Monday,
9th 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 Monday, the 9th 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 W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath 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 J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section *(2)* of section 50 be omitted. He said :—" This sub-section is a reproduction of what is known as the rule of 20 years' presumption. It raises a presumption of fixity of rent in favour of all raiyats who might prove payment of rent at rates which have not changed for 20 years before suit. Such a rule might have been reasonable in 1859, when there was no complete Code of the Law of Evidence in the Indian Statute-book, and when proof of payment of a fixed rent since 1839 might have raised a presumption of possession since 1793. But what justification can there be for such a rule now that we have a Code of the Law of Evidence, which deals specifically with the subject of presumptions,

and when proof of payment of rent at uniform rate since 1865 can reasonably raise no presumption whatever that the same rent had been paid since 1793? The injustice of this rule of presumption cannot be better shown than by referring to the fact that in a vast majority of cases landholders have been unable to rebut it. And yet of the thousands of cases in which it has been held by virtue of this presumption that the lands have been held at a fixed rent since 1793, a large majority must have been cases of holdings created subsequent to the days when from half to two-thirds of these provinces were barren waste. This was forcibly shown the other day by the Hon'ble Mr. Reynolds by means of the statistics he produced of the enormous increase in the number of villages since 1793. Contrary, therefore, to its original scope and object, the rule has operated like a rule of prescription or limitation to create rights where none existed before. If the presumption was difficult to rebut in 1859, how much greater must be the difficulty as years roll on? A large majority of the landholders having come to the possession of estates by purchase at public sales, they have no means whatever at their disposal to rebut the presumption which the law raises in favour of the raiyat. In an enhancement-suit a raiyat has simply to set up a plea of fixity of rent, and in more than 95 cases out of 100, at least in Bengal, the plea prevails. Having been unable in most cases to get any records from the former proprietors, or to preserve them from the influences of climate when they get them, the landholders find themselves absolutely powerless to prove that a holding was created, or that the rent payable on it has changed since 1793. It is not because the provisions of the present law regarding enhancement of rent are unworkable, but because of the powerlessness of landholders to rebut the 20 years' presumption that there has been practically no enhancement by suit in Court since 1859. I will read to the Council the opinions of the Hon'ble Mr. Reynolds and of a few experienced judicial officers on this question. The Hon'ble Mr. Reynolds said:—

'Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent-receipts have been much more regularly given and much more carefully preserved during the last 20 years than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption and more and more difficult to rebut it. Nor can it be denied that auction-purchasers labour under a special grievance in this matter. If it be said that they may be expected to regulate their bids accordingly, it may be replied that it is not for the public interest that estates should sell below their value on the ground that the circumstances of the sale facilitate the advancement of fraudulent claims by the tenants.'

"Mr. H. L. Dampier said:—

'The consideration of the 20 years' presumption is again invited by Government. I have given the question all the consideration of which I am capable, and I find no reason to depart from the views which I expressed at length in the report which I submitted to Government on the 19th May, 1881, on Mr. Reynolds' draft Bill. I then, after examining the question, said, in concurrence with the views then held by Mr. Reynolds, that on the whole I would accept 1839 as the starting point for the presumption, as being the most likely to bring the effect of the presumption into accord with the actual rights which it assumes.'

"Mr. E. E. Lowis said:—

'The 20 years' presumption may be abandoned. During the last 25 years the right to hold at fixed rates has been in most cases enquired into, and it would now suffice to call on all who have such a claim to register themselves once for all. This may lead to some present litigation, but the matter would be settled finally. To this arrangement the zamíndár could have no objection.'

"Mr. J. Tweedie said:—

'The presumption becomes year by year less likely to be true, and probable truth is the only justification for a legal presumption.'

"Bábú Nuffer Chunder Bhutta said:—

'The 20 years' presumption, indeed, works injuriously, especially as against auction-purchasers. Since the passing of Act X of 1859 it is now nearly 25 years; so that the owner of a holding that was created even within five years of the passing of that Act may now claim the presumption. In order to obviate this absurdity the period should be increased to, say, 30 years, so that it may be put beyond all doubt that the holding was in existence at least some time before the passing of that Act.'

"Bábú Sree Nath Roy said:—

'In cases of enhancement the question of the nature of the holding would invariably be put in issue, and the 20 years' presumption in favour of the tenant would be too strong for the zamíndárs to overcome. True, this rule has been in force for the last quarter of a century, but experience tells us that there was scarcely a case of enhancement in which the plea of uniformity of rent for 20 years was not taken among others. If the present Bill passes into law without modifications, the natural consequence of this provision, as well as of certain others I have stated elsewhere, would be that measures will not be wanting to vary the rents or to concoct evidence to that effect, and nobody would know rest and contentment in consequence of the disputes and the litigations which would ensue.'

"Syed Moazzim Hossein said:—

'The retention of the 20 years' presumption rule (section 64, sub-section 2) is no longer necessary in these days. Since the passing of the Act of 1859 every raiyat is expected to be

prepared with 20 years' rent-receipts and shift the onus on the zamíndár, who is hereby placed at a greatly disadvantageous position, having to prove his case by production of collection-papers from the Permanent Settlement, which they might be at a loss to preserve. If the Court disbelieve them, there is no other means left to rebut the presumption. The rule, however, goes very harshly against those proprietors who have shown forbearance, particularly towards certain classes of landowners, such as widows, minors and auction-purchasers. The rate practically stops enhancement. If, however, a presumption is to be retained, the period of 20 years should be counted from before the passing of Act X of 1859; otherwise there would be no end of litigation, and no end to the amount of fraud, perjury and collusion between raiyats and zamíndárs' agents, and this will prove highly injurious to the just rights and interests of landholders. It would be better to stop enhancement by law than to propose such changes, which will tend to no benefit of the landlord, and by which the raiyat will unnecessarily lose his time of cultivation and suffer in purse in the bargain.'

"More than two hon'ble members have spoken of the new facilities for enhancement of rent which the Bill gives to the zamíndárs. It would have been more correct to say that the rights of landholders had been in this respect seriously curtailed, and greater obstacles have been placed in their way than what existed at present. I need only mention the provisions about limitation of two annas in the rupee, the reduction of the increase by one-third in working out the rule of proportion, the material alterations made on the grounds of enhancement, and the provision about progressive enhancements, to show what I mean. The landholders have repeatedly represented to the Government that they are perfectly satisfied with the principles of the present law on the subject of enhancement of rent, and that it is the rule of presumption which has hitherto practically barred all enhancement by suit in Court. The injustice of the rule of presumption is further clear from the fact that with all their prestige and influence, and with all the advantage they have over private landholders in the possession of a well-organised system of records, Government have always voided this rule of presumption as regards their own estates. The presumption is quite the other way as regards Government estates. There is not only no presumption of fixity of rent in any case, but the law also presumes that the assessments made by the Settlement-officer are just, and throws on the raiyat the onus of proving that they are excessive or unjust. The Bill has made no alteration whatever in the matter of this rule of presumption in the interests of private landholders, although it contains an express provision for exempting a majority of Government estates from its operation. To summarise my objections to this rule of presumption, I urge that it is opposed to the recognised principles of evidence; it has operated to deprive landholders of their just dues; it raises a presumption of fact which most landholders, and specially

auction-purchasers, find it impossible to rebut; it is condemned by experienced judicial officers; and, lastly, that the desire of Government to exempt their own estates from its operation clearly shows its injustice."

The Hon'ble MR. QUINTON said:—"I think in the presence of His Honour the Lieutenant-Governor and the Hon'ble Mr. Reynolds it will be useless for me to make any remarks on the conditions and status of the Permanent Settlement in Bengal. But with regard to the particular objection that Act X of 1859 protected from enhancement rents which remained unchanged from the time of the Permanent Settlement, I may say that that provision has never been objected to as other than equitable, and we have heard in the discussions which have taken place on this Bill several times that it gives rights to a large number which it is practically impossible for the people to obtain, and is likely to lead to a state of mind and temper in a law-abiding people which might induce them to leave off submitting their claims for the decision of the Courts and to resort to other means of obtaining justice. These considerations were no doubt present in the minds of the framers of Act X of 1859 when they enacted that a tenant who held at an unchanged rate of rent since the time of the Permanent Settlement should be protected against enhancement, and they went on to add that he should not be required to prove that there never had been any change in his rent during the first 70 years from the date of the Permanent Settlement till the passing of Act X of 1859. If they allowed any such provision to remain unqualified in the Act, it would be nothing more than a dead-letter. Therefore they said that in order to establish the right, if the tenant could prove that he had held at the same rent for 20 years, then the presumption should arise that he held at such rent from the time of the Permanent Settlement. But until he proved that he had so held for 20 years the presumption did not arise; and, if the landlord could prove that in one single year from the time of the Permanent Settlement there had been a *bonâ fide* change of the rent, the presumption would be rebutted. This provision must appear to any one to be a perfectly reasonable one, and I am glad to hear the hon'ble member admitted it was when that Act was passed. This section does, therefore, but continue that principle of law in the same manner as the principle in English law that a thing is beyond legal memory when it happened at a time when the memory of man runneth not to the contrary. This shows that such a presumption is not so contrary to all principles of equity and justice as the hon'ble member has stated.

"At the time when the Act was passed it was extended to the North-

Western Provinces, five districts of which were wholly or partly under permanent settlement, and this provision was, therefore, in force there. In 1873 a fresh rent law was enacted for the North-Western Provinces, and these provisions were continued in that law. Again, in 1881 the rent law of the North-Western Provinces came under revision, and the same provisions were again re-enacted. So that I may say that the legislature in India adopted the principle 25 years ago and re-affirmed it on at least two occasions since. In the same way we held that it would be unreasonable to require a raiyat to prove 12 years' continuous occupancy in the same tenure, and we therefore raised a presumption in his favour which the landlord could rebut. Under these circumstances I do not see how the presumption can be criticised in such unqualified terms of condemnation as the hon'ble member has used. He says many judicial officers have stated that it works hardly on the landlord; the tenant has got to prove that he has held for 20 years at the same rent; whereas the landlord has only got to prove that the rent has been changed during one single year. If the landlord has failed to prove this, on what ground can it be said that the presumption works hardly on him? If the landlord has failed to prove this, is it not fair to suppose that the presumption that the rent remained unchanged from the time of the Permanent Settlement is in accordance with the facts? I do not understand how the argument brought forward by the hon'ble member can be admitted. I have no doubt the Hon'ble Mr. Reynolds and His Honour the Lieutenant-Governor will supply any omission which there may be in my answer when applied to the circumstances of Bengal. I can only say that I cannot see the force of the argument."

The Hon'ble MR. REYNOLDS said:—"As the hon'ble member has referred to an opinion which was formerly expressed by me, I should like to be permitted to say that fuller reflection has satisfied me that my opinion was a mistaken one. I was right in saying that in many cases in which the presumption had been used against auction-purchasers it had effected what was not intended by the original framers of the rule; but I failed to take sufficiently into consideration the vast majority of cases which were never brought to trial, because the existence of the presumption had deterred the landlord from venturing to raise the question. In those numerous cases I believe great hardship and injustice would be done to those who were in the minds of the framers of the rule, and who, if the law were now altered, would be quite unable to show that they had held their lands at rents which remained unchanged from the time of the Permanent Settlement. The number of such cases is very great, and I think the injustice which the proposed amendment would cause ought to deter us from

making any change. The hon'ble member has referred to my opinion and those of some officers, but I should find no difficulty in bringing quite as many opinions against any change in this provision. Then, as to the statement which has been made that the Government keeps itself clear from the operation of the rule and does not allow the presumption to be raised in its estates, I am not aware what justification there is for that statement: I do not think there is anything either in the present law or in the Bill which exempts Government estates from the operation of the rule. But the presumption does not naturally arise in the case of temporarily-settled estates. In permanently-settled estates, where the raiyat has shown that his rent has remained unchanged for 20 years, the presumption arises that he has held at such rent from the Permanent Settlement. But in estates where the revenue has been periodically altered, the revenue being based on the rent, the presumption is not that the rents have been unchanged but that they have been changed. If a tenant in a Government estate can show that his rent had remained unchanged for 20 years, the presumption would apply to him, and he would be entitled, unless the presumption were rebutted, to continue to hold at that rate. But the great mass of raiyats in Government estates would be unable to establish any such claim, because the fact of periodical changes in the revenue is in itself a presumption that the rent must have varied."

The Hon'ble MR. GIBBON said:—"If this is a Bill, which it is presumed to be, to remedy the wrongs which were committed under previous legislation, I am strongly of opinion that the presumption, as it stands in the Bill, should be modified or it should be omitted altogether. If the wrongs of the raiyats are to be remedied, so ought the wrongs of the landlords. It is a wrong to give any one class of occupancy-raiyats any privilege which their brother raiyats do not possess; and that wrong Act X of 1859 committed. I believe that it was never intended at the time of the Permanent Settlement to allow any class of raiyats to hold their lands at fixed rents—certainly not to afford them the means of acquiring such a right in the future. Section 60 of Regulation VIII of 1793, on which most people who have claimed such a right for the raiyat base their claim, says distinctly that the section shall not apply to Behar; therefore, if the Regulation on which the claim is based makes a distinction between Bengal and Behar and exempts Behar from its operation, nothing in that section could have intended that any class of raiyats in Behar should hold at fixed rates. Under this Bill we are making the right to hold at fixed rates more valuable than it is at present; we are allowing the raiyat to acquire rights under this presumption which even Act X of 1859 never contemplated. We

are allowing the raiyat the right to sell, the right to sub-let, guarding him against his sub-lessee acquiring rights under him. We are allowing him to destroy the land, to build on it and to do whatever he likes with it; we are making him the actual proprietor of the land and his position a more enviable one than that of the zamíndár. I think it, however, impossible to do away with this section altogether. Vested rights have accrued which cannot be set aside, but we can avoid allowing a raiyat to acquire rights in the future that he does not possess at present. I therefore think the hon'ble member's second proposal is a sound one, namely, that the presumption should run from a fixed date, to eliminate its accumulative property. But the hon'ble member also proposes to set aside the presumption with regard to tenures, as well as with reference to raiyats; there I think he is wrong, for under the Permanent Settlement Regulations istimrári and other tenures existed and had such rights."

His Honour THE LIEUTENANT-GOVERNOR said:—"The hon'ble member in supporting the amendment which we are considering has based his argument on the fact that there is a preponderance of opinion amongst those who have been consulted against the justice of this presumption. I contest that statement. We took a good deal of trouble to analyse the reports when we submitted to the Government of India the letter of the 15th September. In that letter we showed that the result of the examination of the different opinions which came before us was that there is a very large majority in favour of retaining the presumption. The Commissioners of Patna, Burdwan, the Presidency Division and Dacca were unanimously in its favour. With regard to the judicial authorities on whose opinions the hon'ble member relies, I find it stated that a very few would annul it altogether; a larger proportion would modify it, but a still greater number would retain it. There is also the strong opinion of the Native Judge of Burdwan, who said that the rule had worked remarkably well since 1859 without putting any hardship on zamíndárs. Therefore I contend the authorities are against the hon'ble member. It has been said that the burden of proof lies upon us to establish the equity of this rule of presumption. But the fact is that the rule finds a place in the law as it stands, and it devolves upon those who are opposed to it to give more than general grounds for its abolition.

"The hon'ble member then goes on to speak against the good faith of the Government with regard to the management of its own estates. The other day he told the Council that though the Government are limiting the power of enhancement in the case of zamíndárs we take care not to bind ourselves by any rules of limitation, and he quoted a number of khás maháls in which

enhancement of revenue or rent had been excessive. Whatever may have happened before this Bill becomes law is not in point. When this Bill is law the Government will be bound by it exactly in the same way as the zamíndár will be bound. But as regards the particular cases to which he alludes, I would point out that the hon'ble member failed to refer to a fact, which will remove the whole gravamen of the charge, that the enhancements in a majority of those cases were of *dearah* lands in which the area of cultivation had increased, and which would therefore naturally come under assessment. That is not enhancement properly so-called, but simply the assessment of rent on an increased area of cultivation. My hon'ble friend Mr. Reynolds has already to some extent answered the charge that the Government takes care to protect itself against the operation of the rule of presumption, and I may add that I really do not know what justification the hon'ble member has for the statement which he makes. He brings forward no instances in support of his charge, but only makes a general statement to that effect. I can say against him only this, that the other day in the particular case of enhancement with regard to the Malinagor village in the Poosa estate, to which the attention of the Council has been more than once directed, where the tenants stated that they had held for 20 years at a uniform rate of rent, that plea was sustained against Government by the Munsif, who threw out all the cases. If the hon'ble member is still determined to press his amendment for the omission of a rule of law the retention of which most of the authorities have recommended, I shall certainly oppose the motion."

The Hon'ble SIR STEUART BAYLEY said :—"I cannot recommend the Council to accept the proposal for the abolition of this rule of presumption. I have to deal now with the arguments on which the proposal for abolition is sustained, not with any suggestion which may be made for its modification. I do not think the question of the abolition of the rule is within the range of practical politics. The hon'ble gentleman first based his argument for abolition on the ground, as he led the Council to suppose, that the majority of opinions was against it; but, as has been pointed out by His Honour the Lieutenant-Governor, the majority of opinions is not against it. In quoting these opinions the hon'ble member, as the Lieutenant-Governor pointed out, omitted to mention the fact that the Conferences of Burdwan, of the Presidency Division, of Dacca, of Patna and Orissa are in favour of retaining the rule. Again, as regards the opinions of judicial officers, of which he made a good deal, the tendency is in the opposite direction to what he led the Council to suppose. Bábús Mohendro Nath Mittra, Banimadhub Mittra, Amrit Lal Chatterjee, Mohendro Nath Bose,

Jogodishvar Gupta, Bipin Chunder Rai, Khetter Prosad Mookerjee, can all be quoted as judicial officers who are in favour of retaining the presumption as it stands, and I can show that a very large majority of them are against abolishing it altogether. Then he said that the vast majority of estates since this presumption became law have changed hands by the operation of the sale law. I cannot conceive what has led the hon'ble member to suppose so, for I find that the average annual number of estates sold in Bengal is one out of every 245, and in the course of 20 years that would not make one-tenth part, much less a majority. I should like to know on what authority he says that 95 per cent. of the estates have changed hands. I can only say that that statement is not borne out by the papers before the Council. But I was still more astounded by the assertion that the Government has made a special law in its own behalf, and has thought fit to exempt its own estates from the operation of this principle. That is not the case. What the Government has done, as the Hon'ble Mr. Reynolds has explained, is to maintain the existing law to the effect that in temporarily-settled estates this presumption does not arise, for the simple reason that where there are periodical alterations of revenue, involving periodical settlements of rent, the presumption is that the rent has not remained unchanged. If, however, a man can prove that he has held at a fixed rate from the time of the Permanent Settlement, his rent cannot be altered; but in regard to this presumption there is absolutely no distinction at all between Government and other estates. There are temporarily-settled estates which are not the property of Government. No distinction is made between these particular estates and temporarily-settled estates under the Government, and, where the Government is the holder of a khás mahál which is permanently settled, there is similarly no distinction whatever between them and zamíndári estates. The whole foundation of the hon'ble member's statement is absolutely incorrect, and, when he goes on to say that the Government in its settlement-proceedings has got enhancement by throwing on the raiyats the burden of proving in the Civil Court that they held from the time of the Permanent Settlement, though the statement is true as to the past, it is grossly misleading, for the hon'ble gentleman has omitted to point out that under this Bill the Government deliberately abolish the old law and the special privileges they had under it, and put themselves in regard to settlement-proceedings exactly on a par with all other landlords."

The Hon'ble MR. ILBERT said:—"I agree with the majority of the Rent Commission and of the Select Committee on this Bill in thinking that this presumption ought to be retained. I am in favour of retaining it for very

much the same reason as that for which I was in favour of the prevailing rate as a ground of enhancement. The twenty years' presumption is as valuable to the tenant as the prevailing rate is to the landlord, and in neither case am I disposed to remove a provision of the existing law merely because its form is capable of being described as embodying an element of fiction. The presumption arising from holding for twenty years at a fixed rate of rent is, as has been pointed out, not unlike the well-known presumption which is created by the English common law, and under which, when it is proved that a man has enjoyed rights of a particular class for twenty years, it is presumed in his favour that he has enjoyed the rights for a period whereof the memory of man runneth not to the contrary, that is to say, for a period which, according to English lawyers, commences at a point either at or near the beginning of the reign of Richard I—a date which, I need hardly say, is anterior to the Permanent Settlement. It must be borne in mind that the effect of a presumption such as this is merely to determine the point at which the burden of proof is shifted from one party to the other. Before a raiyat can obtain the benefit of this presumption at all, he must prove that his rent has not been changed for twenty years; it is not until he has discharged this burden of proof that the presumption comes in."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said in reply:—"It is a duty I owe to myself that I should state emphatically that when I quoted the opinions of some judicial officers with reference to the harsh working of this rule of presumption I did not say that they represent the majority of opinions on the subject or that there was a preponderating opinion in favour of my proposal. I simply said that there was a number of opinions of judicial officers in support of my view. Again, I am sorry that His Honour the Lieutenant-Governor should have thought that I mentioned the fact of the exemption of Government estates from the operation of this rule of presumption as something against the good faith of the Government. I used the fact simply as showing very clearly the injustice of this rule of presumption—not that the Bengal Government or any Government has taken advantage of an exceptional rule for its own interested purposes, but that, knowing that the application of the rule to Government estates would seriously jeopardise their interests by creating new rights where none existed before, the Government has taken care to exempt its own estates from the operation of the rule of presumption. It was said by the three hon'ble members who have spoken on the subject that I have no warrant for the statement that the rule of presumption does not apply to Government estates. I shall read to the Council the first line of a

section which contains this rule. When Act X of 1859 was passed this rule was contained in section 4 of that Act. It said, 'Whenever in any suit *under this Act* it shall be proved'; and when Act X of 1859 was repealed by Bengal Act VIII of 1869 the very same words were reproduced. Can it for a moment be contended that settlements in Government estates were made under those Acts? Is it not Regulation VII of 1822 and Bengal Act III of 1878, and after that Bengal Act VIII of 1879, which give the law for the settlement of rents in Government estates; and is there a single provision in those laws similar to the rule of presumption contained here? Again, it has been observed by His Honour the Lieutenant-Governor that I did not state to the Council the other day, when I gave the Council the result of my calculations as to the increase of so many annas in the rupee, that those settlements referred to *dearah* settlements. I took those figures from the Administration Report of the Bengal Government, and there is nothing in the chapter from which the figures were taken to show that they referred to *dearah* settlements. The chapter is headed 'Re-settlements', and I had every right to draw those conclusions when I gave the arithmetical calculation of the amount of increase over the former revenue."

The amendment was put and negatived.

The Hon'ble BÁBÚ PRÁRI MOHAN MUKERJI moved that in section 50, sub-section (*2*), lines 5 and 6, for the words "during the twenty years immediately before the institution of the suit or proceeding" the word and figures "since 1839" be substituted. He said:—"As my amendment for the omission of the section has been lost, I propose this amendment with a view to meet the grievance which I presume to think the zamíndárs have clearly made out. I think it will be fair and just if the raiyat has to prove that he paid rent at a uniform rate since 1839, that is, 20 years before the passing of Act X of 1859, as was originally recommended by the Hon'ble Mr. Reynolds; and I also beg to move that in sub-section (*4*), after the word 'apply' the words and figures 'to an estate or tenure sold by public auction since 1859 or to' be inserted. This forms part of the amendment which was originally recommended by the Hon'ble Mr. Reynolds. If it be not desirable to do away with the rule of presumption altogether, it should be so modified as not to apply to auction-purchasers, and only to cases where uniform payment has been proved from 1839."

The Hon'ble MR. REYNOLDS said:—"I do not think the hon'ble member should again have quoted me after I had recanted the opinion I formerly expressed and told him why I believe I was then wrong. I think the two

amendments now proposed will have a harsh and injurious effect, because a large number of tenants who may have thought themselves safe in preserving their receipts for 20 years would now be called upon to produce their receipts from the year 1839. When the conditions referred to in another part of the Bill are fulfilled, when there is a law requiring tenures to be registered in a public office, or a record-of-rights has been made in respect of any local area, then, and not till then, this presumption can be abolished without any danger."

The Hon'ble SIR STEUART BAYLEY said:—"I wish to point out an obvious objection to this amendment. The hon'ble member would exclude from the benefits of this presumption the raiyats of any estate which has been sold by auction. In such cases a raiyat, having kept his receipts and proofs for a period of 20 or 30 years, will fail to have the benefit of this rule of presumption, because his landlord chooses to default and the estate is sold, and he will then no longer be entitled to the benefits which the law since 1859 has secured to him. I ask whether it is reasonable or right that the status of a raiyat should be changed if the estate has changed hands. I do not think anybody would say that."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sub-section (*4*) of section 56 be omitted. He said:—"I consider the provisions of section 58 contain sufficient penalty for defective receipts. If a landlord refuses to give, or does not give, a receipt in the proper form giving all the particulars required, he will be liable under that section to pay to the tenant double the amount of rent paid by him. But this section provides, in addition to that penalty, a presumption in favour of the raiyat to the effect that where the landlord gives a defective receipt it will be presumed to be in full discharge of all demands from the tenant up to the date of that defective receipt; so that the penalty for giving a defective receipt is greater than for a refusal to give a receipt, although the defect in the receipt might have arisen from ignorance or oversight or carelessness of the zamíndár's agent. I submit that there is no necessity for this provision, because section 58 provides for such cases."

The Hon'ble SIR STEUART BAYLEY said:—"The necessity for this provision has been felt all along. It was started with the idea of requiring receipts to contain certain specific information, which was contained in a recommendation made by the Behar Committee, who remarked very strongly about the way receipts were kept and presented in Court; and they insisted upon the necessity of the

receipts giving certain specific information, and on their being kept in counterfoil. This recommendation was afterwards considered by the Rent Commission, and they came to the same conclusion. As the provision first stood in the Bill it was a great deal more stringent than it is now: the giving of a defective receipt was of itself to operate as a discharge in full up to the date of the receipt; the presumption now given is nothing if the zamíndár can show that the receipt is not an acquittance in full, or that the particulars required have been *substantially* given. It will only be in the case of wilful omission that the presumption will arise."

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (*1*), for the words "six months" the words "three months" be substituted. He said:—"I would call the attention of the Council to the change about to be made by this section in the law. The present law provides that if a landlord withholds a receipt he shall be liable to damages, the present law presumes intent to defraud by withholding a receipt, but this section enacts that if a landlord refuses *or neglects* to deliver a receipt he shall be liable to severe penalties. The proposed section punishes for neglect to deliver, for laziness, forgetfulness on the part of the landlord. The raiyat may bring his rents but fail to bring the account on which the payment is to be entered with him, and yet the Bill will punish the landlord for neglect to deliver. It is impossible for any landlord to prove he has delivered a receipt. I know from my own experience the difficulty of inducing raiyats to receive receipts; they see the amount credited in their account and then they disappear. It is in fact often impossible to give receipts, and this Bill puts further difficulties in their way. It gives the landlord no facilities for delivering receipts, and the only way in which he can possibly give it is by sending it to the tenant in a bearing cover, which will cost him two annas. The withholding of a receipt with intent to defraud should be punished by law, but it is very necessary that the party aggrieved should be obliged to appeal to the Court as soon after the payment is made and the receipt withheld as possible to enable the Courts to judge fairly between them. I have simply provided that the term for instituting a suit under this section should be shortened, so that if the landlord does neglect to give or does withhold a receipt with attempt to defraud, he should be sued without any unnecessary delay."

The Hon'ble SIR STUART BAYLEY said:—"I have no particular feeling in this matter: I can only say that the term of six months was fixed in Committee after a good deal of discussion."

1885.] [*Mr. Hunter; Bábú P. M. Mukerji; Mr. Reynolds; Sir S. Bayley.*]

The Hon'ble MR. HUNTER supported the amendment. He said:—"I think the clause as it stands will place a difficulty in the way of the landlord, and I do not think the proposed amendment will be in any way adverse to the interest of the raiyat."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 58, sub-sections (*1*) and (*2*), after the word "landlord" the words "after demand by letter duly registered under the Post Office Act" be inserted. He said:—"It is necessary for the ends of justice that before a raiyat is allowed to sue his landlord for a penalty of double the amount of the rent, on the ground that the landlord has refused to give a receipt for the sum paid, there should be a provision in the section for a demand on the landlord in such a way that there should be no reasonable doubt as to the demand having actually been made. As it is, the section will afford very great temptation to the raiyat, after he has paid rent, to refuse to take a receipt, and then resort to the Court to recover double the amount; he has simply to tell the Court 'I paid a particular sum; I asked for a receipt and did not get it; and I claim double the amount as a penalty'. I submit that some provision is necessary for the purpose of giving the landlord some protection against false claims for penalty."

The Hon'ble MR. REYNOLDS said:—"I am not in favour of this amendment, and I would remind the Council that the hon'ble member in speaking on section 56 said that the last clause of that section might be removed because section 58 provided a substantial remedy. But this amendment would really cut out all certainty from section 58, because, although it is reasonable to say that a demand should be made before the raiyat goes to Court, it will be impossible for the raiyat to prove that he made the demand by registered letter, inasmuch as he will be unable to show what the contents of the letter were. I therefore cannot support the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"This proposal was moved in Committee, but was not accepted. I have a good deal of sympathy for landlords in respect to this matter, but I think the hon'ble member's amendment will scarcely secure the proof of the demand having been made, which is what he desires. A registered receipt proves nothing beyond the fact that a letter was posted: it is no proof of the contents of the letter. I think the contention of my hon'ble friend is a sound one."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"The simple posting of the letter would, under the Evidence Act, be a presumption of the letter having been delivered, and a copy of the letter might be produced along with the post office receipt."

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (*2*), the words "the receipt in full discharge or" be omitted. He pointed out that the wording of the Bill was ambiguous, and if the hon'ble member in charge of the Bill could see his way to altering the draft of the sub-section a little, MR. GIBBON would withdraw his amendment.

The Hon'ble SIR STEUART BAYLEY consented, and the Hon'ble MR. GIBBON's amendment was then withdrawn.

The Hon'ble MR. GIBBON moved that in section 58, sub-section (*3*), line 3, for the word "shall" the word "may" be substituted. He said:—"The sub-section says that if a landlord fails to prepare and retain a counterfoil copy of a receipt or statement as required by either of the said sections 56 and 57, he 'shall' be punished with a fine which may extend to fifty rupees. My object is to make the sub-section permissive and to allow the Courts to exercise some discretion in the matter. There may be many reasons why the landlord may not be able to give a counterfoil receipt or retain a counterfoil copy of a receipt. Section 59 provides that the Government shall supply receipts in printed books. Suppose none are in stock and the landlord not able to procure them. The landlord would in that case be fined fifty rupees in each case; the Courts would have no option but to fine him. It has been said in defence of this section that the Courts may give nominal damages. The Bill now substitutes a penalty for damages. In all cases that a penalty is inflicted and in most cases of damages the penalty carries costs—in themselves a severe penalty. I therefore wish to give the Courts a discretionary power, so that if the landlord is not to blame he should not be punished."

The Hon'ble SIR STEUART BAYLEY said:—"I understand that the wording of this section is adopted from the Penal Code, and there may be a strong objection to alter it; but I think the hon'ble member's objection may be met by inserting the words 'without reasonable cause' after the word 'neglects,' and I have no objection to do so."

The Hon'ble MR. GIBBON accepted this suggestion and withdrew his amendment.

The Hon'ble SIR STEUART BAYLEY then moved the following amendments:—

(1) that in section 58, sub-section (*1*), line 1, after the word "landlord" the words "without reasonable cause" be inserted;

(2) that in section 58, sub-section (*2*), lines 1 to 3, for the words "If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or" the words "If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge, or, if the tenant is not entitled to such a receipt," be substituted;

(3) that in section 58, sub-section (*3*), line 1, after the word "landlord" the words "without reasonable cause" be inserted.

The amendments were put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 61, sub-section (*1*), clause (*b*), be omitted. He said:—"Where the landlord or his agent refuses to accept rent when it is tendered, it should justify the deposit of rent in Court; but where rent was refused several years ago by reason of a dispute as to the amount of rent, or where the question in dispute was as to the right of the party who tendered it, there is no reason why, after such dispute has been amicably settled, that rent should be refused for all time to come. The law should not justify the deposit of rent in Court on the ground that the raiyat had reasonable ground to suppose that the rent would not be received."

The Hon'ble MR. REYNOLDS said:—"I do not think this objection can be raised on the wording of clause (*b*). The hon'ble member referred to a dispute which had since been amicably settled, but what the clause provides for is a case in which the tenant has reason to believe that, owing to a tender having been refused on a previous occasion, the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it. That presumes that the cause of dispute is still in active operation, and it seems to me that in such cases the tenant should be at liberty to deposit the rent in Court."

The Hon'ble SIR STEUART BAYLEY said:—"The clause as it now stands was the subject of a good deal of discussion in Committee, and has undergone a considerable amount of alteration. It was explained fully in the Statement of Objects and Reasons, and the Committee thoroughly considered the representations of both parties. The tendency on the one side was to let the raiyat deposit money in Court when he liked, and on the other to insist on the raiyat tendering the amount at the zamíndár's kachahri. The zamíndárs objected to this provision, because they, or at least their amlá, are unwilling to lose the enormous hold over their raiyats which the necessity of personally appearing at the zámíndar's kachahri gives to them. Formerly they had the legal power of arresting a raiyat and forcibly bringing him to the kachahri. When Act X of 1859 abolished that power they declared it would be ruinous to them, and it is the same feeling which prompts them to desire the attendance of the raiyat on all occasions. The feeling is a very intelligible one, for it is by this means that an underpaid body of amlá secure their perquisites; but, on the other hand, there was also a very intelligible feeling that so long as payment of the rent is secured the raiyat should not be forced to submit to an ordeal of the dangers of which he has already had experience. We have modified the section a good deal. As it stood last year it was more in accordance with the amendment which the Hon'ble Amír Alí thinks necessary; the raiyat would then be the sole judge practically whether the dispute with the landlord is a sufficient ground for depositing the rent in Court. As the section stands, the ground on which this privilege is now given to the raiyat is that rent has been refused on a previous occasion, and we have given a discretionary power to the Court to grant or to refuse the application. Under these circumstances I think the landlords' rights are sufficiently guarded."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in section 61, sub-section (*1*), clause (*b*), line 8, after the word "owing" the words "to any existing dispute or" be inserted. He said:—"The intention of my hon'ble friend is to meet a certain class of cases which sometimes occur in Eastern Bengal. Cases may arise in which it might be very difficult and a little dangerous for the raiyat to go near the office of the zamíndár, and he thinks that in such cases tenants should be protected from the necessity of going near the office—an office in which he is likely to receive rough treatment. He therefore proposes this amendment."

1885.] [*Sir S. Bayley; Bábú P. M. Mukerji; Rao Saheb V. N. Mandlik.*]

The Hon'ble SIR STEUART BAYLEY said:—"As we have accepted the decision of the Committee against an alteration in an opposite direction, I think we ought also to retain the decision of the Committee against any alteration in this direction."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY moved that in section 65, line 1, before the word "tenure-holder" the word "permanent" be inserted; and that in section 66, sub-section (*1*), lines 3 and 4, for the words "in respect of the holding of a non-occupancy-raiyat or an under-raiyat" the words "from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat" be substituted.

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that to section 74 the following *exception* be added:—

"*Exception.*—Bonus or salámí paid to the landlord by the raiyat in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do shall not be deemed an imposition within the meaning of this section."

He said:—"The principle of this amendment, if I recollect right, was not objected to by the Select Committee when the question was discussed. Considering the very heavy penalties which the section imposes for the collection of any sum over and above the actual rent, it is, I think, necessary that an *exception* of this kind should be expressly inserted in the Bill for the purpose of giving protection to the landlord in those cases in which he receives a bonus or salámí from the raiyat for allowing him to do what he otherwise would have no lawful power to do; as, for instance, when the landlord allows the raiyat to make an excavation and take earth for making bricks. In such cases the salámí which the zamíndár gets from the raiyat should be exempted from the operation of this section."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The Government does get such fees in estates which are not permanently settled in the Bombay Presidency. Perhaps the hon'ble member in charge might reconsider the matter."

The Hon'ble SIR STEUART BAYLEY said:—"We have considered the matter. We think there is no objection to the principle which the amendment lays down, but we are very much afraid of its practical operation. The substantive law has been kept as it is, and the old rulings will be applicable to it. Whatever is not illegal now will not be illegal under this Bill; what is illegal now will continue to be illegal still. We have not ventured to touch the section, and for this reason I think it would be unwise to put in the proposed *exception.*"

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that section 75 be omitted. He said:—"The section will, I believe, be practically inoperative in 99 cases out of 100 where it is really required, and act harshly in others where it is not necessary. The cases intended to be got at are cases in which the landlords take abwábs and cesses in lieu of enhancement of rents, and for this purpose the previous section is sufficient. Where the raiyat actually gives them of his own free accord, where they are not exacted but given in lieu of benefits received, this section as it is worded will be inoperative. Exaction means extortion; it implies a certain amount of pressure or restraint. The present law gives damages for extortion; the North-West Act awards compensation for extortion by illegal confinement or duress. This section says the raiyat may sue for a 'penalty' for exaction without declaring what is to constitute exaction. There is a great difference between allowing an injured person to sue for damages and to sue for a penalty. Penalties should in all instances go to the Crown and not to the raiyat; if the raiyat is injured bodily, the Criminal Code should be sufficient to protect him. Damages would be sued for in proportion to the injury suffered. Under this section a raiyat must in every case sue for the whole amount of the penalty. He should not be encouraged to bring a civil suit for Rs. 200 and hope to receive it by way of damages where the actual loss suffered will in most instances be very slight."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I agree with the hon'ble mover of the amendment."

The Hon'ble MR. REYNOLDS said:—"Under the present law the raiyat is entitled to sue for damages, but he cannot recover more than double the amount exacted from him. In such cases the landlord takes a comparatively small sum from each of a large number of raiyats, and it seems a mockery to tell a

raiyat from whom a sum of Rs. 2 has been exacted that he may sue his landlord with the prospect, if successful, of recovering double the amount. As to the necessity for the section I may refer to the details of a case which has reached me within the last few days in connection with the Patwárí Bill now before the Bengal Council. That Bill proposed to levy a patwárí cess on the land, to be paid in the first instance by the zamíndár, and to give power to the zamíndár to recover the cess or a certain proportion of the cess from his under-tenants. In his letter, Mr. Stevenson, a missionary in the Sonthal Parganás, expresses a strong hope that that procedure will not be adopted, and he remarks that the opportunities which will be given by the Bill will be availed of for the purpose of extorting from the raiyats much greater amounts than the authorized cess. He gives a concrete example, and says:—

'As an example of how zamíndárs as tax-collectors act, I may mention a case the facts of which are before me at present. *K. M.* of the village of *P.*, of the *P.* zamíndárí, whose annual rent is Rs. 34-10, was asked by his zamíndár to pay Rs. 5-6-9 as cesses for the year. On behalf of the raiyat I asked for an explanation of the particulars of the cesses. The explanation given was that there are three cesses to be paid—(1) the road cess, which is two pice in the rupee, but charged on double the rent; (2) the public works cess, also two pice on double the rent; and (3) a rigwari tax, two pice in the rupee on the rent. In this way this raiyat was being made to pay 2½ annas in the rupee on his rent.'

"In this instance the missionary personally interceded for the raiyat, who is possibly a Native Christian, and got the exaction remitted: but he says this case is only an illustration of what is going on all around. That I think is a very strong instance of the necessity for some substantial punishment in cases such as are provided for by this section. The raiyat whose rent was Rs. 34-10 was required to pay Rs. 5-6-9 as cesses for the year. The amount which could be legally claimed from him was 18 annas, and the rest was an illegal exaction. I see that Mr. Stevenson says that it is useless to tell the raiyat that he has his remedy by going into Court and suing the zamíndár for double the amount of the exaction. Therefore I trust the Council will agree that this section, which provides a penalty of Rs. 200, ought to be retained."

The Hon'ble SIR STEUART BAYLEY said:—"I agree with my hon'ble friend Mr. Reynolds that the penalty should be substantial. The old power of suing for damages of double the amount of the exaction is obviously useless, as it has failed to be of any effect. The hon'ble mover of the amendment argues that this penalty being by way of punishment it ought to go to the Crown, but I do not see why the raiyat ought not to have the power of suing for penal damages. The levy of two annas or four annas from a man is not a very serious

thing, but it is a matter of public policy to put a check upon these exactions. With regard to the particular sum inserted, I may remind the Council that in last year's Bill it was Rs. 500, and it was reduced to Rs. 200 on the motion of the Hon'ble Mr. Gibbon; but I cannot agree that the penalty should be omitted altogether."

The Hon'ble MR. GIBBON said:—"I cannot agree with the hon'ble member in charge of the Bill. On the contrary, the whole of the hon'ble member's statement goes to prove, as I have asserted, that in the majority of cases what this section is intended to hit it does not hit. I quite agree that where a man has exacted payment of any excess, that is, where force has been used, the raiyat should be allowed to sue for damages without limit, but all sums levied by way of penalty should go to the Crown. A man might pay a cess to the zamíndár for four or five years, and at the end of the fifth year he may sue under the Bill for Rs. 200 as damages."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 77 be omitted. He said:—"I do not object to the principle of this section. I think that a raiyat whose rent is fixed in perpetuity should have a right to make such improvements as are allowed by the law without any reference to the landlord. But there are two difficulties in the way by reason of which I think this section should be omitted. In the first place it will be a very difficult matter to determine whether a raiyat holds at a fixed rent or at a fixed rate of rent. If the question is referred to the Collector under sub-section (*3*), the Collector will have to raise a side issue in the first instance and decide the very important question as to whether the raiyat holds at a fixed rate of rent before entering upon the question referred to him, namely, whether the raiyat has the legal right to make the improvement against his landlord's consent. On these grounds I submit that the section should be omitted."

The Hon'ble SIR STEUART BAYLEY said:—"Recognizing, as we do, the force of a good deal of what the hon'ble member has said about the undesirability of raising such an important question as whether a raiyat holds at a fixed rate of rent by a side issue, we are prepared to accept the amendment, namely, to omit section 77, and to give raiyats holding at fixed rates the same rights to improve as an occupancy-raiyat. I shall therefore move in section

78 that the words 'holds at fixed rates or' be inserted. I propose this without prejudice to the substantive amendment of the hon'ble member."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then moved that the words "holds at fixed rates or" be inserted after the word "raiyat" in line 1 of section 78.

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 78, sub-section (*2*), line 2, for the word "raiyat" the word "landlord" be substituted, and that the words beginning with "unless" in that sub-section be omitted. He said:—"Where both the raiyat and landlord desire to make an improvement, I submit that the landlord should be given a preferential right to make the improvement. In the first place, what the raiyat may consider to be an improvement as regards his own holding might not be an improvement as regards the holdings of his neighbours. If the improvement which the raiyat proposes to make, although it may be beneficial to his own holding, is prejudicial to the holdings of other raiyats, the landlord has a right under the Bill to prevent it. It is with the view of preventing disputes between neighbouring raiyats that I think it very desirable that the landlord, whose interest it is to do common justice, should have a preferential right to make an improvement where the improvement is desired by the raiyat, instead of the raiyat being allowed a preferential right to do so against the wish of the landlord."

The Hon'ble MR. REYNOLDS said:—"I think the section embodies the proper rule, and a good deal of the objection which has been raised is provided for by the concluding words of the section, which says 'the raiyat shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord.' Where it does not affect other holdings the Bill provides that the person who is primarily interested in the improvement shall have the preferable right to make it, and this is certainly the case with regard to a raiyat holding at fixed rates, whose stake in the land is very considerable. The same remarks apply, though in a less degree, to an occupancy-raiyat. Such a man should not be prevented from making an improvement because the landlord expresses a wish to have the first right to do so. I think the Council should not agree to the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"The question of improvements is one which is really as regards occupancy-raiyats more of theoretical than

practical value. As long as the occupancy-raiyat is not ejected for arrears of rent, compensation for improvements will not have to be paid, and so long the landlord will not trouble himself very much as to whether the raiyat makes improvements or not. But it is of the first importance that we should encourage and strengthen the desire to make improvements. We are often told that raiyats do not make improvements; but in my experience I have found that when improvements are made they are, especially in the case of wells, made by the raiyats; only where the *bhaoli* system prevails it is done under the direction of the landlord. The theory which underlies the whole arrangement is that the landlord has the right to receive the rents; the raiyat has the right to use the land; it is more to his interest that the land should be improved, and therefore he should have the prior right to make improvements. I hope the Council will not accept the amendment."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in section 85, sub-section (*1*), the words "otherwise than by a registered instrument" be omitted.

The Hon'ble SIR STEUART BAYLEY said:—"As this amendment has not received any support, I see no need to say anything."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that in section 85, for sub-section (*2*) the following be substituted:—

"No sub-lease shall be valid for more than nine years."

The Hon'ble SIR STEUART BAYLEY said:—"In consequence of the last amendment this section is not required."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in sub-sections (*2*) and (*3*) of section 85, for the word "nine" the word "five" be substituted. He said:—"We are all alive to the evils of sub-letting. Both the Government of India and the Secretary of State have strongly condemned the institution and urged the necessity of discouraging it. Mons. Laveley has told us that it was to his Lordship the President of this Council more than to any other statesman

that the exposure of the evils of the institution as it obtains in Ireland is due. Its effect on the condition of the tenants has been the same here as in Ireland. A Flemish peasant is regarded by statesmen and legislators as a model peasant, but before we can hope to see a peasant like him in this country it is necessary to educate the Bengal raiyat to regard with horror the idea of allowing a stranger to settle on his land and farming a portion of it. The Flemish peasant would regard it as altogether monstrous. It is with a view to minimise the evil in this country that I move that the maximum period for which a sub-lease shall hold good should not exceed five years. The Bill makes it nine years, and in so far therefore gives a sub-lessee larger rights than what a non-occupancy-raiyat would get under his judicial lease."

The Hon'ble MR. REYNOLDS said:—"I regret I cannot see my way to support this amendment, because, while I sympathise with the hon'ble member in the desirability of discouraging sub-letting, I am not satisfied that we should effect this object by shortening the term of the engagement. But I hope the improved position of a sub-lessee under the Bill will tend to discourage sub-letting. I may say that this particular term of nine years is the result of a compromise which was the outcome of a long discussion. I therefore think it will be better that the Council should not disturb the agreement to which the Committee came in fixing the term at nine years."

The Hon'ble MR. GIBBON said:—"I would oppose the amendment. If it is carried it will do much not to restrict sub-letting but to encourage it. I quite agree that the more you wish to restrict sub-letting the stronger you must make the position of the sub-lessee. The sub-lessee has no status under the present law; the occupancy-raiyat who now sub-lets has it in his power to defraud his sub-tenant at pleasure, and it is mainly owing to the occupancy-tenant having this power that the admitted evils of the present *partaoli* system are due. Now that it has been thought necessary to withhold the right to transfer from the raiyat, it is only by sub-letting a portion of his holding that the raiyat will be able to raise money for his requirements; and for this purpose I maintain it is necessary to give him a longer term than nine years, and I would extend it to fifteen years. The more you shorten the period for which sub-letting is to be legalized, the greater the load of debt the raiyat must clear off in a year or the greater the burden of debt will remain on the head of the raiyat at the end of the lease."

The Hon'ble SIR STEUART BAYLEY said:—"It was on consideration for convenience that we came to the particular term of nine years. It was seven

years previously in the Bill. An amendment was proposed to increase it to fifteen years, but after considerable discussion the term of nine years was fixed. If you restrict the period, sub-leases will be given under another name. I do not think a sufficiently strong reason has been shown to disturb the conclusion to which the Select Committee came."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, by leave withdrew the amendment that in section 85, sub-section (*3*), the words "by an instrument registered" be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 86, sub-section (*3*), be omitted. He said:—"This sub-section creates for the first time a rule of presumption which, I think, is not altogether warranted. The rule of presumption is this, that if a raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender, or if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate, it shall be presumed, until the contrary is shown, that he has given notice to the landlord for the surrender of his holding. At present the Courts reasonably raise a presumption where it is proved that the land surrendered is let to another raiyat from the beginning of the year; but except that one fact no other fact can raise a presumption like this. It is no ground for a reasonable presumption that a man has taken another holding in the village, because he may wish to have two or three holdings in the same village. That should create no presumption that he has surrendered the previous holding, nor is it a presumption that because he has not resided in the village for three months he has surrendered his holding. Your Lordship will see on turning to section 87 that no presumption of a raiyat having abandoned his holding will be raised until after the expiration of the year in which the raiyat actually abandoned it. But here, when the question is as to whether the raiyat will continue liable for the payment of rent, the Bill contemplates raising the presumption in his favour that he has surrendered simply by the fact of his not living in the village for three months. The two things are incompatible with one another, and the presumption is contrary to actual fact that a man may have several holdings in a village without raising the presumption that he has surrendered any of the holdings he previously held. On these grounds I move that the unnecessary rule of presumption which this section tries to create should be omitted."

The Hon'ble SIR STEUART BAYLEY said:—"If I understand the hon'ble member correctly, he has entirely misunderstood the meaning of the section. This section has nothing to do with surrender; it does not come into effect until the surrender has taken place. The question is, when the raiyat has surrendered, is he still to be held liable for the payment of the next year's rent? If he has given three months' notice the answer is no, if he has not given it the answer is yes, but we look to the object with which three months' notice is required, and we say if he has left the village, or if he has exchanged his holding for another, then the landlord has already received the information which the notice is intended to secure, and it is here that the presumption comes in. The presumption is not a presumption of surrender, but of service of notice. The raiyat will then be able to say that he gave notice, because the landlord has let him another piece of land in the same village. If this was a presumption of surrender, then there would be some force in the remarks of the hon'ble member; but the question of surrender itself has nothing to do with this section. It is merely a question whether proper notice has been given to the landlord."

The amendment was put and negatived.

The Hon'ble MR. GIBBON moved that section 90, sub-section (*2*), be omitted. He said:—"This section prohibits the landlord from measuring land more than once in every ten years without the previous consent of the Collector. Where boundary-marks are well defined and the circumstances of the holdings remain fixed from year to year, the landlord will not suffer to any very great extent; a measurement once correctly made will hold good for many years; but in sparsely cultivated districts, such as in North Behar, where raiyats take possession of land without the previous written consent of the landlords, where custom permits the raiyat to take possession of waste land and cultivate it for himself without acquiring the consent of his landlord, the effect will be disastrous. Fallow lands conterminous with the raiyats' lands are encroached upon without the raiyats obtaining the consent of the landlord. Raiyats who wish to protect their lands with an embankment and ditch will, as a rule, erect both embankment and ditch on lands that do not belong to them, and the only means the landlord has of checking trespass is by measurement. The Bill gives the Collector the power to permit measurement whenever he deems fit, but the only reason the landlord could adduce for wishing to measure would be trespass, and the practical effect of this prohibition will be that every case of real trespass which the landlord brings against his raiyat will be construed into an attempt to evade the prohibition, and every request for

permission to measure to test trespass will be refused. If any injury will be done to the raiyat by permitting his landlord to measure his land oftener than once in ten years, the injury will not be done by the act of measurement but by the use he makes of such measurement in the Courts afterwards."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK supported the amendment.

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment, although there may be cases in which the country is only partially cultivated and thinly populated, and in which this sub-section might in some degree prejudice the interests of the landlord; but I cannot in the least agree that the omission of the sub-section will not do the raiyats any injury. The great object of the sub-section is not so much to prevent the landlord from measuring as to prevent harassment to the tenant by continual threats of measuring the land; because there is nothing the raiyat objects to so much as having his land measured, and it is one of the most powerful engines of making the raiyat come to terms. It is to take away the landlord's power in this respect that this sub-section was inserted. The abuse of the provision is sufficiently provided for by clauses (*a*) to (*c*), which provide for cases in which the landlord might reasonably be allowed to measure oftener than once in ten years. But as a general rule the period which should be allowed to elapse should be ten years; the omission of the sub-section will put the rights of the raiyats in great danger by the landlord constantly threatening to measure lands."

The Hon'ble Mr. GIBBON said:—"If it is from the fear of threats of measurement that the injury to be done to the raiyat is anticipated, then the section should have been confined to measurement through the Court, and not to the voluntary measurement of land."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 38 of Act VIII of 1869 (B. C.) be added as sub-section (*3*) of section 91. He said:—"The Bill maintains the right of landholders to measure the lands comprised in their estates, and this section provides for cases in which tenants refuse to attend the measurement and point out the boundaries of their lands. But there is another class of cases in which landholders, and specially those who have come to the possession of estates by purchase at auction-sales, require

the assistance of Courts in a much greater degree than in the other. It is where a landholder is unable to ascertain, by reason of a combination among his raiyats, the names of raiyats who hold particular plots of land in his estate. There is no provision in this section which meets such cases. It is true the landholder may proceed under the Record-of-rights chapter, but the procedure which it involves is dilatory and very expensive, and it would throw the local community into a ferment by requiring the landlord to apply for a record of the rights and status of every raiyat in the estate. If a landlord is enabled to ascertain with the assistance of the Court the names of the raiyats on his estate and the areas of the land they hold, the parties will in most cases amicably settle other questions affecting them. Section 38 of the present law gives a simple remedy, and I therefore move that it be added as a sub-section to this section.. It runs as follows :—

'If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands; and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs; and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such lands, or any part thereof, then and in any such case such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.'"

The Hon'ble Mr. Reynolds said :—"I think now that we have heard the section read, the Council is in a position to judge how far it answers the description of its being a short and simple procedure. The reasons why the

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Select Committee have not put into this section any provision corresponding to section 38 were given sufficiently by the hon'ble member in charge of the Bill in his opening speech. When the landlord wishes to measure, he can apply to do so; but where he is in such a position as the hon'ble mover of the amendment has mentioned, when he is a recent auction-purchaser, and does not know who the tenants are, it is intended that he should apply for the preparation of a record-of-rights. The hon'ble member says other questions may arise as to the status of the tenant and his rights in the land, but the landlord will surely wish to know all these particulars, and it is desirable that he should know them."

The Hon'ble MR. GIBBON said :—"I support the amendment, but at the same time I think it will be better effected under section 158. A few words added to that section will effect all my hon'ble friend requires, and I would rather see an alteration made there than have all the elaborate procedure of section 38 added to the Bill."

The Hon'ble SIR STEUART BAYLEY said :— "I have no objection to the amendment of section 158 in the way proposed by Mr. Gibbon, but I am not sure that that will satisfy the hon'ble mover of the amendment now before the Council. But the hon'ble member greatly facilitates my reply when he says that the procedure of section 38 of Act VIII of 1869 is simple in comparison to a record-of-rights, and that it is not essential for the landlord to have all that information. But the hon'ble member has not read section 39 of that Act, which raises precisely the same difficulty as in the other case, namely, the double procedure of the Court and the Collector instead of the Collector only. I think that the provisions of section 158 of the Bill are ample to secure for the landlord all the information which the hon'ble member requires."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"The law contained in section 38 of Act VIII of 1869 has been in operation for twenty years; still there has not been a single complaint of its harsh operation. But I shall be perfectly satisfied on behalf of landlords if some modification be made in section 158 which will give the landlord the right of applying for the purpose of determining who is the tenant of a particular plot of land; as it stands the section does not provide for that, and there is no provision in the Bill which will give the landlord the right to make such an application without subjecting him to all the litigation, expense and trouble of a record-of-rights."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sections 93 to 100 be omitted. He said:—"Although a provision for the appointment of managers of joint estates was in the Statute-book up to 1874, it remained a dead-letter, and it was repealed in that year along with other obsolete enactments. No case has been made out for a revival of the provision. The facilities which judge-made law has given for the apportionment of rents payable by raiyats in joint estates at the instance of any co-owner, however small might be his share in the joint estate, render such a provision wholly unnecessary. It is besides, in the interests of the co-owners themselves and of their raiyats that every encouragement should be given to a partition of estates and tenures among the co-parceners, and the tendency of recent legislation has also been in that direction. The provisions contained in these sections would conflict with the wisdom of such a policy, and would therefore be a retrograde move."

The Hon'ble SIR STEUART BAYLEY said:—"I am afraid I cannot quite accept in the name of the Select Committee the particular statement of the law laid down by the hon'ble member, nor his recommendation that these sections be omitted. At the risk of detaining the Council I will read what the Rent Commission reported as to the state of facts necessitating the introduction of these sections, and as to the state of the law at present. The fact of the statement being made on the authority of Mr. Field is, I think, a sufficient proof of the present law. The Commission said:—

'A serious source of difficulty in the relations between landlords and tenants arises out of the system of co-parcenary which is customary amongst Hindús, and is not uncommonly imitated by Muhammadans. When coparceners or co-sharers, as they are commonly called, stand in the position of landlords, and manage their affairs either through a single member of the family (*karia*) or through a manager appointed by, and acting for, all, there is no difficulty, and the tenants are put to no greater inconvenience than the tenants of other landlords. But when, on the contrary, the co-sharers are disunited and dissension prevails amongst them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant who would comply with all their demands would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant raiyats, who are thus induced to pay more rent to one co-sharer than he is entitled to receive; or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these fraudulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *amins* prepare *chittahs*, the entries in which are regulated by the gratifications which the raiyats are able or willing to give them. Litigation ensues, and the tenants side with this co-sharer or that; they give evidence and earn

brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the police appear on the spot to reap a rich harvest. The raiyats are impoverished, cultivation thrown back, and distrust and dissension pervade the village. Such is a picture, by no means overdrawn, of the pernicious results of want of union amongst a brotherhood of landlords.

'The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the revenue-authorities or by any of the individuals holding an interest in such estates for the interposition of the Courts of judicature, it shall be competent to the Zila Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the Revenue-authorities, or of any such person as aforesaid, to remove any manager so appointed (*id.*, section 27). A subsequent Regulation (V of 1827) enacted that when the Zila Court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

'Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted therefor.'

"That is the opinion of the Rent Commission, and it was accepted in the first draft Bill, and with certain slight alterations has been retained in the various subsequent editions of the Bill. In regard to the details no amendment is proposed or objection made, and I must oppose the amendment."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I should have liked the hon'ble the Law Member to have given his opinion on the state of the law at sent, but I submit that the repeal of a repealing Act can never revive the Act which had been repealed. I think that is the principle of construction of enactments, and in that view there is no law since 1874 for the appointment of managers of joint estates in this country."

The Hon'ble MR. ILBERT begged to explain that the Hon'ble Peári Mohan Mukerji was under a misapprehension in supposing that section 26 of

Regulation V of 1812 had been repealed. That section was printed as existing law in Mr. Whitley Stokes' edition of the Lower Provinces Code, which was published in 1878 (Vol. I, p. 111); and, without going into technical considerations, he would merely say that in his opinion it was rightly so printed. The hon'ble member had probably misconceived the extent of the repeal clause in Part VI of the schedule to Act XVI of 1874.

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sections 101 to 115 be omitted. He said:—"When giving his sanction to the provisions regarding record-of-rights, Her Majesty's Secretary of State expressed his apprehension that the difficulties of carrying out the measure may prove greater than the Government of India anticipated. But the practical difficulties of the measure are not the most prominent among its objectionable features. It would cause irritation among landlords and raiyats, and convulse rural society to an extent of which those who are not thoroughly acquainted with the details of our agrarian economy can have little idea. Landholders and raiyats alike have repeatedly prayed the legislature to expunge these provisions from the Bill, as they would do good to neither. They involve an amount of expense and irritating enquiry which will be far from compensated by the result, and it is on this account that to no part of the Bill have the raiyats from different parts of the country offered more opposition than to this."

The Hon'ble MR. EVANS said:—"I do not agree with the hon'ble member. There is no doubt that when a record-of-rights is sought to be made over a particular area there will be a considerable amount of contest at the time. But when it has been made, every landlord and every tenant will really be better off, and these records will give facilities in dealing with cases. If such a thing as a cadastral survey and record-of-rights is carried out over the whole of Bengal, it will remove a large source of litigation and uncertainty. Much must be left to the discretion of the Local Government as regards when and where and to what extent the survey and record is to be made. I stated my opinion on this matter when this Bill was referred to the Select Committee. I quite understand that friction must be produced to obtain it, but the ultimate benefit will be so great as to counterbalance the friction."

The Hon'ble MR. REYNOLDS said:—"I think the hon'ble member has overlooked the fact that this chapter, which he desires to omit, will apply to

Government settlements. The settlement procedure law is at present contained in Bengal Act VIII of 1879, which this Bill proposes to repeal, and I do not observe that the hon'ble member has any motion for the omission of that Act from the schedule of Acts to be repealed. The result of this amendment, would, therefore, be to leave the Government no means of conducting a settlement of revenue in Government estates except the old Regulation of 1822. I do not think he contemplated any such result."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. I think the chapter as now drafted in the Bill will be more beneficial to landlords than to tenants. In fact, speaking personally as a landholder, I look forward to the operation of this chapter to undo much of the harm which will be done to the landlord's interests under section 18. When it was first proposed and as it stood in Bill No. II, I objected to this chapter, but the Select Committee has removed every objection I had to it, and I look forward to the beneficial effects of this chapter both in the interest of the landlord as well as in those of the raiyat."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am glad to find from quarters so different a concurrence of opinion in favour of this chapter as one of great importance and necessity. For myself I would sooner omit very many other portions of the Bill than this one. It provides for the first serious attempt to secure that which is absolutely required, by means of a careful record-of-rights, not only for the better administration of the country, but for a better understanding between landlords and tenants of their respective positions. Until such a record has been made, we shall have made no progress in the settlement of disputes arising between landlords and tenants. The difficulties to which the hon'ble member refers are difficulties which I am sure we can get over. For if such difficulties have been overcome in a province like the Punjab, we need fear no serious difficulty in a province like Bengal. We are not intending to press on this process with anything like undue haste or to force it on with undue precipitation. With the sanction of the Secretary of State and of the Government of India the utmost we should attempt in the first instance would be one single district, and we shall be guided much by the success we meet with in that district before proceeding further. I am sure I speak the conviction of the Hon'ble Rao Saheb Mandlik and of every person who comes from that part of India which he represents when I say that where a record-of-rights prevails it has been found to be good and beneficial for all sections of the landholding community."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK reserved his observations until the subsequent amendment in his name came on.

The Hon'ble SIR STEUART BAYLEY said:—"I can hardly be expected to accept a proposal for the omission of this chapter, in the settlement of which the Select Committee has taken an immense deal of pains, and which I think has been reduced to a shape in which it may be worked beneficially and without serious risk of danger to any one. The chapter covers very large ground and can be applied to various cases, individual and general; it may be applied to a tenure or part of a tenure or to a whole district. But I think there has been some misapprehension in the mind of the hon'ble mover of the amendment as to the Secretary of State's opinion, and I may be allowed to quote his words. He says:—

'While fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the Province of Behar, where the need for it is, you think, most pressing, and the conditions least unfavourable; and to this I will make no objection.'

"You have heard just now from His Honour the Lieutenant-Governor that this order of the Secretary of State is still in full force, and that at present he has no intention of going beyond it. Certain provisions of this chapter are of course applicable everywhere. A landlord in Bengal proper may apply to have these settlement-operations brought into effect in regard to his estate or a portion of his estate; or on a riot taking place in any single landlord's estate, the Local Government may apply to the Government of India for permission to put it in force in that estate. But with regard to a general record-of-rights, not only is it distinctly understood that the Lieutenant-Governor will apply it only in some one selected district in Behar and abide by the results of that experiment, but it is also certain that, as the Secretary of State has not sanctioned anything beyond that, nothing beyond it will be carried out until the Secretary of State does sanction it. The result I am unwilling to prophesy, but I do say that, as in the neighbouring district of Benares, the operation has been most successfully carried out without much friction and has been the salvation of the tenant, a similar operation may be conducted in the province of Behar, which is in almost all respects similar to the districts bordering it in the North-Western Provinces. I do not see why what has been worked so successfully in the North-Western Provinces

should be inapplicable to Behar. There is one portion of the chapter to which further allusion will be made when the Hon'ble Rao Saheb Mandlik makes his proposal. I will only say that we look on the provision to which the hon'ble member's amendment refers (section 112) as particularly necessary to be kept in the Bill, but we hope sincerely never to have occasion to use it. It is a very strong power kept in the background to be used when the operation of the ordinary law is not found sufficient. With these remarks I oppose the motion."

His Excellency THE PRESIDENT observed that he had been very much struck by the almost complete unanimity of opinion which prevailed in the Council as to the utility of this chapter. At the same time he was perfectly able to comprehend the natural anxiety which its unreserved application over very extensive areas would occasion both to the raiyats and the zamíndárs. Regarding the question in the abstract, it was perfectly obvious that one of the first steps towards the cessation of litigation and ill-feeling between two antagonistic interests, was that they should each know exactly what belonged to them; therefore no one, HIS EXCELLENCY imagined, not even the hon'ble member himself, could in theory be opposed to the introduction of this chapter. At the same time HIS EXCELLENCY could assure the hon'ble member that not only in deference to the suggestions made to them by the Secretary of State, but also from their own appreciation of the exigencies of the case, the Government of India would be indisposed to consent to the application of the sections referred to otherwise than in the sense and spirit recommended by Lord Kimberley. By applying the machinery of the chapter to a special and limited area in a tentative method they would be able to observe how the clauses were likely to work, and there was every hope that by that cautious method of procedure they would be able to obviate those objections to which the hon'ble member had referred.

The amendment was put and negatived.

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK moved that to section 112 the following be added:—

"Where the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council."

He said:—"This chapter has been admitted by the hon'ble member in charge of the Bill to be exceptional, and I do hope with him that the occasions on which it will be necessary to invoke its aid may not be so frequent as His

Honour the Lieutenant-Governor thinks they might be. No doubt cases will arise in which it will be necessary to impose the strong arm of the executive power to bring contending parties to submit to rents by settlement. And, therefore, as in some portions of this chapter, leave is given to settle rents and to reduce rents and to do what in the opinion of the Revenue-officers entrusted with carrying out the operations of this chapter (the effect of which will be to suspend at least for the time the operation of the general law) may be necessary to be done with regard to private property. I think, however, that it is so necessary for the satisfaction of both landlords and tenants that an opportunity should be given for appealing to the Government of India before the record becomes final, that I feel it essential in the interests of the public that a proviso, such as that which I now propose, should be enacted. I distrust nobody, and no doubt Your Lordship is impressed by the fact that these sections of the Bill are necessary to good government; but to me they throw a new light on the state of affairs in this province, and it is only as such that I can view them. But I think it is essential when the ordinary law is suspended that the Government of India should be a referee in the last resort for the purpose of confirming that record when it has been prepared. I move this amendment in the interests of the public, and it will in my view give more assurance to all parties concerned. A reference has been made to me with reference to the Bombay Presidency, and I can say at once that there is no such record-of-rights there. I do not wish to go into the general question, which is a very large one, and under the circumstances disclosed in paragraph 42 of the Select Committee's Report, I do not wish to raise any question about it. I think that when the Government of India determines that sufficient reasons exist to introduce this chapter, they should be entrusted with the duty of seeing that the record should be so prepared that it may be adopted as the future record-of-rights."

The Hon'ble MR. REYNOLDS said:—"I cannot agree with the hon'ble member that the procedure under section 112 will really be a procedure of the executive authorities, though it will be initiated by the Executive Government. I think the hon'ble member has overlooked the fact that proceedings under this section will be conducted under the usual procedure laid down in this chapter; consequently the decisions of the Revenue-officers will be appealable to the Judge and to the High Court. I confess it appears to me somewhat unnecessary, when such proceedings have received the sanction of what is practically the highest judicial authority, to say that they shall not take effect until finally approved by the Government of India. I presume the hon'ble member thinks that they ought to have the confirmation of the highest executive authority.

But it seems to me that, as the procedure will not be of an executive but of a judicial character, there is no necessity for the confirmation of the Governor General in Council to give validity to it."

His Honour THE LIEUTENANT-GOVERNOR said :—"As the section to which the amendment refers is a special procedure to be resorted to in special cases, I should not have thought there was any necessity for a reference to the Governor General in Council before the Lieutenant-Governor can bring it into operation. I believe a great deal of the procedure contained in this section is derived from the Agrarian Disturbances Act, and it is with the view of suppressing threatened disturbances rather than actual disturbances at great emergencies between landlords and tenants that summary provisions like these have been proposed with a view to give the Local Government power to prevent those disturbances. As the Bill stands, the sanction of the Government of India is required before the Lieutenant-Governor can take any steps in the matter. If that precaution is not sufficient, but it is considered advisable that the final record should not become valid before it receives the sanction of the Governor General in Council, I shall not oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said :—"I look upon this subject from the same point of view as His Honour the Lieutenant-Governor. I think this is a special procedure, only to be used under exceptional circumstances, although the rights which will thereby be settled will be settled judicially by the Settlement-officers, who work under the safeguard of an appeal first to the Special Judge, and afterwards to the High Court. Still as the power of reducing rents is given by this section, and not elsewhere, I quite agree that it might be considered an additional safeguard if the settlement requires the confirmation of the Governor General in Council. In that view I accept the amendment."

The amendment was put and agreed to.

The Hon'ble MR. GIBBON moved that in section 120, sub-section (*1*), clause (*a*), after the word "before" the words "or after" be inserted. He said :—"I believe I am right in saying that this is the only attempt ever made under any law to define what are proprietors' private lands. The present law on the subject is contained in section 6 of Act VIII of 1869 (B.C.), which simply says that occupancy-rights shall not be acquired by raiyats holding lands held by landlords as zirát. No attempt has ever hitherto been made to

define what zirát lands are. The intention is to continue those lands as zirát which are actually existing as such, and the object is to enable the landlord to avoid the accrual of occupancy-rights in them. Although it may be easy for a landlord now to prove that he has held lands as zirát for 12 years, this Bill is not likely to be amended for some time to come, and some years hence it will be impossible for a landlord to prove what lands he held as zirát 12 years before the introduction of this Act and what he acquired afterwards. We allow a settled raiyat to sub-let for one year land occupied by him, but a sub-lessee does not acquire any rights in lands so leased to him. If a landlord has held zirát land for 12 years, we should assume that he wishes to cultivate it himself. At the same time he may wish to sub-let it for some reason or other for a year or two, but under this Bill if he does so his right to recover possession will be forfeited. I think that it will be very hard on the landlord. I think that 12 years' continuous cultivation should give the landlord a right to protect his interest when he sub-lets the land for a temporary purpose only, and I think we should under this Bill provide the means to enable him to do so, and for this purpose I would move that the words 'or after' be inserted."

The Hon'ble MR. EVANS said:—"I agree with the hon'ble member. I think the desire of landlords to cultivate by their own servants or by hired labour should not be discouraged. There are only a few classes of landlords who cultivate their own lands, and it is very natural and proper that they should have the power to do so considering the valuable crops which are so cultivated. Unless, therefore, there is some policy underlying this section adverse to the holding of lands for the cultivation of valuable crops, such as tea, indigo and opium, in case the opium monopoly is given up, there appears to me to be no reason why it should not be considered that, when a landholder cultivates lands for 12 years, he intends to hold those lands in his own cultivation, nor is there any reason why he should not be allowed to let it for a year or two for purposes of the rotation of crops and the like."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I shall vote for the amendment. I have gone through the whole chapter relating to waste lands, and there appears to me to be no reason for prohibiting a man who is a large proprietor of waste lands from reserving to himself certain lands for his home farm. But by this section, directly he lets in a cultivator, he loses the land. The certain effect of this provision, I think, will be that he will let in no cultivator, and unless an increase of hired labourers is in view, the object of the Act will be defeated by these very restrictions."

The Hon'ble MR. REYNOLDS said:—"The amendment would have the effect of defeating the object which the Government of Bengal has in view. There are now, and always have been, two great classes of lands—raiyati lands in which the right of occupancy accrues, and khámár lands in which such rights cannot accrue; and it is the object of this section, and has always been the object of the Government of Bengal, that the stock of khámár lands should not be increased to the diminution of the area of raiyati lands. There is undoubtedly evidence before the Government of Bengal and in the papers before the Council to show that there has been great misappropriation of lands as khámár lands on the part of landlords in Behar, and especially on the part of planters. The hon'ble member urged that it would be impossible for landlords to show that they had cultivated particular lands for 12 years. If a landlord is put into difficulty in that respect, he can proceed under section 118. He is at liberty to apply to have his khámár lands demarcated and recorded, and if he does so there cannot be any chance of his being deprived of those lands afterwards; but it is certainly the intention that khámár lands should not be added to in future. There is a system in Behar under which landlords record as khámár lands which are taken in exchange from raiyats, and the lands received in return by raiyats are also placed under the same heading; so that the result has been to turn raiyati lands into khámár lands. I do not say more than what I see has been said in Mr. Edgar's note on rent questions in Behar. The result of saying before or after' will be to allow landlords at any time to take up lands, to cultivate them for 12 years, and thus to prevent occupancy-rights from accruing. It is certainly not the intention of the present law that landlords should have this power. The proprietor has the power to keep newly-cutivated lands to himself if he pleases, but I am not aware of any rule to prevent the accrual of occupancy-rights if he lets those lands. If a proprietor takes waste under cultivation after the record contemplated in this chapter has been made, he will have power to keep it under his own cultivation. This question will shortly be raised on the motion of my hon'ble friend Mr. Hunter, and I think that amendment will *boná fide* raise the question of waste lands. The effect will not be permanently to bar the acquisition of occupancy-rights, but it will be sufficient to enable the landlord to cover any expenditure incurred by him. But the effect of the present amendment will be to prevent the acquisition of occupancy-rights for ever in lands which come into the temporary possession of the zamíndár. The section as it stands will give the landlord probably more than he is entitled to have: if he has cultivated for 12 years, the Revenue-officer will not look further; he will have to record the lands as private lands. In the same way he will be bound to record all cultivated land which is recognised as khámár. Under these rules I

cannot think that the section is in any way unfair to the landlord, and I think any extension of them which would allow him, by taking possession and holding lands after the passing of the Act, to increase the stock of khámár lands, will not be in accordance with what is intended by this chapter, and it will not provide a remedy for an acknowledged evil in Behar."

The Hon'ble MR. HUNTER said:—"I support this amendment. The hon'ble the Law Member told the Council in eloquent words the other day that the man who cultivates for a profit is now coming face to face with the man who cultivates for a subsistence. The Bill makes many and valuable provisions for the man who cultivates for a subsistence, and I think the hon'ble gentleman who brought forward this motion might fairly ask the Council to accept his amendment in favour of the man who cultivates for a profit. The last speaker has dwelt on the dangers of the landholders encroaching upon large areas as private lands. I admit that such dangers existed in times past, but I think they are sufficiently provided for by the khámár and contract clauses in the Bill. I therefore think it would be sound policy to accept the amendment proposed by my hon'ble friend."

His Honour THE LIEUTENANT-GOVERNOR said:—"I have only a few words to say in addition to what has fallen from my hon'ble friend Mr. Reynolds. When the Bill was originally drawn it contained a provision which required the Local Government to order a measurement and separation of private lands of proprietors in each village from raiyati lands in the possession of cultivators. That was modified as the discussions went on by making that provision permissive instead of imperative, and it did not include the words 'or after' which the hon'ble member very ingeniously wishes to introduce now. The object of not inserting those words was to give protection to raiyati lands against any future encroachment on the part of the zamíndár. Lands which for twelve years before the passing of this Act are shown as domain land will be protected. But if you give power at any time after the passing of the Act to carry on that process to any extent to which the landlord may be willing, lands which are now raiyati may be converted into domain or private lands. That was thought undesirable. The zamíndár will at all times have the right to cultivate as much land as may be surrendered to him by hired labour, the only condition being that, if he lets it out to tenants, they will have the chance of growing up into raiyats with rights of occupancy. I think on the whole the advantage is on the side of retaining the section as it stands."

The Hon'ble SIR STEUART BAYLEY said:—"This section is one which

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has troubled my mind a good deal. I am very anxious to meet the wishes of my hon'ble friend, but, as it stands, I see great objection to accepting this amendment. As I said before, it is necessary that we should understand that the sole distinction between khámár lands and raiyati lands is that if raiyati land is let to occupiers they acquire occupancy-rights, and that if khámár lands are let occupancy-rights will not accrue. The landlord is at liberty whenever he gets possession of land to cultivate it with hired labour. As has been said by my hon'ble friend Mr. Reynolds, there is ample evidence before the Government to show that a very large proportion of what are or ought to be raiyati lands in Behar has been shown or recorded as zirát or domain lands. If land was surrendered or abandoned it became zirát, and I have known cases of lands exchanged for indigo-cultivation, in which not only does the old land now made over to the raiyat for indigo appear as zirát, but the land which he gives up in exchange is also added to the stock of zirát lands. That has been carried to an extent which presses very severely on the extremely large population of Behar, which has an agrarian population of 800 to the square mile; and it was to put a stop to this state of things that this section was first introduced. So far as the subsequent sections are concerned, there is no objection. The object of the hon'ble mover of the amendment is this. You provide that land which has been cultivated by a zamíndár for 12 years before the passing of the Act should be recorded as zirát land. But suppose no Settlement-officer should come on the ground for 20 years; if you put off your enquiries for 15 or 20 years, it is difficult for the landlord to prove that he cultivated particular lands for 12 years before the passing of the Act. That is certainly fair argument. But section 118 has been introduced to meet this difficulty. It allows a landlord to go before a Revenue-officer tomorrow and ask him to record the land which he holds as private lands now, and he saves himself from any difficulty about inquiry on a future date as to facts belonging to the past. The Select Committtee on the whole thought that section 118 was sufficient to meet that difficulty. Then there is the danger, which my hon'ble friend Mr. Reynolds has pointed out, that if you put in the words 'or after', and if the same system of retaining surrendered lands goes on as hitherto, suppose the landlord cultivates that land, it will become zirát land in time. On the other hand, if the Revenue-officer comes immediately after the passing of the Act, and the 12 years' cultivation accrue afterwards, then the amendment will fail to meet the object with which it is introduced. Then, as regards lands which are at present actually waste, I mean jungle land, my hon'ble friend Mr. Hunter has an amendment dealing with that particular case. I am prepared to consider that amendment, and although I do not see my way

to go quite so far as the Hon'ble Mr. Gibbon desires, I am quite prepared to take a different view with regard to waste lands, and to secure such land under certain restrictions to the landlord who breaks it up."

The Hon'ble MR. GIBBON said:—"I would like to clear up some extraordinary misapprehension influencing the minds of some hon'ble members with regard to this matter. The hon'ble member opposite spoke of landlords' ziráts. This section refers only to proprietary lands, not to the class of lands to which the hon'ble member referred. The hon'ble member spoke of the encroachments of planters on the raiyats' cultivation of the country and their misappropriation of lands, and in order to check planters misappropriating land wished to see these restrictions placed on the acquisition of zirát lands by proprietors; but planters are not proprietors; they are thikadár landlords, and this section will not affect them. If the object of this section is to prevent landlords in general acquiring lands for their own purposes, then that object is not effected; if such landlords are affected at all, they will be affected under the merger clause. When a proprietor has cultivated particular lands as private lands for 12 consecutive years and thereby acquired private rights in that land, I submit that he should be permitted to acquire such rights by 12 years' cultivation whether the land was cultivated for 12 years before or after the passing of the Act."

The amendment being put, the Council divided:—

Ayes.	*Noes.*
The Hon'ble G. H. P. Evans.	The Hon'ble J. W. Quinton.
The Hon'ble H. St.A. Goodrich.	The Hon'ble H. J. Reynolds.
The Hon'ble Peári Mohan Mukerji.	The Hon'ble T. C. Hope.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik.	The Hon'ble Sir S. C. Bayley.
The Hon'ble W. W. Hunter.	The Hon'ble C. P. Ilbert.
The Hon'ble T. M. Gibbon.	Lieutenant-General the Hon'ble T. F. Wilson.
	The Hon'ble J. Gibbs.
	His Excellency the Commander-in-Chief.
	His Honour the Lieutenant-Governor of Bengal.

So the amendment was negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for sections 121 to 142, sections 68 to 101 of Act VIII of 1869 (B. C.) be substituted. He said:—"The provisions of the Bill amount virtually to an abolition of the institution of distraint. They give the landholder nothing beyond what every plaintiff may have under the Code of Civil Procedure. They amount virtually to provisions for attachment before judgment, and in so far they are miscalled provisions for distraint. They might well have been omitted altogether. And yet the Government of India in their despatch to the Secretary of State stated in one of their proposals that they would give the landholders a modified form of distraint which would enable them to collect their rents with greater ease than at present, and thus led them to expect that larger powers would be given them in this direction. The provisions in question go quite the contrary way. I know of no complaint of the powers of distraint having been abused, at least in Bengal. The provisions of the present law are such that no abuse of the powers of distraint can be made with impunity. They give, moreover, few opportunities to the landholder or his agent for the abuse of power. They simply allow him to attach the crops by word of mouth, but he cannot interfere with the crops or with the tenant's right to do with them as he likes unless with the help of the Court. It is the fear of the consequences to the raiyat if he removes the distrained crop that constitutes the soul of the institution. If the raiyats had been a substantial class of men, possessing means and resources which the landholders could fall back upon for the recovery of their rents, the institution of distraint would have been comparatively unimportant. But, knowing, as we do, that the crops constitute in most cases the landlord's security for his rent, specially in the case of non-resident-raiyats, the abolition of the institution or a modification of it in the way contemplated by the Bill would throw the greatest obstacle in the way of recovery of rent. Besides, the expensive procedure which the Bill gives the landholders would ultimately add to the burden on the raiyat and injure him perhaps more than his landlord. In cases, again, where the raiyat will remove his crop while the landlord is engaged in getting out an attachment from Court, the latter would not only lose his rent but also his expenses. I may mention that the Presidency Conference, the Patna Conference, the Burdwan Conference, the Rajshahye Conference, the Orissa Conference, and a number of high officers of State recommend that the provisions of the present law should be maintained."

The Hon'ble MR. EVANS said:—"It is certain there is abuse of distraint in certain parts of the country which needs remedy. The doubt is whether the remedy will not prove more grievous than the disease, unless the legal processes

of distraint are made cheaper. Hoping that steps will be taken to reduce the process-fees, I shall oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"I was sorry to hear the hon'ble mover of the amendment say that in writing to the Secretary of State we had given the zamíndárs the promise of a simplified form of distraint and that we had not carried out that promise. "The hon'ble member referred to the summary of our recommendations, which runs as follows:—

'To provide for the more speedy realization of arrears of rent when the rates are undisputed by a modified method of distraint, and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.'

"Unfortunately, however, the hon'ble member must have omitted to refer to the body of the despatch which explains the scheme. Had he turned to paragraph 98 of the despatch he would have seen that the Government of India wrote as follows:—

'As already mentioned, the Rent Law Commissioners recommended the abolition of distraint, but the reports of the district and divisional officers, and the urgent representations of the zamíndárs, led to a general concurrence of authoritative opinion that distraint must, in some shape, and at least for the present, be maintained. We accept the principle of Chapter XIV of the Bill that distraint shall be permitted on application to a Civil Court and through the agency of an officer thereby deputed.'

"Now this is the identical scheme of the Bill which has been maintained throughout and has only been modified by the provision enabling the Courts to issue *interim* injunctions and by that which enables the Lieutenant-Governor to apply the old procedure in certain special cases. We have therefore strictly carried out what we declared to the Secretary of State was our intention, and the hon'ble member's charge against us is quite baseless.

"Then he says there is no complaint or evidence of the law having been abused in Bengal. Mr. Dutt, the Collector of Backergunge, says:—

'I am very strongly of opinion that "if distraint is to be maintained at all, the process can no longer be left to the unsupervised action of the zamíndárs' servants." Private distraint is so constantly and almost invariably abused, and in this district has so frequently been the occasion of breach of the peace, that it cannot be allowed to continue in the Statute-book. When the right is exercised, the chances are, nine to one, that it is exercised not with the legitimate object of realizing rent, but with the object of harassing the raiyat to compel him to comply with some other demand with which he is not bound legally to comply.

'I am not singular in my opinion in this respect. Bábú Dina Bandhu Sen, who as pleader has acted oftener for zamíndárs that for raiyats, and who has gained a thorough and practical

experience of the working of the law from many years' observation, states :—"In nearly all the cases of distraint which have come to my notice as a pleader in this district, I have observed that the law has been abused." This is the opinion of most persons that I have consulted, but Mr. Reily is of a different opinion, and maintains that the right of private distraint helps zamíndárs in getting their rents expeditiously, and should be retained.

'Private distraint should, in my opinion, be abolished altogether. The remarks made above apply with only somewhat less force to distraints under order of Courts. Distraints are not applied for to realize rents, but to harass raiyats, and make them comply with other demands with which the raiyat is not bound to comply. This was the opinion of most of the gentlemen who attended a meeting which I convened in Burrisal to discuss the Rent Bill; and all the gentlemen, except a few zamíndárs, agreed that there should be a special provision in the law that an application for distraint should not be complied with by Courts unless satisfied *primâ facie* that there is no other means of realizing rent. My opinion is the same. Private distraint should be abolished altogether; and if the remedy of distraint under orders of the Court be retained, there should be a special proviso that no order to distrain shall be passed unless the Court is satisfied *primâ facie* that there is no other measure for realizing rent.'

'I have received abundant and almost unanimous testimony on this point. The First Munsif of Burrisal says that 95 per cent. of the applications for distraint made to him within the last 11 years of his service were made solely to compel raiyats to submit to unreasonable demands. He says, "two of the biggest zamíndárs in the district, Bábú Kali Kissen Tagore and Rájá Satyananda Ghosal, who are known to be very good landlords, have scarcely any occasion to avail themselves of the law of distraint." It is the oppressive zamíndárs only who avail themselves of the law to harass raiyats. The Munsif, therefore, recommends the entire abolition of the law of distraint, which, he says, will not create any real difficulty in the realization of rent. He believes that in Bengal much greater oppression is committed by distraint through Court than by private distraint, because landlords, when bent on oppression, try to give their proceedings a semblance of legality.

'It was resolved at the Divisional Conference at Dacca to let the provisions of the present Bill stand as they are.'

"Then the Subordinate Judge of Burdwan says:—

'The chapter on distraint is an improvement on the present law. I am not for abolishing distraint altogether. The supervision of the Court would be a perfect safeguard against the abuse of the power, and if timely application be made there would be no fear of the process being deprived of its practical utility.'

"The Subordinate Judge of Backergunge also says:—

'In my humble opinion the power of distraint should be at once taken away from the landlords, for, as far as my experience goes, I have never seen any case of distraint in which the power was not abused by the landlord. The good landlords never distrain the crops of their tenants in any district. Only oppressive landlords distrain crops of such of their tenants who do not come to terms with them regarding the rate of rent. In these cases the distrained crop is partly spoilt and is partly stolen by the servants of the landlords, and in this way the raiyat suffers great damages. Under these circumstances, I beg most humbly to propose that it would be better for the good of the community to take away the power of distraint from the landlords. For the purpose of realizing safely the rents due from the raiyats, provisions may be made for attaching the standing crop before judgment, after instituting a suit, if the landlord can satisfy the Court that if the crop be not so attached it would be difficult for him to realize the rent due from the raiyat.'

"I could quote also equally strong evidence given by the Munsifs of Burrisal, Bagirhat and Serajgunge, who all agree in saying that the process is resorted to very rarely with the object of realizing legitimate arrears, but very generally for the purpose of crushing refractory raiyats. It can scarcely be said therefore that oppression has not been proved when we have such strong evidence from a number of judicial officers who have had cases of distraint brought before them. It is on such testimony as this that it was determined that the old law of distraint should not be maintained. The Behar Committee proposed in 1878 to abolish it; the Rent Law Commission was also in favour of its abolition. This was not agreed to, but it was proposed to keep it in a modified form. We have given a special power to the Local Government in certain parts of the country where the want of this process presses heavily on landholders to relax the law and allow the continuance of the old process, subject in every case to notice being given to the Court. Although I cannot gainsay what the Hon'ble Mr. Evans has said as to the terrible expense of the process to the raiyat, I can scarcely imagine that it will be a greater danger to the raiyat or worse than that from which he now suffers."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"The hon'ble member in charge of the Bill referred to the opinions of the District Officer of Backergunge and the Subordinate Judge of Burdwan in respect of the abuse of the law, but they don't speak from their own experience; they considered the question theoretically and thought that the law was liable to abuse. It is only the Subordinate Judge of Backergunge who spoke of his experience; and what weight should be attached to this opinion I leave the Council to determine, knowing, as we do, that in no district have the raiyats got more power in their hands than in Backergunge; and in no place therefore are abuses less likely to occur."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that clause (*b*) of section 153 be omitted. He said:—"This clause gives a final jurisdiction in the trial of suits the value of which does not exceed Rs. 50 to special officers appointed by the Local Government. This, I submit, is a retrograde move. It takes away the constitutional right of appeal, and gives in its place a provision the proper working of which will depend upon the care with which the Local Government will select the officers. It is another instance of the power which the Bill gives to the executive authorities to interfere with the judicial administration of the country. The value of a suit might not exceed Rs. 50, but that is no index of its importance to the parties concerned. It might be a

typical case, the result of which would influence the settlement of a dispute between the whole body of the raiyats of a village with their landlord. It might be a case the decision in which regarding the question of instalments by which rents are payable would settle a long-standing dispute with the raiyats of a village. In all such cases the result of the suit is very important both to the landholder and to the raiyat. I should be sorry to see a constitutional right taken away and a provision given in its place the efficacy of which will depend upon a proper exercise of the powers of the executive authorities."

The Hon'ble MR. EVANS said:—"I object to the amendment. No doubt an appeal is taken away in certain cases, where the suit does not exceed Rs. 50, but this is not so in suits in which a question of title to land or of right to enhance or vary the rent of a tenant or of the amount of rent annually payable by a tenant is in dispute. The net result is that an appeal is only taken away in that class of cases where the question really is merely, taking it that the rent is known, whether the rent has been paid or not. Not only do I object to the amendment, but I am surprised to find it come from that quarter. I should have thought zamíndárs would not wish to be harassed by delays in the execution of decrees arising from vexatious appeals."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"It is not merely the fact of payment or non-payment which is involved in such cases. Besides the cases mentioned in the proviso, there may be other cases of importance to the zamíndár; for instance, cases which may influence the decision of many other suits involving questions of instalment of rent or questions of custom."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 156 be omitted. He said:—"The provisions contained in this section are opposed to the judge-made law on the subject. It has been held by the Hon'ble Judges of the High Court that when a tenant is ejected by order of Court the crops on the land go with the land to the landholder. But this section provides elaborate rules for the purpose of giving the raiyat a right to enter upon the land and to rear and reap the crops after he has been ejected. When a decree for ejectment severs all connection between the raiyat and his landlord, I do not see what considerations can justify such a provision. The Bill shows no consideration for the crops of occupancy-raiyats which would go to the purchaser by sale of their holdings. Why should non-occupancy-raiyats be deemed enti-

tled to greater consideration in this respect, specially when they may protect themselves from ejectment by payment of the amount due by them?"

The Hon'ble SIR STEUART BAYLEY said:—"I would point out that the obvious difference between sale and ejectment is this; when a raiyat is sold up he gets the money which includes the value of the crop on the ground. Why when he is ejected should he lose it? In regard to this point the Rent Commission said:—

'There are in the existing law no provisions as to the *away-going crop*; and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a raiyat is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such raiyat would have been entitled to reap or gather, such raiyat shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering and removing the same; and in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products, the Court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.'

"The principle seems a very sound one that the landlord should not by choosing his time for ejectment not only ruin his raiyat but should himself benefit by the crop in the ground which the raiyat has sown and which he is entitled to reap."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that section 156, clause (*c*), be omitted. He said:—"The question has been fully discussed by the Select Committee."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that clauses (*c*), (*e*) and (*f*) of section 160 be omitted. He said:—"These clauses introduce material changes in the present law as to what should be deemed protected interests when a tenure is sold for its own arrears. Clause (*c*) gives protection not to leases given for building or manufacturing purposes at a fair rate of rent, but

to all leases of land on which buildings, &c., have been erected, perhaps without the consent of the landlord, and reserving, it may be, only nominal rents; clause (*e*) extends the protection to judicial leases granted to non-occupancy-raiyats; and clause (*f*) gives protection to all leases granted by the outgoing tenant if the rents reserved on them were fair and equitable at the time the leases were granted. The result of these provisions would be to give a tenure-holder the power of creating leases in favour of his relatives and dependents which would absorb the whole profits of the tenure, and then to put the tenure up to sale for the purpose of entrapping unwary purchasers. These clauses would encourage fraud and collusion and give rise to much litigation."

The Hon'ble SIR STEUART BAYLEY said:—"I wish to meet the hon'ble member on one point on which he spoke, but I would first point out that the protection to subordinate interests against which the hon'ble member protests is precisely the protection given in case of sales for arrears of Government revenue. I admit, however, that in regard to clause (*c*), though the danger of injury is such as may safely be overlooked in regard to its bearing on Government revenue, yet the danger of seriously lessening the rent of the superior holder by protecting absolutely all interests created under clause (*c*) is not imaginary, and we ought if possible to safeguard the landlord aginst it. It can be met by an adaptation of section 13 of Bengal Act VII of 1868, and I propose therefore to insert a clause to that effect. It will be precisely the same as the section of the Bengal Act in a modified form so as to make it run with this chapter. It will come in after section 167 of the Bill. To this extent I am prepared to meet the hon'ble member's objection, but no further."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI expressed his willingness to accept the proposed section as far as it went, and this was then agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI's amendment was put and negatived.

The Council adjourned to Wednesday, the 11th March, 1885.

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

SIMLA;
The 4th May, 1885.

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