessor, Act X of 1859, which we now seek to supersede, did only apply to land which was the subject of agricultural or horticultural cultivation, or was used for purposes incidental thereto. If hon'ble members will turn to Bábú Jogendra Nath Maulik's edition of Act VIII of 1869 (B. C.), they will find the following proposition established by the decisions of the High Court, namely, that Act X was not intended to apply to any land except land of which the main object was cultivation; that the occupation intended to be protected thereby was occupation of land considered as the subject of agricultural or horticultural cultivation and used for purposes incidental thereto, such as for the site of the homestead, the raiyat or *mali's* dwelling-house. It did not include occupation, the main object of which was the dwelling-house itself, and where the cultivation of the soil, if any there were, was entirely subordinate to that; that lands leased for the purpose of building a house or a church were not the subject of the legislation of the Act of 1859, and therefore no right of occupancy could be acquired thereunder in such holdings; that no right of occupancy could be acquired in a *julkur* by a tenant in possession for a series of years; that the provisions of that law did not apply to a tank used only for the preservation and rearing of fish; that a right of occupancy was not acquired in a tank when a tank was the principal subject of the lease, and only so much land passed with the tank as was necessary for it, namely, for the banks; but where the land was let for cultivation, and there was a tank upon it, the tank would go with the land, and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant

thereto. I submit, my Lord, that my amendment fairly summarises the result of all these decisions, and should therefore be accepted as a re-enactment of the present law. In the Digest, Mr. Field attained the same goal by the following definition of the term 'land':—

'Land, when applied to land cultivated or held by a raiyat, means land used or to be used for agricultural or horticultural purposes. *Explanation.*—*Bastu*, or homestead land, is land used for agricultural purposes when it is occupied by a raiyat if the rent of such *bastu* land is payable to the same landlord under whom such raiyat holds his cultivated land.'

"It is true, as has been observed by the Hon'ble Law Member, that the chapter treating of leases in the Transfer of Property Act of 1882 applies to all leases excepting leases for agricultural purposes, but the language of the 117th section of that Act is very peculiar:—

'None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may, by notification published in the local official *Gazette*, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force. Such notification shall not take effect until after the expiry of six months from the date of its publication.'

"My Lord, I am unwilling to allow a matter of such importance to be at the mercy of notifications in the Gazette, and I would, therefore, ask this Hon'ble Council to re-enact the provisions of the present law. I had already, in suggesting a previous amendment, gone some way into the question. To a certain extent they overlay each other. The previous amendment which I had intended to move was to save all lands within the municipal limit from the operation of this Act, irrespective of the object of the occupation. The object of the present amendment is to exclude all land in non-agricultural occupation, wherever situate, from the operation of this law. In the majority of instances the result would be the same, for the principal object of holding within municipal limits is not agriculture or horticulture, and similarly, on the other hand, in the open country the majority of holdings are agricultural. But in either case the change would be a fair recognition of a part of the existing law in favour of landlords, which I do not think has been the object of serious complaint, which professedly is outside the scope of the present legislation, and to which the principal reasons assigned in favour of this legislation are wholly inapplicable. I am glad to find that this was a subject which drew the attention of our hon'ble Colleague, Mr. Goodrich, in the course of the debate upon the motion of the hon'ble member in charge to take this Bill into

consideration ; and I have no doubt that on a little reflection this amendment will commend itself to the approval of your Lordship and of the other members of this Hon'ble Council. We are legislating now, be it remembered, for the cultivators of the soil, and not for the labourers of towns, who have no interest in land, and by the custom of the country as much as by the laws of political economy the owner of land in the midst of urban populations, as well as the proprietor of land used for non-agricultural purposes, had made what terms he chose with the occupants under him without at all entailing those risks of administrative difficulty which we are told justify this new departure from the ancient custom and land law of the country passing by the name of the Bengal Tenancy Bill."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I beg to support the amendment which has been just made. I think that it is in the interest of the whole country that a law which is intended to simplify and regulate the relations between landlords and tenants should be confined solely to lands which are held for agricultural or horticultural purposes. The Council will be pleased to observe that both Acts X of 1859 and VIII of 1869 extended to the whole of the territories under the Lieutenant-Governor of Bengal, and yet nevertheless the High Court has repeatedly held, both in Full Bench and in Divisional Benches, that neither of these laws extend to municipalities. That being so, I submit it is very desirable that the proposed law should not concern itself with lands which are held simply for dwelling-houses, or for purposes of manufactories, hâts or markets, and not for agricultural and horticultural purposes."

The Hon'ble MR. REYNOLDS said :—"I cannot support the amendment, because it seems to me to go much further than is justified by the existing law or the facts of the case, and because I think that if it is carried it will have the result of nullifying, in a great measure, the Bill now before the Council. The question of the use of land for agricultural or horticultural purposes was discussed with much learning by Mr. Justice Field in his note appended to the Report of the Rent Law Commission, dated 29th December 1879, and the Commission which discussed the matter were very guarded in the language they used. They said in paragraph 11 of their Report that 'certain portions of Act X have been construed to apply only to lands used for agricultural or horticultural purposes. Whether the remaining portions are limited in their application is a broad question which has never been settled.' And they went on to say that 'it has never been doubted that the rents of tenures are recover-

able under these Acts (X of 1859 and VIII of 1869), and these commonly include much more than land used for agricultural purposes.' And consequently the Rent Law Commission in their draft Bill introduced a special definition of 'land' which they extended to certain portions of the Bill, with reference to land other than agricultural or horticultural. It has been said that there are certain decisions of the High Court showing that Act X of 1859 did not apply to non-agricultural lands. With reference to this, it must be remembered that Act X of 1859 was not substantive law, but merely a Procedure Act. But there is a further objection which goes to the root of the question, and that is, that if the amendment were carried it would have the effect of excluding from the operation of the Bill not merely all waste lands, but all lands not actually under cultivation at the time the question might be raised. It would leave it open to a landlord to contend that a raiyat's right of occupancy did not extend to those lands of his holding which were not actually under cultivation at the time. It is, in my opinion, better for the Council to leave the question to be decided by the Courts."

The Hon'ble MR. AMÍR ALÍ said:—"I would have been inclined to support the amendment if it had been differently worded, but, as has been pointed out by the Hon'ble Mr. Reynolds, if the amendment is carried it will exclude from the operation of the Act such lands as are used for the time being for grazing or pasturing purposes, and waste lands let to a raiyat with other lands for purposes of cultivation. Of course, I perfectly understand the reason which induced the Hon'ble the Maháráját of Durbhunga, and the Hon'ble Bábú Peári Mohan Mukerji, to endeavour to exclude from the operation of the Bill such lands as were used for manufactories and building purposes. By allowing the section, however, to remain as it is, we avoid greater risks than those the amendment proposes to cover. If any difficulty arises in its practical application, the question will have to be viewed on the broad basis of expediency. I think the amendment will give rise to difficulties unless the wording is sufficiently widened to include other lands besides those used for agricultural and horticultural purposes."

The Hon'ble SIR STUART BAYLEY said:—"The Council has to deal with this amendment as it stands. The Hon'ble Mr. Reynolds has pointed out that it will have the effect of limiting the raiyat's right of occupancy, as he would thereby lose the right as to all waste lands and lands not used for agricultural and horticultural purposes. I may point out also that the effect would be to remove from the scope of the Bill, which deals with tenures

generally, all such parts of a tenure as may be used momentarily for other purposes than agriculture or horticulture. It is much safer to trust to the Courts to apply the law to these cases. I therefore entirely support the Hon'ble Mr. Reynolds' objection."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments:—

That for clause (7) of section 3 of the Bill the following be substituted:—

"'Tenure' means the interest of a person holding immediately or mediately under a proprietor and above a raiyat."

That, in line 2 of clause (16) of the same section, after the words "any other officer" the words "of not less than ten years' standing" be added.

That in line 2 of clause (17) of the same section, after the words "any officer" the words "of not less than ten years' standing" be added.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section (5) of section 5 be omitted. He said:—

"The sub-section runs thus:—

'Where the area held by a tenant exceeds 100 standard bíghás, the tenant shall be presumed to be a tenure-holder until the contrary is shown.'

"Hon'ble members are aware that the practice of exchanging written engagements between the tenant and his landlord did not heretofore obtain in these provinces to a large extent. The result of the presumption would, therefore, be in most cases to convert raiyats holding more than 100 bíghás of land into tenure-holders. By the operation of the rules of succession the country would soon be presented with the spectacle of tenure-holders possessing only 15 or 20 bíghás of land, and following their own ploughs in the fields. But other and more serious consequences would also follow such a conversion. Before the question, whether a man is a raiyat or tenure-holder, is judicially determined, the status and rights of his sub-raiyats would remain in great uncertainty, and the Courts would find the greatest difficulty in determining what provisions of the law would apply to cases of ejectment or enhancement of rent instituted by him; whether, for instance, his sub-raiyats should be treated simply as sub-raiyats or as occupancy-raiyats. In every such suit the Court must bring in the zamíndár as a party, and decide the prelimi-

nary question before it can proceed with the actual merits of the case. Great difficulty would also arise in determining the rights of parties. When a zamíndár wishes to make an improvement which embraces the lands of such a raiyat along with the lands of other raiyats, would the tenure-holder *in posse* be entitled to claim to make the improvement himself? The Bill provides for no such case. The same complications will arise when such a raiyat wants to establish a mart or make manufactories on his land. Viewed in whatever light, it is clear that this rule of presumption would lead to enormous litigation."

The Hon'ble SIR STEUART BAYLEY said:—"I must point out to the Council that the effect of the presumption has been greatly misapprehended by the last speaker. It is not the case that its effect would be to convert raiyats holding more than 100 bíghás into tenure-holders. Apparently what he objects to really is not the presumption but the attempt to assist the Courts in deciding whether a man is a tenure-holder or a raiyat at all. The question at issue in the first instance is whether a man is a raiyat or a tenure-holder: well, all that he said about the landlord being dragged into Court depends upon the uncertainty the Court would feel as to whether a man is a tenure-holder or a raiyat. If you cut out this presumption the uncertainty remains; the landlord would be just as much dragged into Court as before. Consequently the retention of this presumption would make no difference, so far as the necessity of the landlord being a party to the suit was concerned. There was, however, a real reason for the presumption, and it was this. The question has constantly to be decided both by Courts and by Settlement-officers whether a man is a raiyat or a tenure-holder. Now, we do not absolutely define a tenure-holder, but we describe him as a person primarily who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it, and we describe a raiyat as primarily a person who has acquired a right to hold land for the purpose of cultivating it himself. The first thing then which the Court has to do is to ascertain whether a man is a tenure-holder or a raiyat. If the land was given for the purpose of collecting rents, then he is a tenure-holder. We tell the Courts the first thing they are to look to is local custom, but local custom may not always be sufficient to guide them, and then they have to ascertain what was the original object of the tenancy. There is still some difficulty, and it is one which experienced officers tell us it is essential the Courts should be able to decide. Well, in that case we fall back on the arbitrary presumption derived from the area of the holding. It will, I suppose, be admitted

that in nine cases out of ten, where a man takes 100 bighás of land, he cultivates it through others, and only cultivates a small portion of it directly. The general consensus of opinion is that the standard is more than fair. Having thus explained how the presumption will work, I would ask the Council to consider how far it is reasonable to say that it would convert every raiyat into a tenure-holder. It will do nothing of the kind. It will in cases of real doubt give the Courts that assistance of a presumption which has already been decided by the High Court to be in principle a presumption by which the Courts should be guided. It will not really go beyond this. Then there is a point made in the dissent of the Hon'ble Mr. Gibbon that we ought to include sub-letting in the presumption. The difficulty is this, that if a man sublets only one or two bighás of land out of 100 bighás, that has no bearing on the original question the Court has to look to. Unquestionably if he sub-lets a large portion of his holding, then the Court will take this as an indication of the probability that he got it for the purpose of sub-letting; but this points not to basing the presumption on some portion, however small, of the holding being sub-let, but rather to drawing an arbitrary line and basing it on the sub-letting of a half, a quarter, or three-quarters of the holding. This the Select Committee objected to as improper in itself, and as introducing an element into the litigation which is particularly difficult to prove. Leaving the presumption as it is, based on area alone, we thought the Courts would always be able to take the facts into consideration. On the contrary, if you clog it with the condition that there must be an arbitrary proportion of area which must be sub-let, you put the Court into the difficult position of finding out exactly what proportion is sub-let, and this is not easy to prove, while it is on the other hand a condition which the raiyat can very easily evade. I therefore hope the Council will see their way to uphold the section as it stands."

The Hon'ble MR. EVANS said:—"I agree with the hon'ble member in charge of the Bill. The question whether a man is a tenure-holder or a raiyat is often very difficult to decide owing to the difficulty of obtaining proof as to the original conditions of the tenure or holding when it is ancient. It being a matter of fact—so far as we can ascertain—that the majority of persons holding over 100 bighás are tenure-holders, it was thought right by the majority of the Select Committee to lay down a rule for the guidance of the Courts in cases in which no satisfactory evidence was forthcoming as to the nature of the tenure or holding. That rule is that, until evidence to the contrary is given, every holder of over 100 bighás shall be treated as a tenure-holder. But if it is the interest of either party to rebut this presumption, they are at full liberty to do so. The section has no further effect than this and is I think useful and fair.

The Hon'ble MR. REYNOLDS said:—"I wish to add my testimony to what has fallen from the hon'ble member in charge of the Bill. Speaking as a member of the Board of Revenue, I can say from my experience that no question has been more unsettled and has given more trouble than the question of whether a tenant is a tenure-holder or a raiyat, and in reference to this class of cases the law would give some sort of guidance in coming to a conclusion."

The Hon'ble MR. GIBBON said:—"I will support the amendment, although I cannot agree with the reasons adduced by the hon'ble mover in support of the motion. In fact, I think the answer given by the hon'ble member in charge of the Bill is absolutely correct as far as it goes. But at the same time I cannot agree with the hon'ble mover in his view of the probable effect put on the section. I agree to the amendment of the section, because it is absolutely wrong in principle and contrary to fact. Under the Bill a tenure-holder means primarily a person who has acquired land for the purposes of collecting rents, or bringing it under cultivation by establishing tenants on it: a raiyat means primarily a person who has acquired land for the purpose of cultivating it himself or by members of his family or by hired servants.

"The question as to whether a tenant is a tenure-holder or a raiyat is one which depends not on the area of the holding but on the conditions and purport for which it was acquired. There are many tenures of less than 100 bíghás, and many occupancy-holdings of over 100 bíghás. A dispute may arise as to whether a tenant is a tenure-holder or occupancy-raiyat, between a proprietor and tenant, between a tenure-holder and occupancy-raiyat, and between an occupancy-raiyat and his sub-tenant.

"It may at one time be to the interest of the tenure-holder, with a view to obtain a permanent tenancy, to declare himself to be a raiyat; it may be to the interest of an occupancy-raiyat to attempt to acquire the position of a tenure-holder. When deciding whether a tenant is a tenure-holder or occupancy-raiyat the Court will have to consider the object for which the tenant acquired the holding. If the presumption is to hold good, if holdings of more than 100 standard bíghás are to be presumed to be tenures until the contrary is proved, it will also be presumed that holdings of under 100 standard bíghás are occupancy-holdings. It should be remembered that a sub-raiyat cannot acquire occupancy-rights in the land, and the effect of this presumption will be that tenants holding land on tenures of under 100 bíghás will have to prove their right to hold as occupancy-tenants by first proving the conditions under which their landlord acquired his title—an impossibility.

1885.] [*Mr. Gibbon ; The Lieutenant-Governor ; Mr. Gibbon ; The Mahárájá of Durbhunga.*]

"In many districts the local measurement varies—every tuppa, every village has its own measuring rod. Take for instance my district; in some parts it is three standard bíghás to the local bíghá, in some parts ten. The consequence will be that until a preliminary investigation is held and it is decided whether the holding is over or under 100 standard bíghás no case can proceed.

"The sub-section is wrong in assumption and contrary to fact; it will retard suits instead of assisting the Courts; it will not assist a single person to set up a valid title; it may induce many to claim rights they do not possess. It will induce many to do wrong; no one to any good."

His Honour THE LIEUTENANT-GOVERNOR said:—"The question before the Council is as to the presumption as to the status of a tenure-holder from the area of his holding. It is one which has been the subject of much discussion, and though I don't mean to go over the whole subject in reference to what has been written or considered before, I would point out that there is a general concensus of opinion in favour of the adoption of the proposal contained in the Bill. It may be noticed that in the view of several authorities, whose opinions deserve respect, the 100 bíghás is thought too high a limit; while again there are many excellent authorities, both executive and judicial, who contend that the presumption should be changed into an absolute rule, not be a matter of presumption. The Select Committee, however, prefer to adopt the proposal of presumption, and I need not add anything to the arguments of hon'ble learned members of this Council, who from their experience in our law courts are in the best position to say that the section as it appears in the Bill will facilitate the judicial decision of the difficult question, which often arises, whether a holder of land is a tenure-holder or a raiyat. I have not been able to follow the arguments of the Hon'ble Mr. Gibbon, because I was not able to hear all that he said. But on one point, as to the uncertainty attending the ascertainment of the quantity of land held by an individual owing to the system of measurement differing in almost every village, I would point out that the rule laid down by the Bill is that the land shall be measured by the standard bíghá; therefore, that argument would not hold good. I shall certainly oppose the amendment and support the section as it stands."

The amendment was put and negatived.

The Hon'ble Mr. GIBBON by leave withdrew the amendment that section 5, sub-section (*5*), of the Bill be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that Chapter III be omitted.

The Hon'ble Babu PEARI MOHAN MUKERJI moved that section 8 be omitted. He said:—"This section gives the Court power to direct that the enhanced rent, instead of coming into operation at once, shall increase yearly by degrees until the amount decreed has been reached. When a Court on the evidence before it considers that a tenant is bound to pay rent at a certain figure to his landlord, I do not see what circumstances it would take into account for ordering progressive enhancement. The provision deprives the landlord of a portion of what the Court has judicially found to be his just due, and it is, therefore, wholly indefensible. I shall read to the Council the remarks made on it by Lord Bramwell:—

'Now, what consideration would influence the Court I do not know. Whether, if the tenant had got half-a-dozen children, it would be a hardship upon him to have his rent suddenly enhanced, I do not know. I do not see how that can be taken into account, or, indeed, what could be taken into account really under such a clause as that.'"

The Hon'ble MR. EVANS said:—"I think there are certain cases in which it is desirable to give the Courts this discretion, but I don't think they ought to exercise it generally. Where from the peculiar circumstances of the case an enhancement of from 100 to 400 per cent. is decreed, it is very desirable that the Courts should exercise this discretion so as to enable the tenant to adapt himself to so complete an alteration of his circumstances and to avoid immediate ruin."

The Hon'ble MR. REYNOLDS said:—"I think this section makes a very reasonable provision; it was a recommendation of the Rent Commission, who introduced it into their Bill; and there are special reasons for retaining it with reference to tenures, because, although it is practically uncommon that the rent of a tenure is enhanced, yet when it is enhanced it is a common thing to enhance it very largely. In a case referred to in the report of the Dacca Conference, the rent of a tenure-holder was enhanced from Rs. 1,326 to Rs. 5,062 at one stroke, and it seems equitable to give the Courts a discretion to declare that the enhancement should be spread over several years."

The Hon'ble MR. AMÍR ALÍ said:—"I will support the retention of the provision in the Bill for the same reason that I supported it in Select Committee. From some experience which I have had of tenure-holders in Eastern Bengal, I think this provision will be of the greatest boon to them. As has been already remarked, the rents of these tenure-holders have often been enhanced in such a way as to cause a great deal of hardship, and the absence of any discretionary power in the Courts has been much felt in reference to these cases. A merely discretionary power reserved to the Courts can hardly injure the zamíndár."

1885.] [*Sir S. Bayley; The Maháráját of Durbhunga; Bábú P. M. Mukerji.*]

The Hon'ble SIR STEUART BAYLEY said:—"I wish to say a few words in support of the objection taken by the Hon'ble Mr. Reynolds to this amendment. He has explained that it is wanted in behalf of tenure-holders. But the hon'ble mover of the amendment has supported it on the principle laid down by Lord Bramwell. If Lord Bramwell had experience of rent-suits, he might perhaps have understood the reason for such a provision. He would have known that the principle was one which was admitted in the enhancement of revenue in temporarily-settled estates by the Government. And the reason of it is simply this, that although a man might hold land at a low rate for some time, yet when his rent was enhanced it was not in the interest of the Government or the proprietor to reduce that man's means of subsistence—that what he had to spare from the means for the support of his family was the amount of money he had been in the habit of giving to the cultivation of the holding. If the whole of the enhanced rent was demanded at once, the chances were that his cultivation would be injured, that he would have to sell his bullocks and to reduce his capital. It is not desirable therefore to reduce his agricultural resources too suddenly. That is the meaning of the section, and that is why I ask the Council to support its retention."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that section 9 of the Bill be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved by way of amendment that the word "ten" be substituted for the word "fifteen" in section 9. He said:—"The minimum period during which an enhanced rent should obtain currency was fixed at 10 years in the draft Bill of the Rent Commission, in the Hon'ble Mr. Reynolds' Bill, in the Bill which was finally submitted by the Government of Bengal to the Government of India, and also in the Bill which was introduced in this Hon'ble Council in March, 1883. The change from 10 to 15 years was made for the first time by the Select Committee last year. Considering the rapid progress the country is making, and the prospect of a steady rise in the price of agricultural produce, the change is wholly indefensible. Whenever there is a rise in prices, not temporary or casual, the landholder is entitled to an enhanced rent, that is, to such rent as would represent the changed value of money, and it would be depriving him of his just dues if an arbitrary limit be imposed on his right to get that rent. For the purpose of preventing frequent repetitions of claims for enhancement of rent, it would be enough if it be provided, as was done in the original Bill, that a rent once en-

hanced shall not be again enhanced within 10 years of the previous enhancement. But as a matter of fact grounds for enhancements not unfrequently arise at shorter intervals. I find this clearly recognised in a rule regarding settlements issued by the Board of Revenue under the authority of the Government of Bengal. With your Lordship's permission I shall read to the Council the rule in question:—

'Where, however, a settlement has fallen in, or is likely to fall in, before arrangements for a fresh settlement are or can be completed, the Collector should, if the estate belong to an individual, ordinarily settle it summarily year by year, securing in the engagements any increase of revenue which the extension of cultivation or other enhancement of assets, ascertained by summary enquiry, may seem to justify. If the estate be the property of Government, it should, as a rule, be taken under khás management.'

"But whatever might be the rule as regards settlements made by Government, I think private proprietors should not grumble if the 10 years' restriction be imposed in cases of enhancement for rise in price of produce."

The Hon'ble MR. REYNOLDS said:—"The question raised by the amendment seems to be merely a question of substituting 10 for 15 years. I suppose it will be admitted that we ought to have the same rule for tenure-holders and for raiyats, because, as the tenure-holder has to a certain extent to depend on the rent he realises from the raiyats, it seems naturally to follow that his rent should not be increased at more frequent intervals than he can increase the rents of his raiyats; and the Select Committee agreed that the term of 15 years, which is only half the term recommended by the Famine Commissioners in their report, should be applied to tenure-holders. But with regard to what the hon'ble mover of the amendment said as to the practice of the Government, and the instructions contained in the Board's rules, in respect to the settlement of Government estates, I wish to represent that the passage the hon'ble member quoted simply referred to purely temporary arrangements which might be made at the end of the expiry of one settlement and until a fresh settlement has been concluded. The rule provides that in such cases a summary settlement should be made year by year, because we hope every year to make a final arrangement; and there is nothing unfair in saying that such a summary settlement is not to be made on the old jamá but on the increased cultivation and profits. But the regular term of settlement in Government estates is for 30 years; so that, if the hon'ble member relies on the precedent of Government action in the matter, his contention is not supported. I think the section should be allowed to stand as it is."

The Hon'ble Mr. GIBBON said:—"I support the motion on the ground that there is no necessity for it in this chapter of the Bill. But at the same time I consider that if any provision of the kind is necessary, the term should be increased rather than decreased. But it is not necessary in this chapter, and imports an arbitrary limit. As far as I can see, a tenure-holder can only be enhanced on two grounds—where the rent of the tenure is below the customary rate payable by persons holding similar tenures in the vicinity, and, where no such customary rate exists, up to such limit as the Court thinks fair and equitable. Therefore, if a tenure is once enhanced, it can only be again enhanced when the rent is below the rental of other tenures in the neighbourhood or when the Court thinks such enhancement is fair and equitable. It is therefore unnecessary to put any term to the enhancement of the rent of tenures."

His Honour THE LIEUTENANT-GOVERNOR said:—"I don't think any question has received greater consideration at the hands of the Select Committee than this. Recurring demands of the zamíndár for enhanced rents have been the cause of most of the discontent, ill-feeling and litigation which prevails throughout the country; and the adoption of a limit in this chapter has followed the rule which it was thought desirable to declare in the case of the raiyat. There could be no distinction between the two. Fifteen years, as the Hon'ble Mr. Reynolds has pointed out, is just half the term which was recommended by the Famine Commission, whose report has furnished many points for consideration in connection with this Bill. I am glad, however, to find from the testimony of the Hon'ble Mr. Gibbon that, if any alteration is made, it should rather be in the direction of increasing than of reducing the term of years."

The Hon'ble SIR STEUART BAYLEY said:—"I understand the hon'ble the Mahárájá of Durbhunga to move that section 9 be omitted, and the Hon'ble Peári Mohan Mukerji to move as an amendment that the period of 15 years provided in the section be reduced to 10 years. I don't therefore understand whether the hon'ble mover of the amendment is supporting the original motion. Speaking of the motion itself, I think it ought to be rejected, because then a landlord may enhance the rent of a tenure-holder every year, and there would be absolutely no check upon him; it would certainly cause the tenure-holder an enormous amount of hardship. Then, as to what the hon'ble mover of the amendment said as to this section having had no place in the first Bill or in the Bill which was introduced in the Council. The real fact is that the section was there, but the period has been altered to fifteen years; and the reason for the alteration in this chapter is a very simple one. The raiyat from whom the tenure-holder receives his rent is protected from enhancement for fifteen

years; it would be unjust therefore not to protect the tenure-holder for the same period. If he cannot enhance his rents more than once in 15 years, then his dues to the superior landlord, which are paid out of these rents, should not be enhanced more frequently. The real question is—What is the proper term of protection for raiyats? It must be the same term for tenure-holders as you give to the raiyats, and when we come to the amendment on that section I shall be prepared to defend the period of fifteen years given to the raiyats. In the meantime I would ask the Council to observe that, as had already been forcibly pointed out, we have taken only half the term recommended by the Famine Commission, namely, the term of thirty years, which prevails in the settlement of Government estates. I therefore oppose both the amendment and the original motion."

The amendment was put and negatived; and the original amendment was by leave withdrawn.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 4 and 5 of section 10 of the Bill, the words "consistent with the provisions of this Act and" be omitted.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that lines 4 and 5 of section 10 of the Bill be omitted, and the following proviso be added to the section:

"Provided that in case of contracts entered into since the commencement of this Act, a condition should be one consistent with the provisions of this Act."

The Hon'ble SIR STEUART BAYLEY having declared his willingness to accept this amendment, it was put and agreed to.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that section 11 be omitted. He said:—"I think the question of the transferability of a permanent tenure had better be left to local custom in the same manner as with regard to occupancy-holdings."

The Hon'ble MR. REYNOLDS said:—"I do not think the question of the transferability of permanent tenures rests on the same basis as that of occupancy-holdings. The transferability of a permanent tenure is a generally accepted principle. Section 13 of the Bill of the Rent Commission declared that all permanent tenures should be hereditable, devisable and transferable, and in their Report the Commission said that they had merely stated what they believed to be in accordance with the accepted usage of the country. The only case in which a permanent tenure is noticed in the Digest as not being transferable is

the case of the ghatwali tenure, and this is covered by section 181 of the Bill. In all other cases the transferability of a permanent tenure is an accepted principle, and I do not see why the Council should not recognize this in the Bill."

The Hon'ble MR. AMÍR ALÍ said:—"Every word which I have said with reference to the expediency of making occupancy-tenures transferable applies with greater force and reason to making permanent tenures transferable. The amendment proposed will have the effect of doing away with the established custom, which exists almost in every district, with reference to every description of tenures. With the exception of the one class of tenures mentioned by the Hon'ble Mr. Reynolds, I do not know of any tenure which is not transferable at present. If this motion is carried, all tenure-holders who at present exercise the right without any question or objection from the zamíndár will lose the right altogether. I therefore oppose the motion."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJA OF DURBHUNGA moved that after section 13 of the Bill the following section be added:—

"The landlord, within sixty days from the service upon him of a notice of sale under section 12 or 13, may notify to the authority issuing the notice his objection that the transfer was against custom or contract, and may institute a suit in the proper Civil Court for obtaining such a declaration.

"The Court passing such a declaration shall, if the plaintiff so ask, pass an order requiring the purchaser to restore possession to vendor on such terms as the Court may consider proper between the contracting parties, and, on the refusal of the vendor to take back possession, his landlord will have the power to enter into possession himself."

He said:—"The object of this motion is to protect existing custom. If it is the custom of tenure-holders to transfer their tenures without the consent of the landlord, this section would not touch that custom in any way."

The Hon'ble MR. REYNOLDS said:—"The first clause of the amendment seems unnecessary and superfluous, because no enactment of the legislature is necessary to enable the landlord to notify his objections and institute a suit in the Civil Court, and the wording of the second clause seems to me to be of a very unusual character. I think it objectionable that, if the vendor refuses to take back the land, the landlord should be allowed to take possession of it himself."

The Hon'ble MR. GIBBON said:—"The amendment is in a shape that I do not approve, but I think it is a valid attempt to rectify an omission in the Bill. The Bill as it was submitted to the Select Committee provided a procedure under which the landlord could dispute the validity of a document submitted to him. But the Bill contains no provision for that whatever. It simply provides that when a transfer has taken place the transferor or transferee should pay, not only the registration fee, but the landlord's fee, and that a copy of the document is to be submitted to the landlord; but it provides no means by which the landlord can dispute the validity of the document. I maintain that under the Bill, if a document is submitted to the landlord, the instant he accepts the fee, whatever he may do afterwards, it will be taken for granted that he has consented to the terms and conditions of the transfer. The Bill gives him no remedy whatever. I object to the registration clauses in the Bill No. II being omitted from this Bill. This proposal is to provide a remedy, to allow the landlord the means of disputing not only the transfer of the holding, but also the terms stated in the document. We were told in Committee, if I understood the matter rightly in Committee, that it is the intention of the Government of Bengal to provide for that in another Bill. But that is not sufficient. What is wanted is to provide some means of allowing the landlord to contest a document of which he does not admit the validity. I do not say I approve of the amendment befor the Council. It compels the landlord to take the initiative in every case. This I do not approve of. The Bill No. II allowed him to do so; there is nothing provided for cases in which the landlord refuses to take the fee. Suppose he returns the fee and does not admit the validity of the document; what is to be the result? The words of the amendment do not meet the case. I would like to see the matter considered again by the Government."

The Hon'ble Sir STEUART BAYLEY said:—"I think there is a misapprehension on the part both of the hon'ble mover of the amendment and of the Hon'ble Mr. Gibbon about the effect of this section. The registration which the Bill provides for is the registration of a document, not a registration of title. The registration of a document does not affect the validity in any way whatever of the transfer. If the transfer is valid in itself, well and good; if it is invalid, the registration does not make it valid, or alter its nature in any way; consequently, whatever remedy the landlord would have without this section he would have with it. Whether he acts upon the notice or not is a question quite unconnected with the effect of the registration of the document. He can sue now, and it is quite unnecessary to say that he may sue. Then look at the effect of the second clause of the amendment as it is proposed: it seeks

to vest in the Court a discretion to restore the possession of the vendor, and provides that on his refusal the landlord may enter on possession. Can anything be more dangerous as to the effect that might be given to it in collusion between the landlord and the vendor? It will be so dangerous that I do not think the Government can assent to such legislation. But I admit that what the Hon'ble Mr. Gibbon said is true. The landlord should no doubt have some means of objecting to the validity of any transfer before the document effecting the transfer is entered in any register of titles. Provision for the registration of the owners of permanent tenures will be made in the Bengal Bill. It is a distinct understanding that this will be done, and a provision enabling the landlord to contest the terms of the deed has, I understand, been included in the draft Bill which has been introduced into the Council of the Lieutenant-Governor of Bengal. The Bill before the Council does not provide for the registration of titles, but only for the registration of documents."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 18 be omitted. He said:—"Hon'ble members will see that whatever new rights this section gives to a raiyat holding at a fixed rent or fixed rate of rent are centred in the word 'transfer' in clause (*a*) of the section, the protection given by clause (*b*) being identical with the protection given to all occupancy-raiyats by clause (*b*) of section 25. The question, therefore, is, should a raiyat holding at a fixed rent or fixed rate of rent be allowed the same rights with respect to the transfer of his holding as a premanent tenure-holder? I do not think that the economic considerations which have induced the Select Committee to strike out the provisions for a free sale of occupancy-holdings lose a whit of their force in the case of holdings protected from enhancement. The conditions and social positions of the raiyats are in both cases the same. In many instances the raiyat holding at a non-enhanceable rent is much worse off than his neighbours by reason of his having sub-let his holding, and they will be equally subject to the temptation of borrowing money at usurious rates of interest if their holdings be declared transferable. The very fixity of the rent would be an additional inducement to money-lenders and land-jobbers to get the holdings out of the hands of the raiyats, and the result will be a repetition of the consequences which followed the operation of similar provisions in the Dekkhan and the Sonthal Parganás. Again, regarding this section with section 50, I foresee an abundant crop of litigation which it would give rise to. If the right of free sale had been con-

fined to holdings which are protected from enhancement by judicial decrees or by registered leases, there would have been no uncertainty as to the holdings to which the right would extend; but in the face of the 20 years' rule of presumption all raiyats must claim a right of free sale, unless they wish to forego for ever their right to claim protection under that rule; and the question will not be finally determined except by a regular suit, involving appeals to the superior Courts. In the meantime the rights of the parties would remain uncertain, and the Collector's registers would be encumbered with entries which he would have, perhaps, ultimately to strike out. Litigation is inevitable when a right is made dependent on an uncertain and contingent right; doubly so when such contingent right rests on a rebuttable presumption."

The Hon'ble MR. QUINTON said:—"With reference to the remarks which the hon'ble member has just made, I will merely bring to the recollection of the Council that in the permanently-settled districts in the North-Western Provinces the right to transfer their holdings has been specially conceded by law to the raiyats, and, as far as I know, none of the evil results which have been anticipated to ensue from this section have taken place."

The Hon'ble MR. REYNOLDS said:—"The position of a raiyat holding at a fixed rent is surely different from that of a mere occupancy-raiyat. The Rent Commission were of opinion that the status of a raiyat holding at a fixed rent is more nearly assimilated to that of a tenure-holder, and they provided accordingly in their Bill. It has been said that the reasons why the occupancy-raiyat should not have a right of free transfer apply equally to raiyats holding at fixed rents; but there are some facts which would lead to an opposite conclusion. In discussing the question of the occupancy-raiyat having a right of free transfer much doubt was expressed—in the event of the right being conceded—as to how far he would be likely to make a bad use of the power. But with regard to raiyats holding at fixed rents we have instances of the existence and exercise of an undisputed right of transfer—I speak of the guzáshtadárs of Shahabad—and the result has not been undesirable. It has not worked badly there either to their interests or the interests of cultivators generally. With regard to the other part of the objection, namely, the uncertainty as to the status of the raiyat, and the difficulty of saying whether a particular tenant is a raiyat at fixed rates or not, that point rather arises on the Hon'ble Mr. Gibbon's amendment than on the amendment before the Council, which proposes to omit the section altogether. Therefore I am certainly not in favour of the present motion."

The Hon'ble MR. HUNTER said:—"I also must oppose the amendment. The argument of the hon'ble mover of the amendment is directed against the right of transferability by tenants holding at a fixed rent. But it appeared to the Select Committee that there was ample evidence to show that the right of transferability now legalised for tenure-holders should also be recognised for occupancy-raiyats. Great difference of opinion existed, however, as to the conditions under which that right should be legalised, for certain classes of such raiyats. But the present section takes the class of raiyats which has the greatest fixity of tenure, and which has held (or has presumably held) their lands since the Permanent Settlement. The evidence clearly shows that this class of raiyats has by custom and as a matter of fact exercised the right of transferability. The custom is now firmly established in Bengal, and I think the Bill does wisely in recognising and giving legal validity to the custom. From what has fallen from the Hon'ble Mr. Quinton it would also appear that the custom is established in the North-Western Provinces, and that it has been legalised in that part of India without any evil consequences."

The Hon'ble MR. AMÍR ALÍ said:—"The arguments put forward by the Hon'ble Bábú Peári Mohan Mukerji to withdraw the right of transferability from raiyats holding at fixed rates seem to establish the expediency of granting the right to all classes of occupancy-raiyats. I shall urge in detail the grounds on which I ask for the extension of the right to occupancy-raiyats in general when I move my own amendment. I would only remark at this stage that practical experience furnishes a complete answer to the theories of my hon'ble friend. The argument that a raiyat who does not hold at a fixed rent or a fixed rate of rent will claim the right of transfer simply for the purpose of getting the rate fixed, is imaginary. The condition of the guzáshtadárs in Behar amply shows that the raiyats' holdings at fixed rents for a long time have exercised the right without any difficulty and without any question, and are most prosperous as compared with other raiyats of Bengal and Behar. Had there been any ground for the apprehensions entertained by the hon'ble mover of the amendment, surely there would have been some facts brought forward in support of general propositions. I submit there is no ground for supposing on purely *à priori* reasoning that the power of transferability given to these raiyats will be misused by them."

The amendment was put and negatived.

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The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in line 1 of section 18, the words "or rate of rent" and clause (*b*) be omitted.

The Hon'ble MR. GIBBON moved that in section 18, after the words "in perpetuity" the words "under a mukararrí lease or a judicially declared title" be added; and to clause (*b*) of the section the following words be added:—"or on the ground that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy." He said:—"I will say at once that the whole effect of the section turns on the effect of the twenty years' presumption under which a raiyat can claim a right to hold at a fixed rent. My object is that only those tenancies of which the titles are admitted or decreed should come under the operation of the section. The section makes all tenants holding at fixed rents subject to the same rights as regards transfer. The practical effect of that is that, when a holding is transferred, notice of transfer would have to be served on the landlord in the same way as notice of transfer of a tenure under sections 12 to 17 of the Bill; and the practical effect will also be that they will come under the provisions of the Incumbrance chapter (XV) of the Bill, which declares that all 'tenures' shall be sold subject to their incumbrances, and that the ordinary occupancy-holding should be sold subject to the voiding of such incumbrances. As long as a transferor or transferee can set up a presumption, it will lead to litigation and loss to the landlord. It will compel the landlord either directly or impliedly by accepting the fee to admit the right, or compel him to contest it at once. My object is to avoid that. By bringing holdings at fixed rates, where the title to hold at fixed rates is admitted or decreed, under the operation of the Incumbrance chapter no harm will be done. But where the title is disputed you allow the judgment-debtor by setting up the presumption to attempt to set aside a sale on the ground that his holding is a holding at fixed rates and not an ordinary occupancy-holding, that it should have been sold subject to its incumbrances and not with power to void them. Section 287 of the Civil Procedure Code lays down the rule that where a holding or any property is sold all material information should be submitted to the Court; and where a landlord sells up a holding without saying at once that it is a holding at a fixed rent he withholds information which to all intents and purposes it is material that the Court should know; where for instance a holding at a fixed rate of rent is sold as an ordinary holding, the judgment-debtor will have the right to have the sale set aside. Some words fell from the Hon'ble Mr. Reynolds with reference to tenures in Shahabad. I am opposed

to the section under which the 20 years' presumption is allowed, but I have no hope of altering it after the declaration which has been made; therefore I must assume that that section holds good in the Bill. If the Council would refer to the Administration Report of the Bengal Government for 1883-84, it will be found that the Government admit that under the provisions of that section guzáshtadári tenures are increasing, and that rights are being acquired under it; and I maintain those who are acquiring those rights never had any right to acquire such under any law, and if the provision is maintained in its entirety the consequences will be litigation and ruin to the zamíndár. With reference to the words I propose should be added to the section, I maintain no distinction should be made between occupancy-tenants; that the fact of an occupancy-tenant having acquired a right to hold at fixed rates should not give him a right to hold his land in a manner not permitted to the ordinary occupancy-raiyat; that the purpose for which he acquired the land should alone be taken into consideration; that no tenant, whether holding at a fixed rent or otherwise, has a right to use his land in such a manner as to render it unfit for the purpose of the tenancy. He should not be allowed to use it for building purposes or other purposes not contemplated when the land was made over to him. The section, as it stands, will allow him to destroy it with impunity."

The Hon'ble MR. REYNOLDS said:—"I cannot help thinking that the hon'ble member has somewhat overlooked the wording of the section. The section refers to raiyats with fixed rates of rent in perpetuity, but he seemed to understand it to extend to every raiyat who might choose to set up a claim to hold at such rates. I cannot see that that is at all the meaning of the section. The amendment would confine the right of transfer to those who hold under mukarrarí leases or judicially declared titles. If this change were made it would have the effect of excluding those who, if their titles were tried, would be found entitled to hold at fixed rents under this section; and by excluding them it will place them in a worse position than they occupy now—in a position to which the Act should not reduce them. There is a very large number of raiyats who practically hold at fixed rates of rent, but whose title has never been tried, because they have not been taken into Court, and whose rights have not been questioned, because they have been tacitly acknowledged. But the amendment really goes very far to bring these men down to the status of mere occupancy-raiyats. Therefore, so far from checking litigation, the amendment would more probably have the effect of promoting

it. It is no doubt quite true that in cases of transfers of holdings where there is a doubt as to the character of the occupancy the right to hold at fixed rates will be claimed, and that the landlord will dispute the claim, and thus the question will be raised; but I think it would be better that such questions should be raised and decided. Then, with regard to the second part of the amendment. I should be sorry to see the words introduced, because I understand that the recognized status of a raiyat holding at fixed rates of rent is for all practical purposes that of a tenure-holder and not of a raiyat. You may trust him perfectly well not to use the land in such a manner as to render it unfit for the purposes of the tenancy. His interest is very much against his doing so. He may use it for a purpose incompatible with the purpose for which it was let to him, but I really do not see why we should interfere so long as the security for the rent is not endangered. If the hon'ble member had worded the amendment so as to show that it is the duty of a tenant at fixed rates of rent to use his land so as not to injure the landholder's security for his rent, although I should consider the amendment to be unnecessary, I should not have objected to it. But as the amendment stands the clause would have the effect of harassing and molesting the tenant, and I therefore trust the Council will not accept it."

The Hon'ble SIR STEUART BAYLEY said:—"I shall be very glad to leave the defence of this section in the excellent hands of my hon'ble friend Mr. Reynolds, for when this proposal was first made I voted with the Hon'ble Mr. Gibbon in the minority. The question was very fully considered by the Committee, and the opinion of the majority was that which has been just explained by the Hon'ble Mr. Reynolds. They thought it would do more harm than good to divide tenants at fixed rates of rents into two classes—one which had documentary proof of its title, and the other the proof of whose title had not been submitted to the Courts. It was thought that whatever difficulties there might be in the way of ascertaining what the various rights were, though they may be brought to the front by the new law, yet they exist no less really at present under the old law, and a proposal such as this would have the effect of further weakening the rights of those who are least able to prove their rights. The Select Committee having arrived at this conclusion last year, and having again adhered to it this year, I am not willing to ask the Council to swerve from it."

The amendment was put and negatived.

1885.] [*The Mahárájá of Durbhunga; Babu P. M. Mukerji; Mr. Quinton.*]

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments:—

That in section 20, sub-section (1), line 1, for the word "person" the words "resident cultivator" be substituted.

That to sub-section (4) of the same section, the words "when the landlord has recognized such joint tenancy" be added.

That for the word "co-sharer", wherever it occurs in the sub-section, the words "member of a joint undivided family" be substituted.

That sub-section (7) of the same section be omitted.

The Hon'ble BÁBÚ PEÁRÍ MOHAN MUKERJI moved that sub-section (7) of section 20 be omitted. He said:—"Contrary to all rules of evidence, it places the burden of proof on the wrong party. When the question is whether a raiyat has been in possession of land in a village for twelve years, he is the proper person to prove his allegation by the production of his rent-receipts. His landlord, if an auction-purchaser, would have no means of proving the negative and rebutting the presumption which the law will raise in favour of the raiyat. Even if he be not an auction-purchaser, his difficulty would frequently be great. His collection-papers alone would be wholly insufficient to rebut the presumption. They are at best only corroborative evidence. It is on the evidence of his gumáshta or collecting agent that he must rely in such case, but it is well known that in no class of servants are there greater changes by dismissal and otherwise than in the collecting agency of landholders. The landholders would, therefore, be virtually unable in most cases to rebut the presumption, although it be contrary to fact."

The Hon'ble MR. QUINTON said:—"The hon'ble member began his speech with the enunciation of the very general proposition that nothing would be easier than for the raiyat to prove possession for 12 years. It would be in the recollection of the Council that in the debate on the introduction of the Bill the Hon'ble Mr. Evans used some very striking arguments to show that it would be utterly impossible for the bulk of the raiyats to prove 12 years' possession. He quoted a letter from a zamíndár stating that the occupancy-right of the raiyat was a moral right, but it was only a moral right; therefore, I think the statement of the hon'ble mover of the amendment as to the extent to which the raiyats can prove their claims must be taken with great caution. On the one hand, we know that the bulk of the raiyats had a right of occupancy.

Our lamented colleague, the late Hon'ble Kristodás Pál, distinctly admitted that 90 per cent. of the raiyats possessed the right of occupancy. On the other hand, the Council had heard from the Hon'ble Mr. Evans that most of these men were unable to prove the right they possessed. Unless it was shown that a man had not been in possession for 12 years, it should be presumed against the landlord that he had held for 12 years. It was very distinctly stated by the hon'ble member in charge in his introductory speech that this was quite in accordance with the facts. But the hon'ble mover of the amendment asserted that this section threw on the zamíndárs a burden which they were unable to discharge, inasmuch as it would require them to prove a negative. He assumed that every tenant in Bengal got rent-receipts, which he preserved. I doubt whether all raiyats do get receipts for the rents which they pay, and, if they did, they are not in the habit of preserving papers. He assumes that an ignorant raiyat, who pays a yearly rent of Rs. 5, is in a position to prove facts which his zamíndár, who has an office connected with his zamíndári, is unable to prove. That seems to me a very bold assumption to make. Moreover, the zamíndár has not to prove that the raiyat has not been in possession for 12 years; he has only to prove that he came into possession within the last 12 years, which his records would easily enable him to do. As to the argument brought forward with respect to auction-purchasers, when we come to deal with the rights of millions of raiyats, I do not think the question of some hundreds or thousands of auction-purchasers not being able to ascertain who are, or who are not, occupancy-raiyats should be allowed to weigh against the rights of the whole body of raiyats. I must therefore vote against the amendment."

The Hon'ble MR. EVANS said :—"I would refer to the remarks I made on the subject when the Bill was referred to the Select Committee. There is no doubt that the rule as 'onus' of proof should not be altered without some good reason, but there are very many cases in which the special rules had been introduced by Courts of Equity, such, for instance, as the case of young men of expectations dealing with money-lenders with regard to reversions. When Courts of Equity have found it impossible to do justice without reversing the rules of presumption, they have shifted the burden of proof; therefore, although it is undesirable to reverse the rule in ordinary cases, I cannot admit that to do so is necessarily wrong. Now, with regard to the general position of the raiyats, they are not in a position to meet the cost of litigation. They are very ignorant, and are not able to obtain competent legal advice; they have no means to prove their possession of a particular plot for 12 consecutive years

beyond the oaths of a few of their neighbours; and mere oral evidence of that class is worth very little. With regard to the zamíndárs, they have far better evidence available. They can give the direct oral testimony of their gumáshtas and zamíndári servants, and what their agents depose to could be corroborated by carefully preserved collection-papers in their sheristas. This includes measurement-papers, showing the plots and boundaries, the jamá-wasil-báki papers, showing the areas and the rents the raiyats paid, and so on; and there is no doubt that the possession of such records renders the proof comparatively easy. It was said that the raiyat on his part might produce rent-receipts; but, apart from the fact pointed out by the Hon'ble Mr. Quinton that in many cases the raiyat does not get receipts, where he does get them, their value is next to nothing, because nothing whatever is stated in them except the name of the raiyat and the payments made, without any reference to the land which he holds; therefore he is not in a position to prove his statement that he held a particular piece of land for a particular period by rent-receipts. The point on which the presumption was to arise was very narrow. It was at first proposed that there should be a general presumption that the raiyat is an occupancy-raiyat, but it was pointed out that that would require the landlord to rebut a very large number of possible circumstances; that the raiyat would not have to disclose what it was in respect of which he made his claim; and that the landlord would have to disprove his claim in respect to every cottah of land in that village for the last 12 years. And, had the word 'estate' been put in and the presumption made applicable to the estate, the result would have been no doubt ridiculous, and the clause would have deserved the strictures which the learned Chief Justice had passed on it. The presumption had therefore been carefully limited to the particular piece of land in dispute. When he showed that he held that particular plot as a raiyat, it would be presumed as between him and the person to whom he paid rent for it that he held that land or some part of it for 12 years. Now, who was the person who could best prove whether the raiyat held a particular piece of land for 12 years? I say certainly the zamíndár with his records, if properly kept, could easily show that. The man who had records and the means of proof should be obliged to produce the proofs in such cases. As a matter of fact the bulk of the cultivators were permanent cultivators and cultivated the same lands year after year, and it was not a violent thing to say that they should be presumed to have held their land for 12 years until the contrary was shown. That being so, and admitting a certain amount of hardship with regard to the auction-purchaser, it was thought that some remedy of this kind was desirable to give real effect to the

occupancy-right. Unless the auction-purchaser gets the village-papers from the old proprietor, which very generally he is unable to get, he is unable to find out what the raiyats' rents were, and he is obliged to apply to the Collector to have a measurement, to make a record of what the rents are. No doubt, there are not the same reasons for throwing the onus on the auction-purchaser to disprove the existence of occupancy-rights. But the auction-purchaser has always been beset by difficulties of proof, and unless a particular exception be inserted for his security I do not see that he would have any other remedy than what he now possessed, and which this Bill gives him in a more workable form, namely, to apply to the Collector for a measurement and record-of-rights. And I admit that this presumption will operate somewhat hardly upon him; but he is a speculative purchaser, who buys with full knowledge of his position, and has many advantages in other ways and considers the advantages and disadvantages, and regulates his bids accordingly."

The Hon'ble MR. GOODRICH opposed the amendment.

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—"I think the amendment is a proper one. The presumption created by the Bill is a new presumption, and Mr. Justice Field has in the minute before the Council said he could not conceive anything more dangerous than the presumption it is proposed to create. Mr. Dampier, formerly a Member of the Board of Revenue, has said that, on the whole, he would reject the presumption created by the Bill, and Mr. Field says that the effect of section 26 (2) taken with section 25 would be in a very short time to transfer the real ownership of the land from the zamíndár to the raiyat. With regard to auction-purchasers it was quite the other way."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment. After the speech which the Council has heard from the Hon'ble Mr. Evans, I was somewhat surprised to hear the last speaker say that the presumption is a wrong one to make. I venture to think that Mr. Field has not correctly apprehended the purport of the section. The presumption seems to me a perfectly reasonable one to make, because it is in accordance with the evidence, and cannot be said to shift the burden of proof to the wrong party. The raiyat has not the means of proof; he does not, as a rule, get receipts for rent, and when he gets them he does not keep them. This is a case in which the raiyat needs the protection which this clause gives him, and the interests of the small class of auction-purchasers cannot be considered against the interests of the very large body of raiyats. Where a record-of-rights has been established—and the Government

of Bengal hope to establish it throughout Behar in the course of a few years—the presumption will not be necessary. The village-records will afford conclusive evidence on the point. But, till such a record is established, I think this presumption is suitable to the circumstances of the case."

The Hon'ble Mr. HUNTER said:—"I also think the presumption is in accordance with the facts. A vast majority of raiyats at present enjoy the occupancy-right. It is admitted on the part of the zamíndárs that nine-tenths of the raiyats of Lower Bengal and Behar possess that right; I think, therefore, that to give this presumption merely places the law in accord with the actual state of things in the provinces to which this Bill will apply."

The Hon'ble MR. AMÍR ALÍ said:—"My hon'ble friend Mr. Evans has clearly pointed out the reasons for the retention of this presumption. But I entertain such a strong conviction regarding this question of principle, that I desire to say a few words to supplement the remarks which have fallen from the Hon'ble Mr. Evans. It seems to me that the argument which the hon'ble mover of the amendment has brought forward regarding the ability of the raiyat to establish his status can hardly be intended to be accepted seriously by this Council. Any one who has seen the receipts which are given to these raiyats will know exactly the situation in which these men are placed. Your Excellency has already heard what particulars are generally contained in these receipts, and the Council can easily imagine from these circumstances whether the raiyat is in a position to establish the fact which he is required to prove. The landlord has the jamá-wásil-báki, the jamábandi and other village-papers in his hands to establish his allegations. It has been stated that the zamíndár's ámlá are frequently changed. It may be so in some cases; but it seems to me that very little force is to be attached to that portion of the argument. When one considers that not only are the zamíndári records in possession of the landlord, not only are the papers of the gumáshta and other officials under his control, but that the raiyats are, from the helplessness of their position, absolutely unable to produce any satisfactory evidence, one feels that the presumption in question is based on considerations of justice and expediency. When one considers that the great bulk of raiyats are utterly ignorant of their own rights, illiterate, and unable to know the nature of the receipts which are given to them, it seems to me that to call on them to prove their position and rights is to ask them to do something which they cannot possibly do. This is only a presumption, and, if the evidence on the other side establishes a *primâ facie* case that

the raiyat does not possess the status in dispute, the onus will of course then be cast on the raiyat to establish his case. It can hardly be said that this is a perversion of justice and of every right principle to give this fair and just presumption to the raiyat. I therefore oppose the amendment."

The Hon'ble MR. GIBBON said:—"It has been admitted by hon'ble members of this Council that before we change the law we must prove the necessity for so doing, and we have the high authority of the Chief Justice for saying that in providing this presumption we are making a very great change in the present law, and I deny that its necessity has been proved. It has been stated that although we are changing the law we are making this provision in the Bill in accordance with facts. The Hon'ble Mr. Quinton has laid stress on the difficulties raiyats at present have under the present law in proving their occupancy-rights in their land; but he has omitted to make mention of the enormous changes we are making in the law under the Bill. Under the present law the raiyat has to prove his right of occupancy in every piece of land he holds; if he has been shifted from field to field he must fail to prove his right; whereas under the Bill it is declared that if he has held any land for 12 years in a village he will have occupancy-rights in all the lands he may hold in the village. I deny that the necessity to change the law has been proved. It has been stated that the onus of proof should be cast on the person best able to prove the facts, and that the landlord is in a better position to rebut the presumption from his papers than the raiyat; but the jamábandi papers of the landlord show everything but the one thing required. They show the area of the holding and the rent annually payable, but they do not show, nor will they show in the future, how and when the raiyat acquired the land. It has been stated that the raiyats do not receive proper receipts to prove their rights, but on this point also we are changing the law. We are compelling the landlord to keep counterfoil books and are providing penalties for not granting proper receipts, and these receipts will in the future be sufficient evidence of the raiyat's rights. I deny that the case has been proved."

His Honour THE LIEUTENANT-GOVERNOR said:—"I do not wish to prolong the discussion. It may be that the presumption is favorable to the great body of the raiyats in the country. But that there is nothing improper, irregular or anomalous in the presumption made in the Bill has been clearly shown by the arguments adduced by the Hon'ble Mr. Evans. With regard to the auction-purchaser there has always been a difficulty, but it seems to me that where a very large proportion of the raiyats are admitted to be raiyats with the right of

occupancy, and where the number of auction-sales is infinitesimally small, there is no sufficient ground for a change in the rule. Further, it is beyond question that if the raiyat requires protection from any one it is from the auction-purchaser who comes in to try to make as much as he can out of the estate. On every ground I think the Council is right in maintaining this section."

The Hon'ble SIR STUART BAYLEY said:—"After the exhaustive discussion which this subject has received, I do not wish to take up the time of the Council by any lengthy remarks. But I feel very strongly that a real necessity exists for this presumption, and I cannot pass by in silence the statement made by the Hon'ble Mr. Gibbon that the receipts which the raiyats receive are sufficient to enable him to prove the occupancy-right. They do not give the boundaries of the holding, and the objection which I have all along understood the hon'ble mover of the amendment has to the provision that the receipt should give the boundaries is evidence of the fact that at present receipts do not give boundaries: all that is stated in the receipt is the amount of money received and the time for which it has been received. I have always understood him to assert that this is sufficient. But he now says that the rent-receipts prove the raiyat's position; if so, then the receipts should give the boundaries. As an additional argument against throwing on landlords the burden of proof whether the raiyat has or has not held for 12 years we are told of the extraordinary rapidity with which the zamíndár's servants disappear; he says they seldom remain in service more than a few years; sometimes the servant dies, sometimes he is dismissed, sometimes he disappears. Now I do not understand that they are exposed to any unusual mortality, and if they are frequently dismissed it points to what is really at the bottom of most of the rent difficulties in the country, namely, that the zamíndárs entrust a most difficult and delicate duty to a class of men who are unfit, underpaid and dishonest. A reform in this respect would do the zamíndárs more good than any amount of legislation. I quite understand what the Hon'ble Mr. Gibbon says with regard to the inability of the zamíndár to prove when a raiyat comes in; still if a man has come within the last 12 years, there can be no difficulty in showing it. That will rebut the presumption, and there will be an end to it. But the hon'ble member says that the Bill before the Council provides for the grant of real and efficient receipts, and that this will do away with the necessity of the presumption. We are certainly trying to do so, but it is one thing to provide for this in a Bill; it is quite another to have it universally put in practice."

The Hon'ble MR. ILBERT thought that, for the reasons stated by the Hon'ble Mr. Evans, who spoke with intimate practical knowledge of the sub-

ject, the presumption ought to be given in the limited form proposed by the Bill. It had been already pointed out that the criticisms of the learned Chief Justice were based on a misapprehension of the scope and intention of the provision under criticism, and the weight of the arguments directed against it by the Hon'ble Mr. Justice Field was materially lessened by the omission of the word "estate".

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS then moved that in sections 20 and 21, after the word "village", wherever it occurs, the word "estate" be added; also that after section 21 the following proviso be added:—

"Provided that, where an estate extends over more than one parganá, the estate shall be deemed to include only so much of the estate as is comprised in the parganá in which the land held by the raiyat is situated."

He said:—"This amendment is intended to restore, with some modification, a provision of the Bill which received the approval of the Secretary of State, which formed part of the Bill as introduced into this Council, and which, after full discussion by the Select Committee, was deliberately retained in the Bill as re-published last year. Throughout all these stages of the measure the principle was accepted that the occupancy-rights of the settled raiyat should extend over all lands held by him in the village or estate. So important did the Secretary of State consider this principle that he was careful to point out to the Government of India that its legislation must provide that the estate should remain unimpaired, and that the right should not be defeated by any sub-division of the estate. In other words, he intended the estate to be the entire estate as fixed at the Permanent Settlement, and nothing less. At the eleventh hour, and in my opinion most unfortunately, the Select Committee struck out the words relating to the estate and limited the right to the village alone.

"The grounds on which the majority of the Select Committee made this change were explained by the hon'ble member in charge of the Bill in the speech which he made at the beginning of this debate. The reasons may, I think, be fairly summarised under the following heads,—*first*, that the retention of 'the estate' is unfair to the landlord; *secondly*, that the prescriptive rights of khúdkhást raiyats never extended further than the village; and *thirdly*, that the change will not practically work any substantial injury to the raiyat.

"As to the first point, I must own I have little sympathy with the feeling which would restrict the growth of the occupancy-right in the interest of the

landlord. The occupancy-right is nothing more than a right to pay regularly a fair and equitable rent; and I have not the least doubt that, in the long run, a proprietor would be the gainer by having every one of his tenants an occupancy-raiyat. But I am well aware that the landlords do not share this view, and I admit that it is reasonable that the landlord should have an opportunity of knowing something of his tenant, and that, if the privileges of a settled raiyat extended to the whole estate, cases might occasionally occur in which a proprietor might admit a tenant to occupation under the belief that he possessed no right of occupancy, and the tenant might then turn round upon him and claim a right of occupancy on the ground of his having previously held land in another village or tenure of the same estate, though under a different landlord. Such cases, I say, might occasionally happen; but the chance of their happening has been greatly exaggerated. They might happen on a few exceptionally large estates, such as the estates of the Mahárájá of Burdwan or the Mahárájá of Bettiah. But the hon'ble member in charge of the Bill spoke of raiyats acquiring occupancy-rights in villages of the same estate twenty miles apart, as if such cases were or could be at all common. But what are the real facts? Out of all the estates in these Provinces, 89 per cent. are petty estates of less than 500 acres, which is very little more than the average size of a village. In 89 cases out of 100, it is much the same thing to the landlord whether the estate or the village is declared to be the limit, though it is a very different thing, as I shall presently show, to the tenant. I therefore hold that, if no middle course could be found, and it was necessary to choose between the village and the estate, the Select Committee ought to have adhered to the original Bill. In the vast majority of cases this would involve no possible hardship to the landlord; in the few remaining cases the hardship would be of the most infinitesimal kind—the hardship of the proprietor finding that he had got an occupancy-raiyat instead of a non-occupancy-raiyat for his tenant—a very good thing, in my opinion, for both the parties concerned.

"Secondly, it is urged that the village, and not the estate, was the limit of the old right of occupancy; and this is no doubt perfectly true. The khúdkhást raiyat was the cultivator of the lands of the village in which he lived. But to make this argument valid we ought to be able to restore the village as it existed at the time of the Permanent Settlement. But this we cannot do, and the Bill proposed to take the survey village, that is to say, the village as it existed 45 or 50 years after the settlement. But this is a totally different thing; and we have evidence to show that the survey village must comprise a much smaller

area than the village over which the old occupancy-right extended. The increase in the numbers of the people, and the extension of cultivation, have led to a marvellous growth in the number of villages. The present number of villages in Bengal and Behar is by the latest returns 194,701; the number ten years ago, in 1874-75, was 142,339—an increase of more than 5,000 villages per annum. Unfortunately, we have not, so far as I know, any complete figures of the number of villages at the time of the Permanent Settlement. But, for a number of districts, we have the quinquennial papers filed by the zamíndárs under Regulation XLVIII of 1793 and Regulation VIII of 1800; and, in a few cases, it so happened that these papers give the number of villages in some parganás of six districts of Bengal and Behar. I have referred to these papers and have compared the number of villages with the number ascertained at the survey, nearly 50 years later. The general result is that, except in a few cases, in which the quinquennial papers show kismuts or hamlets as separate villages, the survey villages show a large increase of number. Thus, in parganá Mehar, in Patna, the quinquennial papers give 264 villages; the survey found 331. In parganá Moonair, in the same district, the quinquennial register shows 53; the survey shows 321. In parganá Sasseram, in Shahabad, the quinquennial number of villages is 896; the survey number is 1,328. In parganá Jellamootta, in Midnapur, the respective numbers are 141 and 174. I do not wish to attach undue value to these quinquennial registers. They are merely papers filed by the zamíndárs, and they possess no definite authority. But on this point they furnish the best information I have been able to obtain as to the state of things 80 years ago; and this information leads us to what was *á priori* a probable conclusion, that the number of villages at the time of the survey was considerably greater than the number at the time of the settlement, and that, consequently, to give the settled raiyat occupancy-rights over the survey village is by no means to replace him in his old position in which his rights extended over the village as it existed in former times.

"Thirdly, it is contended that the rule laid down in the Bill can work no practical injury to the raiyat. If I were once satisfied on this point, I should not care to trouble the Council further on the question. But it is just because it seems to me that there is a real danger in this matter to the raiyat, that I am anxious to press the acceptance of this amendment on the Council. The landlords are impressed, I can hardly say why, with what I can only describe as a morbid horror of any extension of the right of occupancy; there is no device to which they will not have recourse to prevent its accrual, or to destroy it where it exists. It is the duty of the Council to see that the principle which

the Bill lays down is not expressed in such language as to allow of its being defeated or evaded by acts which contravene its spirit. The hon'ble member in charge of the Bill admitted that this might occur in exceptional instances in which a landlord had several villages in his own direct management within reach of the cultivator's residence, but he contended that the number of landlords in that position is very small, and that very few tenants could be affected by it.

"But this inadequately represents the extent of the danger. It is not at all necessary that the landlord should have several villages under his own direct management. It is true that the area of the average village does not greatly differ from the area of the average estate, but it does not follow that the boundaries of the estate and of the village will coincide. The cases are extremely numerous in which an estate or a tenure lies partly in one village and partly in another. In all these cases, tenants whose holdings lie anywhere near the village boundary will be harassed and molested with the object of driving them across the line, and thus breaking down their occupancy-rights, and non-occupancy-tenants will in the same way be shifted about in order to prevent the accrual of the right.

"This is a real and very serious danger, and the case which it represents is by no means exceptional. The landlords who could exercise such oppression might be reckoned by the thousand, and their tenants by the ten thousand. I therefore think that the Government of Bengal would have been justified in asking the Council to restore the wording of the original Bill. But I have already admitted that there are some large estates in which it would be unreasonable to require that the right of occupancy should extend over the whole estate. The Government of Bengal has therefore considered whether any middle course can be found, and any plan devised which would obviate the danger to which I have referred, without leaving the landlords any reasonable ground of complaint. Such a middle course will, I believe, be found by restoring the old definition, but at the same time limiting it by declaring that where the estate consists of more than one parganá the occupancy-right of the tenant shall not extend beyond that parganá in which his holding is situated. This accordingly is the amendment which I now ask the Council to accept. The parganá or fiscal circle is a definite and well-known area. For the purposes of this section it seems better than the thánú or the sub-division, as its boundaries are fixed and unalterable, and there is no doubt or difficulty in determining to what parganá a given piece of land belongs. The average parganá is no doubt larger than the average estate, but it is not the average estate which we

have to consider in dealing with this question. In an average estate—an estate below 500 acres—there would be no hardship to the landlord in saying that the occupancy-right shall extend throughout the estate, as in such an estate the landlord might fairly be presumed to be able to know all his tenants. What we have to consider is the exceptionally large estate, and such estates extend over many parganás, and in some cases over more than one district. For such cases it seems to me that the parganá limit will fairly and sufficiently provide.

"I need not remind the Council of the historical association of the parganá with questions of tenancy and rent. The existence of the parganá as a fiscal unit was recognized in the old law which made the established rates of the parganá the rates at which pattás were to be granted to the raiyats. The parganá has as real an existence and as definite an area now as it had then. The records of the Survey Department and of the Boundary Commissioner's Office will supply the Courts with a secure guide in the application of the rule if the Council should think fit to adopt it. I think, therefore, that I may, with some confidence, ask the Council to agree to this amendment. It has been my object to show that the limitation of the occupancy-right to the village will not replace the raiyat in his old position, and will not ensure him that reasonable fixity of tenure which is intended to be given him by the Bill; whereas the extension of the rights to the estate limited by the boundary of the parganá will save the raiyat from being (in the old words of the Court of Directors) 'improperly disturbed in his possession', and at the same time will not involve consequences unfair to the landlords."

The Hon'ble MR. EVANS said:—"I do not intend to take up much time, having already made some remarks on this question when speaking on the motion for the consideration of the Select Committee's report, but there were certain points in the remarks made by the hon'ble mover of the amendment with regard to which I should like to say a few words. The first point is the arbitrary selection of the revenue unit called an 'estate' as the area within which the raiyat is to have rights of occupancy.

"It is admitted that estates are sub-divided, to a very large extent, into permanent under-tenures, and that there is no kind of connection between the raiyats of one village in one under-tenure in the estate and the raiyats in another village in the same estate situated in another under-tenure, nor between their respective landlords, the under-tenure-holders. I could have understood his argument had he proposed to give a raiyat the occupancy-right in a whole parganá. But when we come to see that the parganá has nothing to do with

the particular revenue unit which pays revenue to Government, and that one tenure-holder has nothing to do with another tenure-holder, it is difficult to find any principle in it. Then the hon'ble member has pointed out that estates very often are not bigger than the village area; but he also points out that though, as a rule, the size of an average estate is that of an average village, yet there is no sort of connection between an estate and a village. But he seemed to justify the extension of the occupancy right to a larger area because there are more villages now than there were at the time of the Permanent Settlement, and that the village of that time was much larger than the village of the present day. The fact that at the time of the Permanent Settlement one-third or two-thirds of the land was waste explains to a great extent the larger number of villages.' But if he means it to be understood that the whole area of Bengal was covered with occupancy-rights, I say it was not so; because the large waste lands, large forests and great jungles which existed without any cultivation were not subject to any occupancy-right until reclaimed. Some of the village areas included waste lands, but there were other very large tracts of waste lands which were not included in any village area. Then, with regard to the necessity for the amendment, my hon'ble friend starts by saying that landlords have a morbid horror of the occupancy-right. But I may fairly observe that there are some persons who have a morbid horror of landlords and desire to erect unnecessary fences against imaginary dangers. I think that it is not practicable on any large scale to move raiyats from one village to another; that there are often feuds between neighbouring villages; and even where they are on friendly terms, the raiyat would still be a stranger in the village to which he is shifted. Where he is a permanent cultivator shifted from one plot to another in the same village it is different. I do not think, considering what we have done for the occupancy-raiyat, there is now real danger of his being deprived of his right to any large extent. The hon'ble member has, however, urged that the introduction of the word 'estate' had the approval of the Secretary of State. I regard with great deference any opinion expressed by so high an authority; but it is far from clear that the Secretary of State even had this scheme under his consideration or used the word 'estate' in this sense. I am strongly of opinion that with the introduction of the word 'estate' the Bill will be going to an entirely unnecessary length and adopting an unsound and novel principle. The khúdkhást raiyat's right only extended to the village of which he was a resident. I grant that the area of the village in the time of the Permanent Settlement might have been of larger extent than villages of the survey. But that change and the disintregation of village communities has been met by making permanence of cultivation instead

of residence the qualification for the acquisition of right of occupancy. If my hon'ble friend insists that the right of the khúdkhást raiyat extended over a large area, then let him confine the occupancy-right to the resident raiyat. Having recognized the difference between the position of the khúdkhást raiyat of the time of the Permanent Settlement and the position of the occupancy-raiyat of the present day owing to changed circumstances, the Select Committee have, by giving the raiyat the occupancy-right wherever he has permanent cultivation, done a great deal; and I think that there is no necessity for going further."

The Hon'ble BÁBÚ PEÁRÍ MOHAN MUKERJI said:—"I strongly oppose the proposal to introduce the word 'estate' in sections 20 and 21 of the Bill, and I think the proviso which the hon'ble mover wishes the Council to insert in section 21 will not at all remove the strong objections which I entertain to this amendment. As has been just remarked by the Hon'ble Mr. Evans, it is often the case that some villages of an estate are let out in patní and other tenures, and therefore, if a right of occupancy, which is acquired in a village, is extended to the estate in which the village is situated, it will create very great difficulties; and it will, as has been observed by the hon'ble member in charge of the Bill, make the objections to the presumption in section 20 much more valid. On these grounds, coupled with the reasons adduced by the preceding speaker in exposing the fallacies which underlie the arguments which have been adduced in support of the motion, I think the amendment should be rejected."

The Hon'ble MR. HUNTER said:—"I support the amendment. The question as to the insertion of the word 'estate' in sections 20 and 21 was very carefully discussed in Committee, and I was one of the members who desired to see the word 'estate' either qualified or omitted, because I believed the insertion of the word, without some qualification, might be productive of hardship to the zamíndár. It is quite true, as the hon'ble mover of the amendment has said, that the number of large estates is small, but the total area represented by this small number of large estates is very great. The insertion of the word 'estate' without any qualification would enable an occupancy-raiyat to traffic on the ignorance of the proprietor of an extensive estate situated perhaps in several districts by entering on land as a stranger and then asserting the occupancy-right. But I voted for the omission on the understanding that, if any reasonable proposal were brought forward to limit the meaning of the word 'estate', I would give it my support. The amendment now made does not entirely commend itself to me, and I shall presently state what I think a

fair proposal. I shall bring forward that proposal as an amendment, should the amendment now before the Council not be carried. In the meanwhile, I shall vote for the amendment as it stands. The Select Committee held that it would be a hardship on the zamíndár that a raiyat from a distant part should settle down on the land of a large estate, and afterwards assert a right of occupancy—a right of which the zamíndár was ignorant when he admitted the raiyat as his tenant. There are two ways of dealing with the question—either to increase the area of the village or to diminish the area of the estate. Neither of those proposals found acceptance with the Committee. My own idea is that the best form of limitation will be to strike out the word 'estate' and to insert words which will cover the land or tenure of the actual landlord. The word 'estate' means a unit of entry in the Collector's register; what we wish to get at is the tenure or holding of the landlord immediately superior of a raiyat. When under-tenures are created in an estate, it renders it almost impossible for a large zamíndár to know what is going on in different parts of his estate, as the different under-tenures may have no connection with one another. But the landlord, or actual superior of the tenant, has in an immense majority of cases the means of knowing the class of tenant who asks for a holding. I am bound to confess that the introduction of the word 'estate', without qualification, might operate to the injury of the zamíndár. I was very much struck by the historical retrospect given by the hon'ble mover of the amendment in bringing forward this motion, and the evidence which I have myself collected bears him out in what he said about the sub-division of villages. A village has been sub-divided not merely by the reclamation of new land, but also by various contingencies. The chief reason, however, why a residentiary village should no longer be taken as the unit for the exercise of the occupancy-right is not the sub-division of villages, but the sub-division of estates. Sub-division has been going on for a very long time, and, as a matter of fact, I believe there is a risk that in some cases the tenant who tries to enforce his occupancy-rights in a village will find it divided between several landlords.

"I agree with the Hon'ble Mr. Reynolds that there will be a danger of the raiyat being shifted beyond the boundaries of the village into another part of the estate not within the village. It seems to me, however, that there is also another danger. The raiyat has not merely the ordinary risk of being shifted from one village to another; he has also to contend with the distinct animus on the part of a zamíndár, whose interest it will be to prevent him from obtaining the right of occupancy, and who will try to shift him from one village to another. I do not share in the opinions of those who think that zamíndárs, as

a rule, have behaved badly to their raiyats. I admit that the difficulty mentioned by the Hon'ble Mr Evans is a true one. Not only are estates large, but they are also sub-divided, and there is the difficulty that the tenure-holder may not know the rights pertaining to the man who settles on his land. But I think it has been shown by the Hon'ble Mr. Reynolds that this danger is small as far as the landholder is concerned, while the risk is very great as far as the tenant is concerned. For these reasons I support the amendment. But if the amendment is not carried, I shall ask leave to move an amendment with the view of substituting the permanent tenure of the landlord for the word 'estate'. I am not aware whether it is in accordance with the rules of the Council to move an amendment upon the amendment. I shall ask Your Lordship to decide whether I shall be in order in doing so."

The Hon'ble MR. GIBBON said:—"I will not go very deeply into this matter. The Hon'ble Mr. Evans and other hon'ble members who have preceded me have already said all I had to say, or could say, on the subject. I will only say that I was among the number who would have been glad to see the area within which the occupancy-right would be allowed to accrue extended. But I admit all the difficulties in the way of allowing this which were found by the Select Committee. With reference to the specific amendment before the Council, that the limit of the estate should be the parganá, I can only say that I manage one estate within one parganá which consists of 1,100,000 acres. The proposal of the Hon'ble Mr. Hunter creates great difficulty in my mind. There are two classes of tenure-holders—one permanent, one temporary. The tenure-holder who has only a temporary interest in his tenure may be constantly shifted, and therefore the area within which the raiyat may one day acquire the occupancy-right may not be the same area the next day."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am bound to say a few words with regard to this question, which underwent long and serious discussion in the Select Committee; but the revival of the question in Council has been at my instance, because I could not help feeling that the principle which is involved is of very great importance and should be brought before the Council for consideration. The Hon'ble Mr. Evans the other day said that in regard to this matter the word 'estate' had been introduced at the instance of the Bengal Government. I wish to plead not guilty to that charge because, if I remember rightly, the proposal formed part of the suggestions in the despatch of the Government of India to the Secretary of State three years ago, and eventually received his approval. Now, of course, I understand

that the Secretary of State, in giving his sanction to the inclusion of the word 'estate' in connection with this section, might have been misled, as probably many other mistakes have been made in considering analogies between estates and holdings in England and in this country, in the thought that an estate in India meant very much the same thing as an estate in England. The objection which has been taken is that an estate in India comprises very many large subordinate tenure-holders, who are practically as much landlords as the superior landholder himself. The position has been rightly explained both by the Hon'ble Mr. Evans and the Hon'ble Peári Mohan Mukerji, who have shown that where there are patnís and dar-patnís and se-patnís, carved out of the parent estate of the landholder or proprietor, as entered in the Government registers, there may be risks in giving too wide a definition which we should not incur. I fully recognise the force of that argument; but then there is a danger in the opposite extreme. The danger of limiting the position of the occupancy-raiyat to a single village lies in this, namely, the risk of the loss of his status as an occupancy-raiyat from the prevalence of the practice of the zamíndár shifting him from one holding to another. It was the common prevalence of this practice which among other causes has led to a revision of the law. And, though the Hon'ble the Mahárájá of Durbhunga insisted the other day that there was no proof of such a practice, I think he must have spoken in forgetfulness of the statement which he himself made to the Hon'ble Mr. Reynolds—when he went on deputation under instructions from my predecessor, when there was proposal to recognize occupation for three years, and not twelve years, as conferring the occupancy-right—that if that was the case, raiyats would have to be shifted from year to year to prevent their acquiring the occupancy-right. That was a clear illustration of how a large zamíndár intended to act to prevent the accrual of the occupancy-right. Now if the right of occupancy is confined to the village in which the raiyat resides, it will still be in the power of the zamíndár to turn the raiyat away from one village to another, and thereby make him lose the status, which it is one of the objects of the Bill to secure. The object and general policy of the Government of India within the last few years, as I have understood the discussions upon the subject, has been that it should be the aim of the Government to try and extend, as far as possible, the status of the right of occupancy, with a view not only to the great advantage of the zamíndár in securing a raiyat with substantial interest in the land, but also generally for the interests of the country. Now, in the Select Committee, the original proposal for the introduction of the word 'estate' was after considerable discussion rejected. There is no wish to revive that proposal; but it demands

attention, whether some modification could not be made which would still afford greater protection to the raiyat against the danger to which I have alluded; and I understand the Hon'ble Mr. Reynolds' proposal to-day to be that, instead of limiting the right simply to the village, it should be extended to the parganá, which is a larger area than a village. If it will facilitate the carrying out of the object of the Bill in giving better security to the raiyat in his holding, by extending the occupany status to the parganá, where there would still be the same rent-receiver, I think it would be an improvement upon the section as it stands; and for my part I should be quite willing to adopt that modification. The risk of shifting the raiyat from village to village will not then be a serious one."

The Hon'ble SIR STEUART BAYLEY said:—"I am sorry I am not able to accept the amendment which has been urged upon us on the authority of the Bengal Government. I dwelt at such length in my speech on Friday last on the subject of omitting or retaining the word 'estate' in the definition of 'settled raiyat' that I don't like to go over the same ground again. Briefly, I may say that our objection to the word 'estate' as dealing with rent is that an estate might be divided amongst numerous tenure-holders of one kind or another who know nothing of one another's raiyats, and have no access to each other's papers. Therefore, in any of such cases a man might come in as a non-occupancy-raiyat and then claim occupancy-rights. I then went on to show that while there were serious objections to the retention of the word 'estate,' the advantage to be derived from its retention would of necessity be very small. Nine-tenths of the raiyats will have occupancy-rights under the Bill; therefore there remains only the one-tenth of non-occupancy-raiyats. Out of this one-tenth there would be exposed to danger from shifting only those who were on the estate of a landlord holding two or more contiguous villages in his direct possession, from one to the other of which the landlord might have the power to shift these men. The number of landlords who have this power is small; the number of raiyats on whom it could be exercised is extremely small. On the other hand, what is the real value of it to raiyats taking up fresh land? It is admitted that 99 per cent. of the raiyats cannot leave their village, and therefore only the few raiyats to whom the present proposal would be an advantage would be those who would be willing to abandon their homes. But this is precisely the class who should not, we think, have the boon. Looking at the disadvantage to the raiyat and the danger to the zamíndár as in either case of very small importance, I prefer to take my stand on the ancient, historical, customary and legal rights of the khúdkhast raiyat and go no further. Now the

khúdkhást raiyat undoubtedly had both by custom and right the right of occupancy in any land held by him in his own village. I am first met by the argument that this proposal had been sanctioned by the Secretary of State. His Honour the Lieutenant-Governor, I think, has made an error in saying that the words 'or estate' were suggested in the despatch of the Government of India; the suggestion was not made there, but was contained in the Secretary of State's reply. How far the Secretary of State had foreseen the difficulties arising out of the sub-division of estates into numerous separate tenures I cannot say; but when we came to examine the subject we found that a single revenue-estate might be sub-divided into a dozen or more of rent-estates. Therefore, while we have narrowed the area below the limits in the Secretary of State's despatch, we have very greatly strengthened and facilitated the proof of the right within that area. Then we were told that the word 'estate' was contained in the first and second drafts of the Bill, and that only now, at the last moment, we have made a change. I must ask the attention of the Council to the real history of the case. It is true that we did not leave out the word in the second draft of the Bill, but we specially called attention to the real inconveniences which would ensue from its retention, and it was on the strength of that call that the Local Government again referred the matter to its officers; and when we found that a large number of those officers objected, we again considered the matter. The change therefore was not made in the ill-considered way which might be imagined from the speech of the hon'ble mover of the amendment, but it was done on the advice of a great number of the officers of the Bengal Government. The hon'ble gentleman has laid a good deal of stress on the argument that a landlord ought to like to have occupancy-raiyats on his estate; he admits that the landlord does not like them, but he says that that is due to the ignorance of the landlord to his own interests. But we cannot make a landlord like what he ought to like. He has an idea that, by extending occupancy-rights beyond what the old law and custom of the country grants, it trenches on his rights as the landlord. Whether the morbid horror which the landlord has is well or ill-founded, there it is, and we ought to take some cognizance of it where it does not interfere either with the stability of the raiyat or the progress of the country. Then an argument is built on my assertion that the rights of the khúdkhást are limited to the village in which he resides. If this be true, it is urged that we should give him his rights in *that* village, the village of the old khúdkhást raiyat of the time of the Permanent Settlement. But the village of the Permanent Settlement is gone, because there is now so much more cultivation. By going to the village of

the survey we are going back 30 years. The line must be drawn somewhere, and here we have an area which is definitely and finally recorded, and which is independent of any subsequent changes. I do not think we can be asked with any reason to go any further back. I admit that the village of the present day is probably smaller than the village of the time of the Permanent Settlement, but we have much more cultivated land. The village of the present day, as far as I can make out from a statement which has been furnished to me, averages about 400 acres. I cannot say what the occupancy-raiyat's right averaged at that time; but statistics show that in Dacca the vast majority have holdings of only five bíghás, and in Tipperah three-fourths of them hold on an average not more than three bíghás, and in portions of Behar three-fourths hold below five bíghás. The standard bíghá is one-third of an acre; therefore the average area of a village is 1,200 standard bíghás; and comparing the agricultural holdings of an occupancy-raiyat with the area over which he can acquire the occupancy-right, I do not think that is such a small area, and there is no real necessity to extend it. We are asked to extend the right over so much land as is within the parganá. But what is the area of a parganá? The particular estate which the Hon'ble Mr. Reynolds mentioned as one in regard to which the difficulty had arisen, and the one to which he would apply his remedy, was the estate of the Mahárájá of Bettiah. The Hon'ble Mr. Gibbon had told the Council that you will find a single parganá, the very parganá in which the Mahárájá has the greater portion of his estate, containing a million of acres. What possible advantage, therefore, can it be in such a case as this to withdraw the word 'estate' and put in the word 'parganá'? It will leave the question exactly as it is. That of course is an exceptional case, but it is precisely one of the cases to which the Hon'ble Mr. Reynolds thinks it might be applied. As soon therefore as we begin to test the matter we find that it does not meet the case. There are other ways proposed to meet the difficulty. One is that it should be confined to permanent tenures. That was proposed in Committee. The Mahárájá of Bettiah's estate is let out on long leases which fall in from time to time; consequently the raiyat holding under the intermediate tenure-holder, as the Hon'ble Mr. Hunter proposes to amend the section, is a raiyat who has one day an occupancy-right in the whole of the parganá and another day is a raiyat in a small tenure. As the small tenure falls in, it is held directly by the zamíndár or amalgamated with another tenure; consequently the area of a tenure is constantly shifting, and how we can regulate a raiyat's right of occupancy with an area which we cannot calculate I am unable to understand. I am afraid, therefore, that the scheme, however well intended, will break down on that point. There is one other point

which is worth noticing, and that is with regard to the presumption. The presumption is a fair one so long as it gives the raiyat the chance of proving his occupancy-rights in the village. It is infinitely more difficult to defend if those rights are extended to the estate. The presumption itself is an infinitely more valuable boon than the extension, and I shall consequently ask the Council to reject the amendment."

The Hon'ble MR. REYNOLDS' amendment was then put and negatived.

The Hon'ble MR. HUNTER by leave moved to substitute in the amendment just put to the Council the words "a permanent tenure of the landlord" for the word "estate".

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRÍ MOHAN MUKERJI moved that section 21, subsection (*l*), of the Bill be omitted. He said:—"A provision which gives the settled raiyat a right of occupancy in all land let to him will make the landholders very reluctant to let new lands to such raiyats. Such a provision would, therefore, act injuriously on the raiyats themselves. The hon'ble member in charge of the Bill expressed his wonder that the landholders should prefer to have for their tenants a body of serfs instead of a body of prosperous raiyats with substantial rights of occupancy, and my hon'ble friend Mr. Amír Alí has given to the Council, as instances of unworthy conduct, extracts from statements made by landholders themselves, showing that in certain parts of Behar landholders give short term leases and shift raiyats from one plot of land to another with a view to bar the accrual of rights of occupancy. I wish to take this opportunity of submitting to Your Lordship and this Hon'ble Council that there is not a single statement in the massive records connected with this Bill that the practice in question obtains anywhere in Bengal, and, if it obtains in certain parts of Behar, it has the justification that the interests of agriculture in that Province make it necessary to let land remain fallow after it has been cultivated for a number of years. But little blame to landholders if they have taken care to prevent the extension of rights of occupancy in land. Neither the Regulations of 1793, nor any custom which found a place in the judicial records since that year, gave a right of occupancy to any but a khud-khást-kudimi raiyat, that is, an old and resident raiyat. With all deference to the opinion of more than one hon'ble member to the contrary, I maintain, and I am prepared to substantiate the view, that Act X of 1859 for the first time

gave rights of occupancy to non-resident and such of the resident raiyats as had not acquired it by length of possession; but, while creating this new right, it expressly provided for the protection of rights of landholders with regard to lands in which the right had not already accrued; and section 7 of that Act runs thus:—

'Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat, when it contains any express stipulation contrary thereto.'

"Few zamíndárs would have cared to concern themselves with the growth of this right if that Act had not at the same time attached to it other substantive rights. The zamíndárs found that the law raised a presumption of fixity of rent in favour of such raiyats which they could not possibly rebut, and that it gave them a right to hold at privileged rates of rent when their rents were enhanceable. It is not in human nature that landholders should not, under such circumstances, try to protect their own interests by following a course which was not only not unworthy in itself, but also one which the legislature had specially provided for them. And yet nothing shows their great moderation in this respect more than the fact that from 75 to 90 per cent. of the raiyats of these provinces unquestionably enjoy the right at present. There is no reason, however, that, because a man has a right of occupancy in a particular plot of land, the right should extend by possession for a single day to all land that might be let to him. Such a provision will act against the interests of the settled raiyats themselves. It would also hamper the extension of cultivation and the reclamation of waste lands.

"Nothing is more true than the observations on this point contained in the dissent of my learned and hon'ble friend, Dr. Hunter, which I shall read to Your Lordship:—

'As regards lands brought under cultivation by the landlord himself, by means of hired labour, he is in a much worse position than before. Henceforth the landlord who cuts down heavy jungle, or digs tanks, or drains swamps, at a large outlay by means of his own servants, will, under the provisions of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land; if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-rights immediately begins to accrue. In no case will the landlord be permitted by special contract in his lease to bar the growth of occupancy-rights in land which he has reclaimed by his own

servants at his own expense. Considering the pressure of the people on the cultivated soil and the existence of large unreclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land.' "

The Hon'ble SIR STEUART BAYLEY said :—" I do not propose to follow the hon'ble member in his discussion of the position of the occupancy-raiyat or that of his predecessor, the khúdkhast raiyat of the time of the Permanent Settlement, beyond saying that I dissent from the hon'ble member *in toto*. The Hon'ble Member told the Council that the khúdkhást raiyat paid the highest competition-rent; but in saying so he used an expression which had absolutely no meaning. I have no doubt that Lord Cornwallis was correct in saying that the landholder took the highest rent he could get; but while rents were regulated by custom the term 'competition-rent' did not apply at all. Nor will I follow the hon'ble member in his examination of the right of occupancy. That it meant a right to hold at beneficial rates I find no authority. Whether he was right in saying that the status given under Act X of 1859 was more desirable than the right held at the time of the Permanent Settlement I do not care to enquire, but I would ask whether the hon'ble member would deny that the khúdkhást raiyat had a right of occupancy in any land which he might hold in his own village. In conclusion, I maintain that the proposal before the Council is absolutely contrary to the whole scope and meaning of the Bill."

The Hon'ble MR. AMIR ALÍ said :—" It seems to me that sub-section (1) of section 21 is the natural consequence of the whole of the deliberations of the Select Committee with reference to the status of the occupancy-raiyat. It is a natural consequence of the determination of the Government to give to the occupancy-raiyat a sufficient amount of protection against eviction, and to give him the same security in regard to all lands held by him in the village which he possessed under the law to a specific plot of land; and it is a natural consequence of the desire of the legislature to prevent the habit of shifting raiyats which had been frequent in all parts of these provinces. In face of the evidence before the Council not only in the reports furnished by the various officers of Government but also by the Famine Commission, it will be going beyond the actual existing circumstances to say that there is no necessity for some such provision as this."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments :—

That to section 21, sub-section (1), of the Bill, the following proviso be added :—

"Provided that such land is not larger in area than the quantity of land continuously held by him for the last twelve years."

That sub-section (2) of the same section be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 22, sub-section (1), of the Bill be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in line 4 of section 23 of the Bill, after the word "unfit" the words "or permanently less fit" be inserted. He said :—"The object is to give the landlord sufficient protection against anything likely to permanently injure the land. I moved a similar amendment in Committee last year, but I believe that, although the Committee agreed with me in thinking that the landlord should have sufficient protection given to him to prevent the raiyat from doing anything likely to permanently injure the land, the wording of my amendment was not accepted. In any Bill of this sort, in which novel provisions for compensation for improvement have been inserted, it is only fair that some reciprocal advantage should also be given to the zamíndár. It may be the case even now that some members might find some fault in the wording of the amendment, but I do not pretend to be much of a draftsman. I dare say, however, the Council will agree to the principle that some protection at least should be given to the landlord from any act of the raiyat which is likely to deteriorate the productive powers of the land."

The Hon'ble MR. QUINTON said :—"I think the section as it stands gives the landlord all the protection he can reasonably claim. To say that the land has been made less fit would give rise to litigation, because it would be impossible for the Courts to determine degrees of fitness, and would make the raiyats more and more uncertain as to their position."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"For the reasons assigned by the hon'ble mover, I think the amendment a reasonable one. Some protection should be given to landholders in cases in which the raiyats deteriorated the quality of the land and lessened the letting value of it."

1885.] [*Rao Saheb V. N. Mandlik; Mr. Reynolds; Sir S. Bayley; The Maháráját of Durbhunga; The President.*]

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—"I think the amendment is worthy of being considered."

The Hon'ble MR. REYNOLDS said:—"As the Hon'ble Mr. Quinton has pointed out, it will be difficult for the Court to determine what has made the land permanently less fit for cultivation. It, therefore, seems to me an unreasonable suggestion, and I should prefer to leave the section as it stands."

The Hon'ble SIR STEUART BAYLEY said:—"I think the raiyat ought not to divert the land from the purposes for which it was let, and the amendment is one to which I have no objection in principle; but I cannot support it as it stands, because no Court could judge whether land had been rendered permanently less fit. I therefore think the wording of the amendment is objectionable, and that it will lead to litigation without that litigation being of any use."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said:—"All that I want to place before the Council is that they should in some way recognise the principle that the landlord should be protected from any act of the raiyat which is likely to deteriorate the letting value of the land in future, and if the Council agrees to that principle I am sure the hon'ble member in charge or the Law Member might be able in a day or two to lay a better-worded amendment before the Council. When you give compensation to the raiyat for improvements, you must give some reciprocal advantages to the zamíndár."

His Excellency THE PRESIDENT said that the principle of giving protection to the landlord against improper usage of the land by the tenant was generally recognised in Europe. He would, therefore, suggest that the consideration of the amendment should be postponed, or else that the section should be passed and it be left for further consideration by the Council whether in a later part of the Bill some clause should not be introduced which would give all the protection which was desired.

The further consideration of section 23 was postponed.

The Council adjourned to Thursday, the 5th March, 1885.

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

FORT WILLIAM;
The 31st March, 1885.

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