Wednesday,
11th 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,

ASSEMBLED FOR THE PURPOSE OF MAKING

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

The Council met at Government House on Wednesday, the 11th 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 Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb 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 Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that clause (*a*) of sub-section (*2*) of section 163 be omitted. He said:—"My remarks on this clause will also apply to my motions to omit sections 164 and 168. These sections introduce changes in the present law the necessity of which has never been experienced. They provide for sales of tenures subject to registered incumbrances in the first place, and free of such incumbrances only when the proceeds of the first sale

prove inadequate to satisfy the decree. The present law is that, whenever a tenure is sold for its own arrears, it is sold with power given to the purchaser to avoid incumbrances created by the outgoing tenant. It is a provision which has a wholesome effect not only in checking the progress of sub-division and sub-infeudation, but also in preserving tenures in their pristine integrity. The result of the contemplated changes will be quite the other way. They will perpetuate sub-divisions and sub-infeudations, and reduce the value of tenures at every successive sale. But in whose interest are these changes advocated? The superior proprietor will be delayed in the recovery of the amount of his decree, and the security for his rent will diminish with every sale of the tenure; the judgment-debtor will be saddled with unnecessary costs, and the sale will fetch a much less price than what it would have otherwise done; while the purchaser will have to give his bid in the dark, not knowing what incumbrances relating to the property have been registered within the last 10 or 15 years, and he will be exceptionally fortunate if he does not find in the end that he has made an extremely bad bargain. When not one of the three interested parties is likely to benefit by the proposed modifications in the present law, I hope hon'ble members will see fit to maintain the present law in its integrity."

The Hon'ble MR. EVANS said:—"I do not think the judgment-debtor should benefit by the avoidance of his incumbrances. As I understand the matter, that is usual in sales for arrears of the Government revenue only because it is absolutely necessary for the protection of Government revenue and only so far as it is thought necessary, and there is power to Government to cancel the sale in cases of hardship. No man ought to be allowed to say that he incumbered the tenure but now wishes to sell free of incumbrances. The only admissible argument will be the protection of the superior landholder. I do not think there is any great hardship to the superior landholder in protecting as far as we have done *bonâ fide* incumbrances."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. It is only necessary to provide means to the landlord to recover what is due on account of rent. The Bill provides that in every way possible. It provides that the tenure shall only be sold in the first instance subject to incumbrances; but if the amount of the purchase-money does not cover the amount of the decree, the tenure can be sold again free of all incumbrances. It is necessary in all other cases to protect incumbrances. Some tenures under my management consist of hundreds of acres, and the incumbrances are of very large amounts, from Rs. 20,000 to Rs. 40,000; and simply because a comparatively small sum of

five or six hundred rupees may be due to the landlord as rents, to allow that the tenure should be sold free of incumbrances in order to recover such a small sum would be very hard to landed capitalists. I think it very necessary to give the protection which the Bill provides."

The Hon'ble SIR STEUART BAYLEY said:—"It seems very obvious that there is real necessity to protect incumbrances on tenures. The tenure-holder has a right to do what he likes with the land as long as he pays the superior landholder the rent secured upon it, and, as the Hon'ble Mr. Gibbon has pointed out, many of these incumbrances are such that in the interests of public policy they should be secured. Is it reasonable that the tenure-holder, having got a large bonus given for permission to build or to dig a tank or to erect a manufactory, should by defaulting allow the tenure to be sold up and leave the interests of these incumbrancers absolutely at the mercy of the purchaser? It is true that the tenure-holder will get a larger sum if the tenure is sold with power to avoid all incumbrances, but what does that mean? It means that having taken a bonus for permission to make the incumbrance, he again gets paid by the purchaser for permission to avoid it. He gets the value twice over by a deliberate swindle of the incumbrancer. If there is really danger to the rent of the superior holder I think it ought to be safeguarded, and with the view of giving the necessary protection I have proposed the section next in the list. But as long as that is safeguarded I cannot see that any injury will befall to any other party, and it is much in the interest of public policy not to allow the tenure-holder deliberately to swindle the incumbrancer."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for the word "thirty" in sub-section (*4*) of section 168 the word "twenty" be substituted. He said:—"The present law allows a sale to take place after 20 days from the date of the proclamation of sale. The extension of the minimum period to 30 days will simply add to the delay in the recovery of the amount of the decree. No complaint of hardship has been made on the ground of the procedure for the sale of tenures for their own arrears being different from that which obtains with regard to other sales. I therefore fail to understand why this additional source of delay should have been introduced in a Bill which was started with the distinct object of giving landholders facilities in the recovery of rent."

The Hon'ble MR. GIBBON said:—"I think we have gone quite far enough under section 163 to change the law. The present law, as far as my experience goes, allows you first to attach the property and afterwards appoints a day

for the proclamation of sale. The proclamation always gives the tenant time to protect his own interest; whereas we propose now that the attachment and proclamation shall be simultaneous, and we only give 30 days. If you reduce that period to 20 days and still maintain the new provision of the law which necessitates attachment and proclamation at the same time, we shall be doing the judgment-debtor very material injury. It is also necessary to make the intended sale as public as possible and to give all persons who may have incumbrances on the holdings, and whose incumbrances would be voided by the sale, time to protect their own interests."

The Hon'ble SIR STEUART BAYLEY said:—"The Hon'ble Mr. Gibbon has stated the reason which induced the Select Committee to make this alteration. I believe I am right in saying that 30 days is the term in the Civil Procedure Code, and 20 days in the present law refers to tenures and not to occupancy-rights, which are sold in 30 days."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"With reference to what the Hon'ble Mr. Gibbon has said I wish to observe that it is not necessary under the present procedure that there should be a process of attachment before proclamation is made for the sale of the tenure. The tenure or holding being hypothecated for its own rent, from the nature of the case, no attachment is necessary, and therefore the additional convenience to which the hon'ble member points, far from being a convenience at all, will be so much more delay to the landlord."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 164 be omitted.

The Hon'ble SIR STEUART BAYLEY moved that to section 167 the following sub-section be added:—

"(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160 (c), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable."

"This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land."

He said:—"This is the sub-section which I propose to insert to meet the wishes of my hon'ble friend Bábú Peári Mohan Mukerji. It is a re-production of section 13 of Act VII of 1868 (B.C.), and its effect is that if the incumbrance is of such a nature as to diminish the value of the security for rent, the purchaser can enhance the rent to a fair standard."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I think the proposed amendment will supply a defect in section 160, and I therefore support the motion."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that section 168 be omitted.

The Hon'ble MR. GIBBON moved that section 174 be omitted. He said:—"This, I think I am right in saying, is a perfectly new provision of law, and will have an effect which was not intended. It is intended to give the judgment-debtor 30 days' grace after the property is sold; it will allow him, after the property is sold, to pay the amount of the decree plus 5 per cent. of the purchase money, and thus recover his holding. The practical effect will be to encourage a tenant whose property is put up for sale to put off the day of payment. It will prevent *bonâ fide* agriculturists and tenants from coming forward to purchase. In the first place, they cannot afford the waste of time; it necessitates his going to the Court to purchase, to go 15 days afterwards to purchase, and again 30 days after to see whether the sale has been confirmed or the money has been paid by the tenant, and again to recover his money from the Court. The very uncertainty will deter people from paying proper value, and it will deter agriculturists from purchasing. It will encourage land-jobbing in its worst shape by forcing the purchase of all holdings into the hands of the hangers-on about the Courts—men who will not purchase them with any intention of retaining them, but purchase them because they see them going for little or nothing and may make a profit by their re-sale, or at any rate secure their 5 per cent. on the purchase or on their bid. There is another reason for not allowing this provision to become law. The law allows a judgment-debtor to set aside a sale of his property on account of any irregularity in the sale, and I would ask hon'ble members to try to realise the effect this provision will have on the minds of the Courts when the judgment-debtor goes forward to set aside a sale on the ground of irregularity. The Court would at once refuse his application on the ground that he should have paid up the amount of the decree instead of applying under

section 311 of the Civil Procedure Code. It will retard the recovery of rents, injure the landlord, and throw property into the hands of speculators and land-jobbers. It is bad policy."

The Hon'ble MR. EVANS said:—"I am exceedingly sorry to differ from my hon'ble friend in regard to a practical matter of this kind in which no doubt he has had considerable experience, and his judgment is therefore entitled to great weight. But it appears to me that this is a very important provision of the Bill. The tenacity with which proprietors and raiyats in this country cling to their land is remarkable. They are improvident and get into arrear; but when they find they are to be dispossessed, they struggle to protect their interests, and they commit wholesale perjury in order to do so, and they proceed by a regular system of obstructing the execution of the decree. When the sale has once been made, it is a matter of common form for them to lodge a petition under section 311, alleging every conceivable irregularity; they deny receipt of notice of sale, they say the process peons were suborned, and they produce a number of villagers to say that they never saw the peon, and they allege every other possible irregularity. Suppose the debtor succeeds in proving irregularities, he has further to prove that they caused substantial loss. He then goes in with a number of friends and neighbours to exaggerate the value of the holding, and swears that it was sold for less than it ought to have been sold for, and that the decrease in price was due to these irregularities; and if the Judge of the first Court decides against him, he, as a rule, appeals up to the High Court; and the Courts very often, when they can, try to help the man, but very often they are unable to do so. Execution proceedings are among the most tedious and expensive proceedings we have, and all Judges have lamented this particular cause of litigation. For the purpose of stopping this class of litigation, which is of an exceedingly bad character and is more full of false evidence than any other class of litigation, I think this provision is a very good one. It is intended to check these evils and give relief to the people. It will also afford great relief to execution-creditors. When a man finds that his land is lost, he has got the chance of recovering it by paying 5 per cent. in excess of the purchase-money, and if he does so the whole thing is over; the decree-holder has got his money without a long litigation, and the purchaser is not damaged, because he too gets back his money, with 5 per cent. in addition. I have long thought that some measure of this kind introduced into the Civil Procedure Code might have a good effect. This was thought a good opportunity for trying the experiment, and a number of Judges to whom I have spoken think it will be a valuable provision and will work

well. The getting rid of the class of cases I have described will be of immense good. The only person in any way prejudicially affected is the purchaser, but we have secured his interest by giving back his money with 5 per cent. by way of interest. The great delay and uncertainty at present existing in these cases will be greatly diminished. The two other persons mainly concerned are the judgment-creditor and the judgment-debtor, and they will both, I think, be benefited. The intending purchasers will not as a rule be discouraged from bidding, for there will be less chance of long litigation, which at present makes property at execution-sales fetch low prices, and discourages *bonâ fide* investors, and encourages speculators in litigation. I, therefore, strongly object to the amendment, and ask the Council to retain this provision in the Bill as being possibly a solution which, if I am right, will be really useful."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I also oppose the motion. I fail to appreciate the force of the arguments advanced by the hon'ble mover in support of it. A purchaser of a tenure or holding at an auction-sale always makes the purchase subject to the risk of the sale being set aside on the grounds mentioned in section 311 of the Code of Civil Procedure. The section in question will not add to that risk. There is no reason, therefore, why the sale should fetch a less price than it would have otherwise done. The costs incurred in trials regarding the validity of sales are sometimes enormous, and it usually takes years before the question is finally decided. This new provision will remove one of the most fruitful sources of litigation, and, while it will give back his property to the judgment-debtor without putting him to harassment and expense, it will give the purchaser a reasonable profit by the transaction, and save him from the costs and suspense attendant on a protracted litigation. I hope hon'ble members will recognise in this new section a great improvement on the present law on the subject."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK opposed the amendment. He said:—"I think the section will introduce, in addition to other troubles, the speculative element against which all the Civil Courts have been struggling. Although it is in one sense an attempt to relieve tenure-holders and occupancy-raiyats by opening a door to repentance, I think in all these matters the quickest step is the wisest step for all parties concerned. A man who has allowed so many opportunities to escape him is not the man for whom we ought to plead. The purchaser is no doubt sufficiently recouped by getting back his money with interest; but the real difficulty is the opportunity given for speculation, and I think that can do no good."

The Hon'ble MR. AMÍR ALÍ said:—"I also oppose the amendment. The reasons in favour of this provision have been fully given by my hon'ble friend Mr. Evans, and it is unnecessary for me to detain the Council by going over the same ground. Any one who knows the practical difficulties arising under section 311 of the Civil Procedure Code will appreciate the boon of such a provision in this Bill. From my own experience I can say that the majority of purchasers will be glad to recover their money with a substantial interest instead of being engaged in harassing litigation to support the purchase."

The Hon'ble MR. GIBBON said:—"This provision is not a substitute for section 311 of the Civil Procedure Code, but an addition to it. You maintain all the drawbacks of the present law and give the judgment-debtor another excuse for not paying up on the due date. The practice is very different in regard to estates taken under management by Government to save the old proprietors. Estates are not first sold up and taken into management afterwards, but the Collector, acting under authority, realises the difficulty of the debtor and takes charge of the estate beforehand. The Government does not proceed by putting up the estate to sale and inducing persons to buy on speculation. This provision would have the effect of depreciating the value of the property by deterring people who would otherwise be purchasers from spending their time to make purchases which will not be confirmed. The present law declares that a purchaser under a decree should pay the amount within 15 days; he must go one day to make the purchase, he must go 15 days afterwards to pay the purchase-money, and he must go again to see if the sale has been confirmed. Any would-be agricultural purchaser would be deterred from making a purchase under such circumstances."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJÍ moved that clause (*d*) of sub-section (*1*), sub-section (*2*), and clauses (*c*), (*e*), (*g*) and (*h*) of sub-section (*3*), of section 178 be omitted. He said:—"In imposing various restrictions on the freedom of contract in transactions between landlord and tenant the legislature has proceeded on the hypothesis that the vast majority of raiyats form a body of men who are incapable of understanding and taking care of their own rights and privileges. Nothing could be more erroneous. It is seen from the preamble of Regulation IV of 1794 that, although the legislature of 1793 enjoined the exchange of written engagements between landlord and tenant, the raiyats deliberately refused to enter into written en-

gagements in view of protecting their own interests. I shall read to the Council what the Rent Commission said on the subject in their report:—

"The legislature of 1793 directed its efforts to the introduction of written engagement between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements; but neither party was in the least persuaded or converted, and finally a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other. The little use made of the provisions of the existing law, which enable the raiyat to sue for a patta or the landlord for a kabúliyat, goes far to show that the race of landlords and tenants in Bengal has not much altered its mind on this point since the time of the Permanent Settlement. The experience of the registration offices indicates that writing is commonly used in the creation of new tenancies; and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes, than to force upon the people a law fashioned according to Western rather than Eastern ideas."

"When the raiyats were so very careful of their rights in 1793, hon'ble members might safely presume that they are much more so at present, now that their condition has immensely improved, and there has been a vast progress in the spread of education. Considering what a vast area of land still remains to be cultivated, I confidently submit that no country in the world would derive more benefit than Bengal from perfect freedom of contract in land. In the interests of agriculture, and of the education which Government is so desirous of giving to the people in habits of self-government, it is essential that perfect freedom should be accorded in this matter. Laws which offer such violence to the natural rules of supply and demand can never be successful in their operation, and it is more than doubtful how far these restrictions to contract would prevent parties from having recourse to shifts and devices for the purpose of evading the law. In reference to this question I shall ask the Council to bear in mind that the original proposal of the Government of India, which received the sanction of the Secretary of State, was to restrict freedom of contract so far only as it might bar the accrual of the right of occupancy. I therefore move that the clauses of this section which limit freedom of contract beyond questions affecting the accrual of the right of occupancy be expunged from the Bill."

The Hon'ble Mr. Evans said:—"I expected to hear some statement regarding the particular objections to the particular sub-sections mentioned in the amendment. The only one to which I attach real importance is that in which the hon'ble member agreed with us, namely, that a raiyat should not be allowed to contract himself out of the occupancy-right; the others stand each one on

their own merits as regards their necessity, and I do not propose to offer any remarks upon them, except two. As regards sub-section (3), clause (g), which is mentioned in the amendment, I will support the motion; but the reason why I do so is that I altogether object to section 40; but inasmuch as that matter has been passed by the Council I won't state my objections at length. I do not think it safe or desirable to entrust to a Sub-divisional Officer or a Collector the question of adjudicating on the expediency of commuting rents in *bhaoli* tenures. There are strong reasons why the tenure has prevailed, and I believe in the wisdom of retaining it. I do not think such an officer who may be a stranger to the district is a good judge as to whether a *bhaoli* tenure should be swept away. Therefore, as I object to section 40, I of course object to this sub-section, which makes inalienable the right of the landlord to make an application to see how much discretion the Revenue-officer has. If he has good discretion, he will refuse the application; if he is an officer with advanced opinions, who wishes to sweep away all the *bhaoli* tenures of the country, he will grant the application; therefore, as far as that is concerned, I will support the amendment. There is one other matter to which I wish to refer, and that is clause (e), under which all raiyats are to have an inalienable right to sub-let subject to the provisions of this Act. With regard to the occupancy-raiyat, the question has been discussed, and the arguments are strong in favour of allowing it to a certain extent. We have placed large restrictions, and I think properly so. But this clause goes further; it provides that every raiyat is to have an inalienable right to sub-let. If a raiyat is let in on a written lease, he has to go out at the end of the term, and he cannot give a sub-lease beyond his own term. But with regard to the non-occupancy-raiyat, who has no written contract, he will have, as the section stands, a right to sub-let at fair and equitable rates, subject to the proviso in section 46; he may get a judicial lease at the end of five years, and a good deal of confusion will be caused. If the clause is not struck out, I think the word 'occupancy' should be inserted before the word 'raiyat'."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I support the amendment, and I am sure it does not go far enough. I think there ought to be a distinction between occupancy and non-occupancy-raiyats, and there ought to be no general provision against raiyats and superior landlords as far as possible adjusting their mutual differences without resort to the machinery of the Courts."

The Hon'ble MR. REYNOLDS said:—"I am willing to accept the suggestion which has been made by the Hon'ble Mr. Evans as to clause (e), but I cannot support the motion of the Hon'ble Peári Mohan Mukerji."

The Hon'ble MR. GIBBON said:—"I oppose the amendment. The hon'ble member has nowhere said that these contracts are to be what the contract law requires,—contracts to be made for lawful consideration,—and only such contracts are valid. If this amendment is carried, the effect will be that the occupancy-raiyat, who is under no necessity to enter into a contract under the Bill, whose position is already assured, if he is induced to enter into any contract, will be induced to write away rights already accrued to him. With reference to the remarks which fell from the Hon'ble Mr. Evans, I would not object to a permissive section being entered in the Bill to allow contracts for lawful consideration. Take as an example, with reference to the commutation of rents in kind, if it were to be declared that the tenant may enter into a contract with his landlord not to sub-let in consideration of the landlord allowing him to deliver only one-third of the produce in the future in place of the one-half he has been in the habit of delivering, I would not object to such a clause being inserted; but if the sole object is to permit the tenant to contract himself out of rights already acquired under the Bill, I object; but I do not think at this stage of the Bill such a proposal would be adopted. With reference to the question of sub-letting where a raiyat has been let in on an initial lease, the tenant might be allowed to contract himself out of his right to sub-let. But with reference to occupancy-raiyats, with whom it is not necessary to enter into any agreement, the only result would be the avoidance of the accrual of all rights."

The Hon'ble SIR STEUART BAYLEY said:—"I am sorry I cannot accept the amendment. The hon'ble member bases his motion, first of all, on the ability of the raiyat to look after his own interests. I am unwilling to detain the Council on this subject, but I would remind hon'ble members of the contracts which were read out two years ago by my hon'ble friend Mr. Ilbert and myself, and which were specimens of 1,000 or 1,200 of the same kind. I can only say, with regard to what fell from the hon'ble member as to the inability of the legislation of 1793 to force raiyats to contract with their landlords, that recent experience has shewn us that modern landlords have at all events been far more successful. I need not enquire into the reason, but it is the fact that landlords can get raiyats to give the extraordinary contracts to which I have alluded, and I do not suppose that anybody who has seen those contracts will doubt that they were given without the exercise of the least discretion on the part of the raiyats who gave them. The hon'ble gentleman objects to legislation framed according to Western rather than Eastern ideas; but the contracts to which I refer are unfortunately drawn up on Western models, but under Eastern conditions, that is to say, they purport to be bargains between equals, but are

really extorted under pressure of poverty, or ignorance, and it is precisely for that reason we do not desire to maintain the Western doctrine of their inviolability. The old shape of the pattá did not put any restrictions on the customary rights of the raiyat. These new forms of lease taken from Western models are calculated to break down existing occupancy-rights, to prevent the accrual of occupancy-rights, to make the raiyat pay the whole of the land cesses while the law says he has only to pay half, to make him give up his right to appeal for protection to the Courts. It is because we have seen numbers of contracts with such provisions that I say that without these safeguards, which, as I shall show presently, were in the view of the Government of India when they wrote to the Secretary of State, it would be absolutely fallacious to give them the rights which we are giving them. The hon'ble gentleman has said that in our despatch to the Secretary of State freedom of contract was only to be restricted in regard to the accrual of occupancy-rights. But there is nothing in that despatch to show that what we referred to was restricted to the time antecedent to the accrual of occupancy-rights. The Government of India said:—

'Nor need we dwell on section 20 of the Bill, which provides that no contract, whether entered into before or after the commencement of the enactment, shall in any case debar a raiyat from acquiring a right of occupancy in raiyati lands used for agricultural purposes. Such is the power of the zamíndárs, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed: and in this conclusion we have the support, not only of the Bengal Government, but also of the almost unanimous opinions of the Bengal officers.'

"This, the hon'ble member said, referred only to the accrual of occupancy-rights, but your sections go beyond it. In terms this is quite true. But after all what is the occupancy-right? The occupancy-right is made up of a bundle of incidents; and therefore to say that we restrict your contracting yourself out of your occupancy-right, but you may contract yourself out of any or all of the incidents which go to make up that right, means nothing. With regard to what fell from my hon'ble friend Mr. Reynolds, the point is this: where the two parties in the case of a *bhaoli* holding are not both of them willing to continue the arrangement, is it desirable to maintain their relations in such a shape? Whether the proposal for a change of the system under which rent is paid comes from the raiyat or the zamíndár, it is very desirable that somebody should settle how it should be done and on what terms, and we put in the Revenue-officer as the person most able to judge as to the interests of both

parties. If we leave section 40 in the law, that is, that either the landlord or the raiyat has the right to go into Court and ask for a commutation of rent, the provision in this section of the Bill is, I think, a necessary one. It is impossible that any contract should prevent a raiyat or a landlord from going into Court, and it would be very wrong to allow it to have that effect. In regard to the other point as to sub-letting, I am quite willing to accept my hon'ble friend Mr. Evans' proposal; and therefore I move that in sub-section (*c*) the word 'occupancy' be inserted before the word 'raiyat'."

The Hon'ble MR. ILBERT said:—"I feel some doubt about the proper way of dealing with this amendment. The scope of the Hon'ble Peári Mohan Mukerji's speech is wider than the motion in support of which the speech was delivered; for he does not move the omission of the whole section, and I understand him to admit that there are certain parts of it to the retention of which he would not raise any objection. There is not any amendment on the notice-paper which raises the broad question whether there are or are not certain classes of agreements between zamíndárs and raiyats to which the ordinary law of contract ought not to apply. And I presume that the reason why this question is not raised is because it is almost universally admitted that there are such classes of agreements. We all know the theory on which the ordinary law of contract is based. It presupposes equality between the parties to the contract, full knowledge and appreciation by each party of the nature of the rights to which he is entitled, and a deliberate intention on either side to modify those rights in a particular manner. Gaius and Titius, or Ram Das and Ram Bux, meet in the market-place and strike a bargain, and when they have done so the Courts hold them to their bargain. But the circumstances which lead up to the execution of a kabúliyat by an occupancy-raiyat are of a very different character. The raiyat's ordinary rights, the rights with which a kabúliyat purports to deal, are not based on contract, and the whole notion of their being capable of regulation by contract is unfamiliar to him. His rights are based on occupation and regulated by custom. He did not come in under a lease by which the landlord agreed to let and the tenant agreed to take a specified piece of land, for a specified term, under specified conditions; and if any instrument purporting to be such a lease can be produced against him, it is usually a fiction. He simply occupies the land, as his forefathers have occupied it before him, subject to the observance of certain conditions, the general character of which is approximately known and understood, though they have never been reduced to a definite written form. There is a nebu-

lous border-land between his rights and those of the zamíndár which has, from time immemorial, been the subject of dispute between them, and with respect to which the contest is under ordinary circumstances not unequally waged between persistent worry on the one side and passive resistance on the other. But there are certain central rights which we know very well that the raiyat would not give up except under the pressure of absolute necessity—rights which are essential to his status; and if we found that he has attached his signature or mark to a kabúliyat purporting to give away these rights, we may feel morally certain that the signature has been obtained under circumstances which are described in the Indian Contract Act as constituting undue influence. In fact, whilst the elements of an ordinary legal contract are offered on the one hand and acceptance on the other, the characteristic elements of the transaction which results in the execution of such kabúliyats as these are pressure on the one side and submission on the other. It is the execution of instruments of this nature that we wish to prevent. We desire to prevent the occupancy-raiyat from contracting or appearing to contract himself out of rights which are essential to his status. We have no desire to make this section more stringent or more comprehensive than the nature of the case requires, and if it can be shown that any of its provisions can be relaxed or modified without any serious risk of allowing the main objects of our legislation to be defeated, I should be most ready to accept the modification."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"Two statements have been made by the hon'ble member in charge of the Bill with regard to which I should like to say something. The proposal which was made by the Government of India to the Secretary of State was embodied in this way—'to declare that no contract shall debar a raiyat from acquiring the right of occupancy in raiyati land'. And the Secretary of State in giving his sanction, confined himself to the suggestion so embodied in that paragraph, because he said:—'I proceed to communicate to you my opinion on the proposals summarised under 13 heads in the 108th paragraph of your letter.' So that there can be no mistake as to what the proposal was to which the Secretary of State gave his sanction. The hon'ble member has advanced the argument that when the Secretary of State gave his sanction to the restriction of the right of contract barring the accrual of rights of occupancy, that sanction extended to the restriction of all contracts relating to every incident which affects the right of occupancy. I submit that that argument should be taken for what it is worth. As regards the other statement made by the hon'ble member that the kabúliyats in the case of the Mymensingh and Pubna raiyats show that the raiyats are too ignorant

and helpless to secure their own rights, I submit that unless hon'ble members have all the correspondence, official and demi-official, relating to those kabúliyats placed before them, the Council is not in a position to judge whether very unjust influence or any coercion was used by the landlords for the purpose of getting those kabúliyats. I know that the public Press distinctly stated at the time that members of the service had used their influence to induce the raiyats to repudiate their kabúliyats, that it was not their voluntary act, and that statement has not up to this time ever been contradicted."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for the words "a raiyat" in clause (*e*), sub-section (*3*) of section 178, the words "an occupancy-raiyat" be substituted.

The amendment was put and agreed to.

The Hon'ble Mr. HUNTER moved that in section 178, after clause (i) of the proviso, the following clause be inserted, namely:—

"When a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat";

and that the numbering of clause (ii) of the same proviso be altered accordingly.

He said:—"My Lord, I move this amendment to remedy what I believe to be a serious defect in the Bill. The main provisions of section 178, which prevent the tenant's statutory rights from being defeated by special contracts, have my cordial support. But the section very properly accords a particular treatment to the reclamation of waste lands. It enables the landlords to bar the exercise of occupancy-rights during the currency of a reclamation lease—a lease which may run for an indefinite period, and which would probably run for twenty or thirty years. The Bill thus makes provision for the reclamation of waste lands by means of tenants holding under long leases. But it omits to make provision for the reclamation of waste lands by the landlord himself, working with his own servants, or with hired labour. This omission is probably due to the circumstance that the latter class of reclamation has hitherto not been common. But cases of such reclamations have come to my notice, and I am told that their infrequency is due in part to the discouragements under which they are

placed even by the present law. In the only case in which, so far as I know, extensive reclamation has been affected by the steam-plough in Lower Bengal, the landholder writes to me that the present law renders such reclamation disadvantageous to the reclaiming landlord; while under the new law no landholder would think of undertaking such reclamation, unless protected by some accidental local tenure like the *útbandi*. Yet there are several classes of reclamation which cannot be carried out by cultivators, but must be conducted by the landlord, or by a combination of neighbouring landlords, if they are to be effected at all. The Council is, I think, agreed that it is the interest alike of the cultivators and of the State that such reclamations of waste land should be undertaken. To add to the cultivated area is the most direct and the most permanent remedy for the great evil in certain parts of Bengal—over-population. But such reclamations will certainly not be undertaken by landholders if the Bill is allowed to stand as at present. My amendment only proposes to place the landholder who reclaims land at his own charges by hired labour, in as good a position as the landholder who reclaims by means of tenants on long leases. In so doing I desire to say that the amendment has been carefully framed with the intention to cover only *bonâ fide* reclamation of waste land. I hope that the representatives of both the landlords and the cultivators will see their way to accept an amendment, which is submitted to the Council in the interests of both."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I think that in the interest of both landlord and tenant I am bound to support this amendment. It is necessary in the interests of the extension of cultivation that a provision to this effect should be made."

The Hon'ble MR. REYNOLDS said:—"I look with considerable misgiving on this amendment, not so much with regard to its use as to its possible abuse. I am averse to any provision which contemplates restrictions on the accrual of the right of occupancy. The Bill does not, it appears to me, place the reclaiming landlord in so unfavourable a position as the hon'ble mover of the amendment has represented. As long as he keeps the land after reclamation in his own possession and cultivates it by his own servants or by hired labour the profits will be all his own, and when he lets it to a raiyat he can let it on any terms he thinks fit. The landlord has thus full opportunity of remunerating himself for his original outlay of capital. I may add that I feel some doubt whether the clause will have that effect of encouraging improvements which the hon'ble member expects from it. The raiyat may be debarred by the conditions of his lease from acquiring the occupancy-right for a

period of 30 years. I cannot think that raiyats who take land on such conditions will make any improvements on it. I don't mean to oppose the amendment, as I sympathise with the object which the hon'ble member has in view, but I do not wish the amendment to pass without raising some note of warning as to what may be its effect."

The Hon'ble MR. AMÍR ALÍ said:—"I support the amendment for the reasons assigned by my hon'ble friend the mover."

His Honour THE LIEUTENANT-GOVERNOR said:—"I take no exception to the principle of the amendment, but I think there is a danger in it outside that to which the hon'ble member alluded. Is it not possible that waste land may come to mean in the eyes of the zamíndár fallow land intended for raiyati cultivation which is in the possession of the raiyat but has been allowed to remain fallow for a number of years? I think the amendment should be safeguarded by the addition of some words or provision which would make it clear what waste land is, so that landlords should not trench on land which may have the appearance of waste land from not having been used for a long time but still belongs to the raiyat."

The Hon'ble SIR STEUART BAYLEY said:—"I very fully sympathise with the object which my hon'ble friend Mr. Hunter has in view. I myself threw out in Committee a suggestion somewhat to the same effect. I suggested that where the landlord had broken up waste land himself and cultivated it himself either directly or by the agency of hired servants for 12 years, then he should have it as *sír* or *khámár* land, and he would be in the same position as a raiyat who had done so. The objection which has been taken by His Honour the Lieutenant-Governor that land so reclaimed may simply be cultivated land which has remained fallow for some years, is of some force, and I shall be glad to guard against that by any *explanation* which may be approved by the Council, if any better form of words can be found. But I shall be sorry if the Council should reject the amendment altogether."

The Hon'ble MR. REYNOLDS said:—"Perhaps the hon'ble mover of the amendment will agree to the addition of an *explanation* to the following effect:—'that the breaking up of fallow lands for cultivation shall not be deemed to be reclamation of waste land under this section'."

The Hon'ble MR. ILBERT said:—"The question of waste land has been considered; the Courts will put the same construction upon it as they do under the waste land rules. I think the term 'waste land' is enough."

The Hon'ble MR. HUNTER said:—"My Lord, with reference to the remarks which have fallen from His Honour the Lieutenant-Governor, I beg to point out that if a definition of waste lands were necessary in this Bill, the necessity has not arisen under my amendment. If that necessity exists, it arises under the preceding clause (*i*) of the proviso, and indeed it would have also arisen at a much earlier stage in the Bill. The Courts must construe the real meaning of the words 'waste land' in my amendment, precisely as they must construe their meaning in the preceding sub-section and in a number of other Acts. But while I object to the meaning of the words being minimised with special reference to my amendment, I wish to state again, and with the utmost distinctness, that my amendment is intended to cover only the reclamation of *bonâ fide* waste land. I am sorry that I cannot accept my friend the Hon'ble Mr. Reynolds' picture of the happy condition of the reclaiming landlord under the present Bill. My hon'ble friend says that if the reclaiming landlord keeps the land in his own hands no occupancy-rights will accrue. But this Hon'ble Council well knows that landholders cannot keep large tracts in their own hands, for cultivation by hired labour; that as a matter of fact they reclaim land not to cultivate it themselves but to let it out to tenants. Well, when a landlord lets out the land which he has himself reclaimed, what will happen under the provisions of this Bill? If he lets it to a substantial settled raiyat, the tenant immediately obtains the complete occupancy-right. If the landlord lets it to a stranger, he takes the risk of getting a bad tenant; but even then the tenant will have all the protection of a non-occupancy-raiyat, and the occupancy-right begins to accrue from the moment he enters on the land. It is delusive, under these circumstances, to speak of the reclaiming landlord as being sufficiently protected. I sincerely hope that the Council will accord to him the protection for which I now ask. I believe that it is in the interest alike of the landholder, the cultivator and the State that this protection should be granted."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that the words "or contract" be substituted for the words after "usage" in section 182. He said:—"The object of this amendment is to take homestead or building land out of the scope of the Bill, and to confine the regulation of the incidents of the tenancy of such land to custom and contract. The Bill is avowedly one for the regulation of the relations of landlord and tenant as regards agricultural and horticultural lands. It should not, therefore, concern itself with homesteads. I per-

fectly agree to the principle that where the homestead forms part of an agricultural holding the provisions of the Bill should apply to it. But what justification can there be for bringing other building lands within the purview of the Bill? It is true that custom is saved with regard to such lands, but, as their incidents are usually governed by contract, great uncertainty will arise if contracts are ignored and the parties left to fight out the nature of a local custom in Court. The result of the provision will be that until the rights of parties are judicially determined, and until it is known whether a particular custom which has been set up by one of the parties is proved or disproved, they will remain in ignorance of their own rights. One of the most harmful effects of such a law will be the encouragement of flimsy and perishable constructions. It is desirable on all grounds that before a man builds a house to live in he should know the nature of the rights he has in the land, and nothing would secure this better than by giving free scope to contract, as at present, in such cases. The Council is well aware that on the motion of Lord Granville papers relating to tenures of building lands, containing much useful information regarding the practice of different countries, were placed on the table of the House of Lords, and they showed no fact more prominently than that unlimited freedom of contract exists in England in this respect, and that the great London proprietors are the best landlords in the world. All considerations, therefore, converge to show the necessity of giving free scope to contract in the matter of homesteads."

The Hon'ble MR. REYNOLDS said:—"I demur altogether to the remarks of the hon'ble member which implied that the section has anything to do with what are ordinarily known as building leases. This is merely a question of the homestead of the raiyat. The possession of a homestead is essential to his status as an agriculturist, and we have evidence in the papers before the Council to show that where a landlord has in some cases had the opportunity of putting pressure on a raiyat whom he has not been able to turn out of his holding but out of his homestead, the power has been abused by increasing the rent. The amendment will have the effect of defeating what is really a great part of the object of this section."

The Hon'ble SIR STEUART BAYLEY said:—"I cannot recommend the Council to accept the amendment. The hon'ble member's speech is calculated to lead the Council very far astray from the point which the Committee had before them. Nothing can be more entirely and wholly foreign to this section than the question of building leases such as those in London, extending it may be to 999 years. This section refers merely to the land on which the raiyat's house is built and which he holds in connection with his occupation as a raiyat, and in re-

gard to which we find in almost every district a different custom prevailing. In some districts he pays no rent; in others he does. In some he acquires an occupancy-right at once; in others the right grows up. In some districts he can be evicted from his agricultural holding without prejudice to his right in his homestead land; in others he cannot. Then there are various customs, as to what right he has in the materials of his house. There are different customs existing in almost all districts on points like this, and we found it impossible to frame any law which would not be unjust to one party or another, and it was in the face of these difficulties that the Select Committee decided that the matter should be left to be governed by custom. But where there is no custom which can be ascertained, we provide that it shall be governed by the rules which govern ordinary agricultural leases. If there is one means of pressure greater than another, it is by increasing the rent for homestead land—a power which the landlord can bring to bear when he cannot otherwise touch the raiyat in his agricultural holdings."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"The language of the section does not on the face of it support the view I have taken of the section. If hon'ble members will, however, read the definition of 'raiyat' in section 5, sub-section (2), they will find that, although land might originally have been taken for purposes of agriculture or horticulture, the descendant of the man who originally took the lease would still be deemed a raiyat, although he is a clerk in a Government office or a shopkeeper or a blacksmith. The definition of 'raiyat' is very clear, and there is nothing irrelevant to the argument which I adduced as to the practice in regard to building leases in England; and I think it will be in the interests of the country generally that the change which I suggest should be made."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that section 186 be omitted. He said:—"Hon'ble members will find that the provisions for penalties contained in this section are altogether one-sided. In the case of a landholder *an attempt* to distrain would be a criminal offence, but in the case of a raiyat an attempt to resist distraint or to remove distrained crops is no offence. The section is also objectionable on principle, on the ground that it converts into criminal offences acts which are otherwise not criminal. The Indian Penal Code is a complete and exhaustive Code in itself. Any attempt to supplement it by definitions of crime in respect of particular transactions which do not otherwise come within its scope, should be discouraged. If there be a

criminal trespass let the offender be punished for it; but why call that a criminal trespass which is in no sense a trespass? Hon'ble members will also observe that the Bill nowhere provides a penalty for removal by the raiyat of crops stored for division or valuation under the dánábandí system."

The Hon'ble SIR STEUART BAYLEY said:—"I must request the Council to think once, twice and thrice before they accept this amendment. This question was one which was taken up by the Behar Committee, who said—

'By compelling Behar proprietors to adhere to the restrictions which the law imposes on distraint, you would practically deprive them of the only power of distraint which they care to exercise, namely, that of a private distraint or restraint of crops. It is, Mr. Gibbon thinks, better to do away altogether with a right which, if exercised according to the intention of the law, would be of little or no value, and which, not being exercised in accordance with law, has in the past, and may in the future, lead to great abuses. In these views a majority of the members concur.'

"Then with regard to the other acts, namely, preventing or attempting to prevent the reaping, gathering, storing or removing produce, I can only refer the hon'ble member to what Bábú Bimola Churn Bhuttacharji writes as to the system in Behar. He says—

'The next engine of oppression in the hands of the zamíndár is not to make the dánábandí (appraisement of crops) at all, but to let the grain rot in the threshing-floor or in the field. When the raiyats decline to accept the zamíndár's terms as to the share of the produce, the zamíndár declines to make the appraisement. One year's loss of rent is nothing to him (the zamíndár), but to the raiyat the loss of one year's crop means starvation. The grain is allowed to rot in the fields, or is eaten up by birds, unless the raiyats come round in time. Another mode of oppression is that after the dánábandí or agorabattai (appraisement or apportionment of the crops) has been made, the zamíndárs do not allow the raiyats to take away their grain.'

"These are the suggestions which we have incorporated in this section. Both the Behar Committee and the Rent Commission say it is a real practical evil, and I can say from my own experience that in regard to the dánábandí the amount of damage has been very great, and there is always a difficulty in bringing the question to the decision of the Courts, because it is uncertain where the respective rights of the landlord and the raiyat to the possession of the crop begin and end, and it is therefore difficult for the Courts to say whether the landlord is actually doing an illegal act in stopping the raiyat in his right to reap the crop. These are the reasons which led the Select Committee to accept the section as it stands. The penalty is three months' imprisonment or a fine of Rs. 500, which is the same as the penalty for criminal trespass. The hon'ble member said the section was one-sided because the land-

lord may be punished, but for doing these things the raiyat cannot be punished criminally. We have, however, provided a penalty for the raiyat who interferes with the appraisement or division of the crop in the shape of rent at the highest estimate of any neighbouring crop. It is because we hold that the ultimate proprietary right in the grain rests in the raiyat, that we do not punish him criminally for taking action in regard to it."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that sections 191 and 192 be omitted. He said:—"The effect of section 191 will be to exempt a large majority of Government estates from the operation of the rule of twenty years' presumption. Government, while desiring to have their relations with their raiyats regulated by the same code of laws which regulated the transactions of private landlords, should not claim exemption from a rule which has worked so very injuriously to the interests of landholders. One hon'ble member remarked the other day that the presumption which the rule raised was incompatible with the very fact that the estate had never been permanently settled. But because the revenue of an estate had never been permanently settled it is no reason to suppose that there might not be numerous raiyati holdings in it the rents payable for which have never been altered. The periodical assessments of revenue which Government have made in their estates should have made them the more reluctant to claim an exceptional privilege in this respect, as nothing can be more easy for them than to prove variations of rent, if such variations have actually taken place. The exemption of Government estates, therefore, from the operation of this rule of presumption is highly objectionable. It will destroy rights and privileges of raiyats of Government estates which their fellows on the estates of private owners will continue to enjoy, and it will shake the confidence of the people in the scope and justice of a measure which provides one law for the raiyats of private owners and another for the raiyats of the State itself. For the very same reasons section 192 is very objectionable. While in the case of private property a contract fixing the rent of a holding at a certain figure will be in the interests of the raiyat binding on all future proprietors and purchasers, all contracts fixing rents at figures which a Revenue-officer may consider to be not fair and equitable for the time being will be in the interests of Government revokable at the will and pleasure of the Revenue-officer. The provision offers a striking contrast to the restrictions imposed by the Bill upon freedom of contract. It violates the sanctity of contract to the injury of the raiyat and for the behoof of Government, while other provisions of the Bill will nullify contracts in the behoof of the raiyats and to the injury of private proprietors."

1885.] [*Mr. Quinton; The Mahárájá of Durbhunga; Mr. Reynolds; Sir S. Bayley.*]

The Hon'ble MR. QUINTON said :—"This section really contains the law as it stands at present. My hon'ble friend on this and previous occasions has spoken on the assumption that tenants and raiyats under zamíndárs are in the same positions as those in temporarily-settled estates under Government. The Government, for wise purposes no doubt, has thought proper that the land-revenue, which is the most important item in the finances of the Government, should, in a great many provinces, be temporarily settled from time to time, and in making these settlements we must take into account how far the value of the land is divided between the tenant and the proprietor; that is, the Government consents to give to the raiyats a part of the revenue. I think the arguments used by the hon'ble member do not in the least apply. There is no permanent settlement; but if you say that, when a man's rent remains unchanged for twenty years, his rent cannot be raised, then it will be impossible for the Government to raise the revenue."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said :—"I do not wish to say anything, because I do not think any argument which I may bring forward will tend to persuade the Council to go against the decision to which the Government have already come."

The Hon'ble MR. REYNOLDS said :—"I feel some difficulty in attempting to answer the argument of the hon'ble mover of the amendment, because I have failed to connect his argument with the sections under consideration. I do not understand that this has anything to do with the twenty years' presumption where Government estates are concerned. The principle of the sections seems a fair one, and is specifically laid down in the Regulations, that the landlord cannot create an interest beyond the term to which his own interest extends. That seems to me to be the principle of these sections, and I fail to see that there is anything inequitable in it."

The Hon'ble SIR STEUART BAYLEY said :—"I think we have a right to complain of the repetition of the statement that the Government has made a separate law for Government estates from other estates. There is no such distinction in reality; all temporarily-settled estates will be exactly in the same position; there is no distinction between the Government and any other proprietor, and the assertion that the Government has made a separate provision for their own estates is simply misleading. The rules to which the hon'ble gentleman objects will apply to all lands by whomsoever held in districts which are not permanently settled. The history of the matter is that it

is a part of the existing law, which provides that the temporary settlement-holder could not contract beyond the term of his own settlement; a settlement-holder therefore cannot protect his raiyat against subsequent enhancement in case of the subsequent enhancement of the revenue. That is the law, and it is practically repeated in this section. Then we come to the question of the presumption from twenty years' holding at an unchanged rent. The presumption cannot possibly arise where the revenue, and presumably the rent, is being constantly changed. I do not think the question could be better stated than as it has been formulated by the Rent Commissioners' Bill. The *exception* to section 6 of that Bill says:—

'In the case of a tenure or under-tenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rate of rent has been expressly recognised in settlement-proceedings by a Revenue-authority empowered by Government to make definitively or confirm settlements.'

"That is to say, where a person has held from the time of the Permanent Settlement there he has a right to go on holding at the same rent, but where you have the rent constantly changed the presumption does not naturally arise that he has held from the Permanent Settlement. It is no idea of our own."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"As a matter of fact we know of several estates which have been permanently settled long after 1793. Still when a question under the rule of presumption arises it has been authoritatively held that the Permanent Settlement which is meant in this connection is to be taken as the Permanent Settlement of 1793. So that the argument which has been advanced by the Hon'ble Mr. Quinton on the ground that where there is no permanent settlement there can be no question of presumption falls to the ground. Where a temporarily-settled estate is in the hands of a farmer or other person in behalf of the Government, it is the Government that will derive the whole benefit of the enhancement that will take place in that estate; therefore whether an estate is in the hands of the Government or a farmer, if it is not a permanently-settled estate it must for all intents and purposes be taken as an estate in which the Government is most beneficially interested. The justification for the existence of that section in the Bill is based on the argument that it finds a place in the Rent Commissioners' Bill, and the justification for section 192 is based on the fact that it is the existing law. If these arguments are allowed to prevail in the case of all sections that are contained in the Bill and which have been omitted from it, we shall have no cause for complaint."

The amendment was put and negatived.

1885.] [*Bábú P. M. Mukerji; Mr. Ilbert; Bábú P. M. Mukerji.*]

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that the words relating to Regulation VIII of 1793 in Schedule I be omitted. He said:—"The sections of Regulation VIII which the Bill contemplates repealing are the very sections which regulate the relations of landlords and tenants. Next to the rules fixing the revenue in perpetuity, these sections form the most important rules of the Permanent Settlement. If the object of the present measure is 'to restore the raiyats to their original position', as it is avowed to be by Her Majesty's Secretary of State, nothing could be more incompatible with that object than a repeal of the sections in question. In the interests both of landlord and raiyat I think these sections should not be removed from the Statute-book."

The Hon'ble MR. ILBERT said:—"The first schedule merely contains, in accordance with our usual practice, those sections of the existing Regulations which will be superseded by the present legislation. The only effect of the hon'ble member's amendment would be that the sections which he wishes to omit from the schedule would speedily find themselves included in a schedule to a Bill framed for the purposes of Statute-law revision. If my hon'ble friend will refer to the first volume of the Lower Provinces Code, he will find that my learned predecessor, who has done so much useful work in removing obsolete matter from the Indian Statute-book, has freely laid a sacrilegious hand on the Permanent Settlement Regulations. And if he were to turn to the English Statute-book he would find that the sacrilegious hands of Statute-law revisers have been laid on an enactment which is not less famous than the Permanent Settlement, on the enactment which appears in the authorized edition of the English Statutes as 25 Ed. I, caps. 1 and 29, but which is commonly known as Magna Charta."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in Schedule III, column 2, for the words "two years" the words "one year" be substituted. He said:—"The present law is that when a raiyat has been dispossessed by a landlord he may sue to recover possession within one year from the date of dispossession. That is the ruling of the High Court, and its authority goes to remove any doubt in the wording of the law itself. The effect of substituting the period of two years for one year will be to allow independent rights to grow up in the meantime and thus to sow the seeds of litigation. I submit therefore that the present law should be maintained, and that by extending it to two years it will allow new rights to be created, and thus give rise

to litigation and to very great complication as regards the determination of the title both of the person who has acquired rights and the person who has been ousted by the zamíndár."

The Hon'ble SIR STEUART BAYLEY said:—"The words as they stand in the schedule are in conformity with the policy of the Bill. It has been deliberately decided to legislate that a raiyat who is supposed to have abandoned his holding and has been treated as such might within a period of two years apply to the Court to reinstate him on payment of such costs as may seem fair and equitable; it has been decided that two years is a better period than one year. We leave the occupancy-raiyat two years, a non-occupancy-raiyat six months, to apply to be reinstated in cases in which the abandonment may be found to be involuntary or incomplete."

The Hon'ble MR. EVANS said:—"I am informed that the hon'ble member will be ready to accept a similar wording in section 43 as in section 29. Casting my eye over the Bill I find that the alteration is necessary, inasmuch as a very large number of rent-engagements are not in writing."

The Hon'ble SIR STEUART BAYLEY said:—"I am prepared to put in section 43 words similar to those in section 29."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, having accepted the proposal so made, by leave withdrew his amendment.

The Hon'ble SIR STEUART BAYLEY moved that the following proviso be added to section 43:—

"Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY moved that in section 50, sub-section (*l*), before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 52, sub-section (*l*), clause (*a*), before the word "holding", in two places where it occurs, the words "tenure or" be inserted;

that in the same sub-section, clause (*b*), before the word "holding", in two places where it occurs, the words "tenure or" be inserted;

that in section 52, sub-section (*2*), clause (*a*), the words "tenure or" be inserted before the word "holding"; and

that in section 52, sub-section (*4*), before the word "holding", in the two places where it occurs, the words "tenure or" be inserted.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 53, for the words "tenure-holder or raiyat" the word "tenant" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 61, sub-section (*1*), before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 89, before the word "holding" the words "tenure or" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 90, sub-section (*2*), clause (*a*), the words "tenure or" be inserted before the word "holding".

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 108, sub-sections (*1*) and (*2*), for the words "under the last foregoing section" the words "under this chapter" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in the proviso to section 108, the words "tenure or" be inserted before the word "holding" in the two places where it occurs, and the words "tenures or" be inserted before the word "holdings".

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 111, clause (*b*), for the word "local" the word "civil" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 119, for the words and figures "sections 105, 106, 108 and 109" the following be substituted:—"sections 105 to 109, both inclusive".

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 125, sub-section (3), for the words "on the outer door" the words "on a conspicuous part of the outside" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 134, sub-section (1), after the words "to be made" the words "from time to time" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 145, after the words "every such suit" the words "or application" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that to section 145 the words "or in which the application is made" be added.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 158, sub-section (1), the words "held by a tenant" be omitted;

that after the words "the landlord or the tenant" the words "of the land" be inserted;

that in clause (a) the words "held by the tenant" be omitted;

that after clause (a) the following be inserted:—

"(b) the name and description of the tenant thereof (if any)";

and that clauses (b) and (c) of the same sub-section be lettered (c) and (d) respectively.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in sub-section (1) of section 173, after the words "in execution of which a" the words "tenure or" be inserted;

that in sub-section (2) of the same section, before the word "holding" the words "tenure or" be inserted; and

that in sub-section (3) of the same section, before the word "holding" the words "tenure or" be inserted.

The amendments were put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 174, sub-section (2), after the words "setting aside the sale" the following be added, namely:—

"and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside".

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 180, sub-section (1), clause (a), for the word "and", in the second place where it occurs, the word "or" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that to section 185 the following be added, namely:—

"Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 190, sub-section (6), after the words "from time to time" the words "subject to the sanction (if any) required for making them" be inserted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in section 195 (e), for the words "which is not expressly repealed by this Act" the words "in so far as it relates to those tenures" be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in the Form of Receipt in Schedule II, for the words "Raiyat's portion" the words "Tenant's

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portion", and for the words "Raiyat's part" the words "Tenant's part", be substituted.

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that in Schedule III, Part III, the following words be added to clause 6, namely :—

"in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877."

The amendment was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA said:—"We have now, my Lord, reached the final stage in the discussion of this Bill. Nothing that I can say will, I am aware, influence this Council in their determination to pass the Bill; but in justice to myself I feel bound to make one or two observations. I have opposed the Bill from the very first, because I considered it an impracticable, unfair and unworkable measure, and, viewing it in its final form, I am still of the same opinion. My hon'ble friend Bábú Peári Mohan Mukerji and myself, however weak we may be in debate, have certainly one advantage over the majority of the members of this Council—in the practical experience that we possess of zamíndári management. I yield to no one in my desire to see the raiyats protected from oppression, but it is my deliberate opinion that this Bill will not accomplish this object; on the contrary, I believe that the legislative safeguards which you have provided, the constant intervention of Revenue-officers in all the details of agricultural life, will lead to the most widespread confusion, and will be as disastrous to the raiyats as to the zamíndárs themselves. My hon'ble friend and myself have endeavoured, to the best of our ability, to point out these dangers to the Council, but our proposed amendments have, almost without exception, been rejected; and the reasonable hopes that we had entertained in the moderation of the Council have been disappointed. I view with the deepest concern the outlook before us. I dread the passions and animosities which this legislation will kindle and inflame. We are embarking rashly on a sea of change, and many will be shipwrecked on the voyage. Such vast innovations cannot be introduced into the rural economy of the province without exciting great commotions. I can only hope that these anticipations may not be realised; but, whatever may be the result, I have, at any rate, the

satisfaction of feeling that I have acted as the true friend of my country and the Government in warning you of the political dangers which I believe underlie the proposed legislation."

The Hon'ble MR. EVANS said:—"I will not trouble the Council at any length at this stage. I agree with the majority of the Council that the main provisions of the Bill are beneficial. I think that the sections which give to occupancy-raiyats facilities in proving the status which they hold, the changes we have made in favour of landlords as regards the grounds of enhancement, and the provisions in regard to the preparation of a record-of-rights, thus preventing confusion and diminishing litigation, are all beneficial, and I think that the necessity for legislation has been clearly made out which would alone have justified any large change in the rent law which affects the well-being of so many millions. The task has been one of great difficulty, and our success cannot be more than partial. The Committee and the Council have done their best to perform the task which was forced on them, and I support the motion that the Bill as amended be passed. There are some minor points on which I hold a different opinion from the majority of the Council. And there is one point on which there is an irreconcilable difference between me and the majority, and that is the question of the limit on enhancement out of Court. I will not trouble the Council with any repetition of what I have said on this point, but I will point out that the effect will be this. It is perfectly certain that under this very law a large number of landlords will be entitled to enhancements at much higher rates than 12½ per cent.; and when a landlord has taken the raiyats of one village into Court, and has established his right to enhance their rents 30, 40 or 50 per cent., the raiyats of the next village will say 'Don't take us into Court, but take an enhancement of 15, 20 or 25 per cent. and we will agree.' The Council have, for reasons which appear to me to be wholly insufficient, enacted that such contracts shall be void, although the raiyats may be convinced that it will be to their interest to consent to an enhancement of their rent to that extent. By this law the zamíndár is forced to take them into Court; if he does not, the result is that, if he were to take kabúliyats by consent at 15 per cent. and then put his finger on their crops to realise the rent they have consented for their own advantage to pay, he will be liable to a fine of Rs. 200 for every such exaction, and for three years it is open to the raiyat to repudiate. I cannot believe that such a state of things is desirable. I am satisfied that the raiyat is the best judge of when it is to his advantage to keep out of Court. When a raiyat has amicably agreed with his landlord to an enhancement exceeding 12½ per cent., I cannot think it right that the contract

should be void. I think the provision is wholly unjustifiable and useless. There is therefore this difference between me and the majority of the Council. I should not however be justified in voting against the Bill, which, as I have said, I consider to be on the whole beneficial, on account of one of its provisions with regard to which I hold a different opinion from the majority of the Council. But I still hope that when the Act goes before him the Secretary of State will make his approval of the Act conditional on the repeal of this clause, or will strongly represent to the Executive Council the necessity of introducing a Bill for that purpose."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"Remote as is the expectation—remote beyond remoteness—of inducing your Lordship and this Hon'ble Council to agree to a direct negative of the present motion of the hon'ble member in charge of the Bengal Tenancy Bill, I deem it my duty to entreat your Lordship and this Hon'ble Council to pause before passing the Bill. It has been observed by a high authority, Jeremy Bentham, that 'the legislator is not the master of the disposition of the human heart; he is only their interpreter and their minister. The goodness of the laws depends upon their conformity to general expectation. The legislator ought to be well acquainted with the progress of this expectation in order to act in concert with it.' Allow me, my Lord, to ask, has the Bengal Tenancy Bill satisfied the expectations either of the landholders or of the raiyats? The resolutions passed at meetings held in different parts of these provinces, the numerous memorials which have been submitted to Your Lordship by landlords and raiyats alike, and the public opinion which has found expression in every section of the Native and Anglo-Indian Press, give an emphatic negative to the query. The landholders stand aghast at the dreadful vista of unmerited and uncompensated loss of power and prestige, price and produce, which the measure threatens them with, trembling at the idea of the pains and penalties, the law-suits and litigation, of which they are to reap a plentiful crop, involving zamíndár and raiyat in one common ruin. Nor are the raiyats more appreciative of the benefits intended for them. They loudly express their consternation at the prospect of a law conceived with the best intention for their benefit, but which, they think, will actually make their position much worse than at present. My Lord, in the debates on the Bill my position was an embarrassing one—an existence on sufferance in a Council commanding an overwhelming majority against me, and counting amongst their number the ablest and most distinguished members of Her Majesty's Indian service. In spite of Your Lordship's very kind and reassuring expressions of appreciation of my position, the consciousness of overwhelming odds against me

never left me for a moment, creating a perpetual depression of spirit and subtracting much from my usefulness. Nevertheless, I endeavoured to show that the Bill ignores the original scope and object of an amendment of the Rent Law, that it is based on assumptions which are indignantly and vehemently denied by landholders, that some of its provisions make uncalled-for inroads upon vested rights of property, and others militate against conclusions arrived at after careful inquiries conducted under the paramount authority of the British Parliament, and that it is a measure eminently calculated to foment quarrels and disputes, and to sow broadcast the seeds of litigation. I fully appreciate the desire of the hon'ble member in charge of the Bill that there should be a finality at some stage of these discussions, but the passing of a measure which is disliked by all classes connected with the land is not likely to allay the agitation which the discussions regarding it have given rise to. Let us not cry peace where there is no peace. Let us bear in mind that in the exercise of the legislative function in questions of such magnitude, complexity and importance, where every word and sentence we seek to clothe with the authority of law may be fraught with the gravest consequences to millions of unrepresented subjects of Her Gracious Majesty, it can never be unwise to pause and take a forecast of the future. The question which I would beg Your Lordship and this Hon'ble Council to consider is, whether it is desirable to pass, without further inquiry and deliberation, a measure which it has been publicly said would shake the confidence of the people in the faith of the British nation, and which would set brooding over their wrongs a large and important section of the community who are noted for their loyalty and devotion to the British Crown. Should this Hon'ble Council decide upon passing the measure, I beg Your Lordship's permission still to express a hope that Your Excellency will be pleased to consider whether this is not properly one of the cases, contemplated by the Indian Councils Act, in which Your Excellency might reserve your assent for the signification of the pleasure of Her Gracious Majesty upon it."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I had no idea that we should be called upon to vote today for the passing of the Bill. After what has fallen from several hon'ble members in this Council in reference to the shaping of the measure in the Select Committee, and when, as the Hon'ble Mr. Reynolds once or twice remarked during the discussions in Council, that certain principles had been laid down in Committee which he thought were not to be departed from, I saw it was vain to hope that any radical change would be made on some points which in my opinion were clearly

a departure from the law as it is enunciated in the Acts of 1859 and 1869, In this contingency, and having carefully looked into the subject, I find the position is one the difficulty of which has been estimated by one of the learned Judges of the High Court, Mr. Field, in this sentence. He says:—'We ought not to interfere with existing rights which have been the creations of our own administration operating upon the natural progress of the country', and he held that no case had 'been made out for disturbing the land-marks of property.' This remark applies, as far as I am concerned, to the position held by sub-raiyats and non-occupancy-raiyats. I do not think either of these classes fill any acknowledged position according to the customary law of India, and I do not except Bengal in making that statement. I speak subject to correction, but, having studied the land laws of nearly all the Provinces, I do say that both these classes of people are new creations. And I do not think a sufficient case has been made out for their being brought in in addition to the large and varied interests we have already got in Bengal. On the other hand, I think, having left the security of the raiyats in the shape of registered contracts, and having enacted the new sections 19, 29 and 43, we have let in a wide door, as I said when speaking to one of the sections, which we might have closed no doubt by inflicting a certain amount of hardship; but that door would have protected a very large number of raiyats. And, on the other hand, we have for the first time enacted provisions with reference to the accrual of rights and the non-accrual of rights in places where no rights have ever existed, as in the case of waste lands; and although the amendment which was carried today in reference to the reclamation of waste lands will give protection to a certain extent, I regret the Council should have hesitated in carrying through some provisions which would have been of very great assistance to the Government and have acted as a direct incentive to vast improvements in landed estates. I see no reason whatever, where no vested interests are concerned of any class of raiyats, why we should forbid people to enter into contracts which would have the protection of registration which I have referred to, and which, while serving the interests of both parties to the contract, will assist the progress of the country.

"A good deal has been said in regard to the agitation in regard to this Bill. To both sides I would say that they ought now to apply themselves to the honest working of the provisions of the Bill which will be passed today. For myself I think the Bill will have an indirect effect in the promotion of litigation to an extent that I almost fear to contemplate. There is not a single provision, so far as I can see, in any of the larger departments of the Bill which leaves

it to the parties to settle their own interests by amicable agreement. This is a portion of the Bill which I have failed to understand. It is possible that, not knowing the details of the enhancement law and the law of contracts and possibly of other departments which have been amended by this Bill, I have not been able to follow one side or the other. But I have read the papers very carefully, and I think, and the district officers all think, that litigation will be the result. While, therefore, I shall not oppose the passing of the measure, I am sorry to say that I do not see how I can support it."

The Hon'ble MR. REYNOLDS said :—"Every member of this Council must be impressed with a sense of the responsiblity which attaches to the vote he is about to give on this motion, and this applies with special force to those members who are more closely connected than the rest with those provinces to which the Bill will extend—the provinces of Bengal and Behar. For myself, I may be permitted to say that I approach the question with a deep feeling of this responsibility, a feeling proportioned to the magnitude of the interests at stake, and to my recognition of this Bill as the most important legislative measure undertaken by the Government since 1793. The experience of my official life enables me to appreciate the difficulty of the problem we have been called upon to solve. I am one of the few members of this Council who have tried rent-suits under the old Regulation of 1799 and under Act X of 1859. As Superintendent of Revenue Survey in the eastern districts I have been called upon to deal with the complicated system of land-tenure which prevails in that part of the country. I have been in executive charge of two districts which have been prominently noticed in the course of these debates,—the districts of Midnapur and Mymensingh,—and it has been my duty, as a member of the Board of Revenue, to superintend the administration of Government estates and of the properties under the charge of the Court of Wards. If my experience has taught me nothing else, it has at least taught me that the relations of landlord and tenant in those provinces present questions of a very difficult and complicated nature—questions covering a vast field, and demanding an intimate acquaintance both with the history of the past and with the circumstances of the present, but at the same time questions which are closely bound up with the national life, and which the statesmen and legislators of Bengal ought not to ignore or to put aside. If it would be presumptuous to hope for the enactment of a perfect rent law, it would be a faint-hearted neglect of duty to shrink from an attempt to frame the best law we can.

"To one who endeavours, in this spirit, to gather up the work of legislation

from the point at which the authors of the Permanent Settlement concluded their labours, it will probably appear that, while nothing fundamental requires to be changed, the altered conditions of the present day call for a different method of treatment from that which was thought sufficient in 1793. It is for us to prescribe definite rules where the legislators of that day were content to lay down broad general principles. Their Regulations were sometimes as much homilies as laws; and the real object of them is to be gathered rather from the opening preamble than from the sections which contain the specific enactments. To us, who can look at their legislation in the light of subsequent events, it is remarkable to observe how much they seem to have trusted to general declarations, to enunciations of the line of conduct which the Governor General in Council expected proprietors of land to pursue, and to a belief that such matters as were left undefined would be arranged by mutual forbearance and pacific agreement. We know now that some of their anticipations were signally falsified by the results. But they were careful to reserve to their successors, in clear and explicit terms, the power of further legislation; and the broad lines of their policy were so wise and equitable that it may safely be said that it will never be necessary for the Indian lawgiver to depart from, or tamper with, the principles which pervade the great settlement of Lord Cornwallis.

"It, therefore, seems to me a great merit in this Bill that it aims at no other objects than those which the authors of the Permanent Settlement had in view. The particular means by which those objects are to be attained have varied, and may again vary hereafter, as the circumstances of the country change. What is necessary is not to subvert but to supplement the venerable law, to fill in its outlines, and to apply the spirit of its provisions to the remedy of evils which have grown up since its promulgation. The opponents of the Bill may fairly be challenged to point to a single section which contravenes this principle. The Bill is, indeed, little more than a modernized version of those Settlement Regulations which deal with the question of landlord and tenant; it translates the law of 1793 into the language of our own day, with such amplifications as experience has shown to be necessary to prevent its meaning from being misunderstood. I think that such considerations as these afford a conclusive answer to those who complain of this Bill as an infringement of the compact which Government made with the zamíndárs in 1793. What was guaranteed to them was that their public assessment should be fixed for ever, and that they should enjoy exclusively the fruits of their own good management and industry. They were never promised that they should enjoy the fruits of the good management and industry of others. It may be true that

the Regulations of 1793 do not say a word about rights of occupancy or compensation for improvements; but this is merely because the authors of the Permanent Settlement used a different language, not because their language bore a different meaning. It may be true that the legislators of 1793 laid great stress on the delivery of pattás, and that there is no corresponding provision in this Bill; but this is because the object which they sought to attain by this means can now be more effectually secured by provisions of a different kind. I have dwelt at some length upon this topic, because in a matter in which the good faith of the Government has been challenged I think it desirable that the members of this Council should speak with no uncertain sound. I do not desire to detain the Council with a detailed review of the other objections which have been brought forward against the measure. I believe those objections admit of an answer equally complete, and I welcome the Bill as an earnest and sincere attempt to deal with the questions in issue upon the subject.

"It is an earnest and sincere attempt, but I fear it is nothing more than an attempt. I have already said in the course of this debate that I do not consider this Bill as a complete or wholly satisfactory measure. While I acknowledge the improvements which it introduces in the existing law, it seems to me to fail in giving that adequate protection to the raiyat which the authors of the Permanent Settlement reserved the right to give, and which, in my opinion, the circumstances of the country require should be given now. I believe that time will shortly bring these defects clearly to light, and will show the necessity for further legislation. The character of that legislation cannot be precisely indicated now. I feel some doubt as to the effect of the provision which confines the occupancy-right of the settled raiyat to the village. I think it probable that it will be found necessary to remove from the law all reference to the prevailing rate as a general ground of enhancement. But there are two questions in regard to which I feel no doubt that the provisions of the Bill are altogether inadequate, and that experience will show them to be so. These are the questions of the gross-produce limit of rent, and of the status of the non-occupancy-raiyat. The provisions of the Bill will greatly stimulate and facilitate enhancements, and this not only where such enhancements might fairly be given, but in areas in which rents are already too high. The Behar raiyat, who is already paying a rackrent, will find himself exposed to a further claim on the ground of a rise in prices. The most effectual safeguard (the only safeguard, so far as I know, which has as yet been suggested) is the enactment of a rule which would limit the maximum rent to a fixed proportion of the produce in staple crops. The Council were possibly right in deciding that the

evidence before them did not justify the enactment of such a rule, but I cannot help regarding the omission of any such safeguard as a serious blemish. Then, with regard to the non-occupancy-raiyat, I admit that a landlord ought to have some power of choosing his tenants, but he should not be allowed to exercise it capriciously, or to use it as a mere engine for the extortion of a higher rent. The provisions which I believe will be found necessary for the non-occupancy-raiyat are briefly these—the initial lease should be for a period of not less than three years, and at the end of that term the landlord should be required to elect once for all whether he will evict the tenant or allow him to stay. If he determines to evict, he should be required to pay reasonable compensation. If he decides to let the tenant stay, the raiyat should have a right to hold for a further term of 10 years at a rent to be mutually agreed upon, or, in case of dispute, to be fixed by the Court. At the end of that term the raiyat would have acquired occupancy-rights, and would come under the provisions of the ordinary law. In these respects I look upon this Bill as seriously, perhaps dangerously, inadequate. But this need not prevent my supporting the motion that the Bill shall pass. If my apprehensions should be verified by the results of the working of the Bill, it can be supplemented by such further legislation as circumstances may show to be necessary. In the meantime I am contented to accept it as an instalment of what is required in order to put the relations of landlord and tenant in these provinces on a secure and permanent footing."

The Hon'ble MR. HUNTER said:—"My Lord, I had not intended to say anything further at this stage. But a remark which has just fallen from the Hon'ble the Mahárájá of Durbhunga compels me, as a member of the Select Committee, to make one observation. The Hon'ble the Mahárájá has just told us that his 'amendments have, almost without exception, been rejected'. This is, perhaps, due in part to the circumstance that neither in the Select Committee nor in this Council have we had the advantage, with a few exceptions, of hearing the Hon'ble the Mahárájá's arguments in support of the amendments which stood in his name. Both in the Select Committee and in this Council special facilities have been given to his friend and my friend, the Hon'ble Peári Mohan Mukerji, to bring forward the Mahárájá's amendments in his absence. The Hon'ble Peári Mohan Mukerji largely availed himself of these facilities in the Select Committee, and I appeal to him whether he was not fairly and patiently listened to. But in this Council the Hon'ble Peári Mohan Mukerji has not seen fit to bring forward and support by argument the majority of the amendments standing in the Mahárájá's name. The result is that a number of the Mahárájá's amendments have been withdrawn by the Mahárájá himself

on the occasions when he was present, and a still larger number have not been put in his absence. It is, therefore, incorrect to say that the Hon'ble the Maháráját's amendments have, with scarcely an exception, been lost. A great proportion of them have not come before the Council at all."

The Hon'ble MR. AMÍR ALÍ said:—"The issue involved in the present motion is one of such magnitude, fraught with such serious consequences for good or for evil to the agricultural classes in this province, that with all my desire not to inflict another speech on this Hon'ble Council I cannot record a mere silent vote. I have received many telegrams from the Mufassal asking me to urge on this Council the expediency of postponing the passing of this Bill. And it is, therefore, especially necessary I should explain my reasons for supporting the present motion. I have already stated that I entirely approve of the principles embodied in the Bill. I have objected to some of the main provisions on the ground that they either gave a very inadequate security to the classes for whose protection it was chiefly intended, or were likely to prove mischievous in their tendency to the raiyats. My strongest objection was to the ground of enhancement founded on the basis of increase in the prices of food-crops. I still maintain that this ground of enhancement will prove disastrous before long to the raiyats of Bengal and Behar. I had hoped that some of the objectionable features to which I ventured to refer would be removed before the final vote was taken. That has not happened. Still I do not feel I would be justified in withholding my vote from the present motion. The difficulties which are springing up on all sides in consequence of the tension of feeling between the classes chiefly interested in the passing of the measure make any further delay undesirable. Bearing in mind the powers reserved to the Local Government under section 196 to pass any enactment which the circumstances and exigencies of the moment may call for, I believe that this legislature has provided a sufficient remedy for the evils likely to arise under the provisions of the present Bill. Looking at the Bill from this point of view, I have not much hesitation in supporting the present motion. I regard it as a step in the right direction; further experience will show its defects and shortcomings, its difficulties and dangers. I trust to the Bengal Government to remedy these defects the moment the necessity for doing so becomes urgent."

The Hon'ble MR. GIBBON said:—"I have no intention or wish to detain the Council with a long speech by entering into the merits of the Bill. But I believe the Bill is on the whole a good Bill, and will be beneficial in its opera-

tion. There are, however, some sections of the Bill, but very few, on which I differed from the Select Committee; I had hoped that these sections would have been amended, but bow loyally to the decision of the Council with regard to them. The Bill will make great changes in the mode of transacting business, and it will take time to make them. I will only express the hope that the Government, after the Bill is passed, will see its way to making litigation cheaper and more within our means."

His Honour THE LIEUTENANT-GOVERNOR said:—"I can congratulate the Government of India, the Government of Bengal and the Province generally that this Bill has reached that stage at which from the acceptance of the motion now before the Council it will pass into law. It has been a labour of great research and toil for more than ten years. It has occupied the minds of men of different experience and of different opinions regarding the land-revenue system and landed tenures in Bengal; and in the consideration of which Natives and Europeans, officials and non-officials, zamíndárs and planters, and even the raiyats themselves, have been represented. It has been computed that the papers connected with the discussion and passing of Act X of 1859 could be collected in a volume not larger than the one in my hand; and it is a matter of fact that the literature connected with the measure which we have now before us would fill the shelves of a moderately large sized library—so wide has been the enquiry, so extended the investigation and so general has been the public interest affecting the great problems at issue in this legislation. Again, I have seen it stated that the authorship of the Bill rests with several different persons. I have seen it attributed to the exalted nobleman, Lord Ripon, who has lately gone from among us; I have seen it attributed to the hon'ble member, Mr. Ilbert, at present in charge of the Legislative Department, to the Hon'ble Sir Steuart Bayley, and to myself, and to several other gentlemen both in and out of this Council. The fact, however, is that the origin of this measure goes much further back than that; and if any one cares to look into the earlier records on the subject he will find that the first warning note dates as far back as 1864, in the days of Lord Lawrence; and I believe that every Viceroy, and I am certain that every Lieutenant-Governor since that time, has had something to do with this large and important measure. Therefore, the contention which the Mahárájá of Durbhunga and Bábú Peári Mohan Mukerji have raised on the subject of inadequate consideration and imperfect examination of the Bill seems to me to be absolutely untenable. The Mahárájá of Durbhunga tells us that the Bill will be found to be impracticable, unfair and unworkable; that it will not protect raiyats, because the Revenue Courts will

be constantly interfering; and he argues, and argues apparently in all sincerity, that a condition of things which would leave the raiyats at the will of the zamíndár is the only and best solution of the difficulties of the case. His contention apparently is that the self-interest of the parties concerned is the best security against all evils. Now I wish to point out that that great nobleman who looks down upon us in this Council Chamber from that picture with such a genial countenance, when he carried out the Permanent Settlement, was actuated with this very idea that the self-interest of the zamíndárs would always lead them to act with moderation and equity for the good of their raiyats and tenants. Proceeding on that principle he refused to entertain the proposals advocated by Sir John Shore and others of his advisers, that in carrying out a scheme for the settlement of the revenue he should endeavour also to legislate on the settlement of rents. His notion was that a Permanent Settlement with the zamíndárs would tend to the creation of a landed aristocracy throughout the country much in the circumstances of the English country gentleman, and that the self-interest of one in that position would clearly lead him to reside on his own estates, to extend cultivation, to expend capital on improvements, to settle the rents of his raiyats and to generally establish the rights of all classes of cultivators on his property; and thus to bring about all the benefits which self-interest induces. But what were the results? Certainly none of these anticipations were realized. Within a very few years of the passing of the Permanent Settlement law the preamble of Regulation VIII of 1819 shows us that the zamíndárs had become absentee proprietors and mere rent-receivers; they had abnegated all their rights and responsibilities as landholders; they had created tenures of all degrees—patnís, dar-patnís, se-patnís and the like, each in their turn permanent, heritable and transferable tenures; and at the end of this long string of intermediate holders came the unfortunate raiyats, by whose toil this whole intermediary system had to be supported. Thus the main object of Lord Cornwallis' Permanent Settlement was entirely lost. Then we come to Act X of 1859, which was the first serious attempt to break in on the rule of absolutism which the uncontrolled zamíndárí system had brought about. The legislation of that year was an earnest effort to secure to the raiyat the right of occupancy to which the common law of the country had entitled him before. A very few years after that law was passed the zamíndárs found a way to avoid the accrual of the occupancy-right, and with the help of the Courts they did avoid it; they shifted the raiyats from their lands to such a degree in all parts of the province that the Government had to take up seriously the necessity of legislating for the maintenance of the raiyats on their ancestral holdings. That was the origin of

the present Bill, and in giving effect to it I do not see how it can be argued that we are going out of our proper sphere of legislation; the idea of leaving these two unequal parties to settle their affairs between themselves the experience of the past shows to be impossible. It may be that the passing of the Act will, for a time at least, create some uncertainty in the minds of men. But my hope is that, as power is given to the Local Government, with the sanction of the Governor General in Council, to fix the date on which the law is to be put into operation, a period of at least six months will be necessary for the framing of the rules which are required to be passed under the Act, and for the necessary preparation for its introduction. The best chance of the success of the measure will be the attitude of the zamíndárs towards it; but I hope they will soon realise the fact that their vested interests are not attacked in any degree, and that they owe a duty to the raiyats in respecting the rights which appertain to them."

The Hon'ble SIR STEUART BAYLEY said:—"My Lord, I shall not detain the Council long, but I have a few remarks to make in reply to some of the points raised by different hon'ble members in the course of this debate. I have found my position throughout the debate somewhat difficult, because I have had to answer two fires from entirely different directions, and now again on one side I am told that the measure is impracticable and unfair, that the Council have rejected reasonable proposals and modifications, and that the Bill is not in conformity with general expectation. On the other hand I am told that it is not adequate to give the protection which is required. It is a little difficult for me to answer by one set of considerations both these attacks from different points of view, and first I wish to refer to what has fallen from the hon'ble member opposite (Bábú Peári Mohan Mukerji), who has undertaken the burden of defending the interests of the zamíndárs, and has explained to the Council that he felt his existence here to be on sufferance, and suffered from the depression which such a position naturally causes. I can only say, speaking, I am sure, not only for myself, but for the Council generally, that having regard, both to the ability with which he has debated the question, the moderation and yet the undaunted persistence with which he has upheld the zamíndárs' interests, the admirable patience and temper with which he has supported his own case, very frequently in a minority of one and deserted by all from whom he might have expected assistance, I can assure the hon'ble gentleman that I am sure the Council must all consider the zamíndárs' party could not have had an abler representative in this Council, or one whose conduct of the debate could have so thoroughly won their respect. There is

one point which he only touched, but which was specially brought forward on a previous occasion by the Hon'ble the Mahárájá of Durbhunga, and which is perpetually repeated in the Press, to the effect that because only three members of the Select Committee signed the report without some reservation of special points, therefore the Bill has really the authority of only three members. This has been repeated so persistently, and is so likely to do harm when the facts are not properly understood, that I must, although the argument put forward is so unreasonable and unfair as to amount almost to an insult to the intelligence of the Council, ask your permission to say a few words in regard to it. The Committee consisted of more than half the members of this Council, and it included only two representatives of the Executive Council. Every Additional Member except the hon'ble member who represents Madras, the hon'ble member who represents Bombay, and one other hon'ble member who is not here today, was on the Committee; and the Executive Council, as I say, was represented only by Mr. Ilbert and myself. Then, in addition to the fact that eleven out of the whole twenty members of this Council were on this Committee, which is a very unusual number for a Select Committee, and consequently necessitated considerable divergence of opinion, I would point out that we had altogether something over 60 sittings, and I have been through the notes of the Committee's proceedings, and I find that at each of these sittings on an average we decided from 15 to 18 motions. Thus we came to something over 1,000 decisions. Now, is it reasonable to suppose when 1,000 points are brought before a Committee on which there are 11 representatives, that there would be unanimity of opinion? Is it reasonable to suppose that because in various points we differed that therefore the majority were not in accord as to the main questions of this Bill being a just or right and proper measure? I think, if you will consider what the difficulties in the way were, how impossible it was to get agreement in all things, in the multitude of minute points that came before us, I think you will see how utterly unfair and unreasonable the argument is that because upon some points a good many of the members, having been in the minority, retained their opinion, therefore this Bill has not really the concurrence of the majority of the Committee. If it was so, I might add my name to the number of dissentients. I was in the minority on several occasions, but I should be very sorry that the fact should be held to bind me to the opinion that this is not a good Bill. Of course, as soon as the question came to the test of the voting, it was apparent that only two members of the whole Council wished to postpone the Bill, and the same two wished that it should not pass. All the rest were anxious that it should pass. Just as if all the gentlemen sitting here today had to prepare a *menu* for their

dinner there would be no two exactly alike, but it would be very unreasonable to say that they did not vote for having dinner at all. Or to take another illustration: if a train is going as far as Allahabad some passengers might wish it were going further, others might wish it stopped a longer or shorter time at particular places, but yet all are very well content to go by it. In this case only two members wished that the train should not start at all. Such differences of opinion as these were the essential outcome of the Bill being exceedingly complicated, the Committee being exceedingly numerous, and having not only two extreme parties both strongly represented in it, but also of a very varied experience of different parts of the country being brought to bear upon the problems which were being discussed.

"Then we are told the Bill is not in conformity with the general expectation. In one sense it is in conformity with the general expectation; that is to say, I presume the general expectation was that this Council, under the presidency of His Excellency the Viceroy, would occupy a middle position, which it actually has occupied, and would as it were moderate between those who were extremely anxious for the zamíndár's interests and those who were extremely anxious for the victory of the raiyat's interests. In that sense I claim that the Bill is in conformity with the general expectation. In another sense certainly it is not, because it is the resultant of two contrary forces which have brought about a Bill which goes in the direction of neither, but in the medium direction between the two.

"Then we have been told that we have deserted the original scope of the Bill and what we laid down in our letter to the Secretary of State as the objects and intentions of the Bill. I think, if this statement is examined, it will not be found to be based on any accurate foundation. We have in the course of the discussion examined most of the points one by one in reference to which the assertion was made, and I think I may say that we have pairly maintained our position. It is perfectly true that a good many points which we laid down in our letter to the Secretary of State, and on which we intended to legislate, we have cut adrift; but it was because we found the ship was over-weighted, or that they were points in themselves which could not be carried out. We have got rid of the right of transfer, and I do not presume that the hon'ble gentleman who charges us with having deserted our original position would make that a ground of objection. I maintain, however, that in regard to contract and all the other points of importance we have practically carried out what we proposed to the Secretary

of State. The real fact is that, after the very careful enquiry which was given when the question of revising the rent law was under discussion, it became impossible that any legislation should take a direction very materially different from what it has taken. I feel therefore that, however we might disagree, nobody who reads these papers can think that we are going back from the principles laid down by the Rent Commission. Their report is an elaborated one, and I do not think that we have departed far from the foundations which they laid, and on which the legislature was practically bound to build.

"There are one or two other points on which I should like to make some remarks. One is the great danger which has been so much enforced on our attention of the spread of litigation. I have no doubt whatever that the Bill will cause litigation; it would be worse than foolishness to argue that it will not. Act X of 1859 caused a great deal of litigation; in fact, wherever you give or define rights, you must cause litigation. So long as the raiyat is absolutely submissive to the zamíndár, and so long as he has no rights to enforce, and no Courts to enforce them in, so long will there be no litigation; but when you find customary rights being questioned, being in the excitement of agitation supported on one side and weakened in the other; when you find what my hon'ble friend opposite (Mr. Evans) called the moral rights of the raiyat existing in an abstract form, but impossible to prove in a concrete form, then if you attempt to define those rights and give the raiyat an opportunity of proving them, doubtless you must have litigation. The alternative of no litigation is to leave the raiyat entirely at the mercy of the opposite party—the party against whom he has his rights to enforce; and that, I think, is a sufficient answer. Nobody wants litigation, but if the alternatives are to give the raiyat rights and enable him to enforce them, or to give him no rights at all, then I have no hesitation in saying we should willingly choose the former alternative. We are told that, as the outcome of this Bill, especially of the Settlement and Record chapter, every non-occupancy-raiyat will try and prove occupany-rights, every occupancy-raiyat will try and prove a right to hold at fixed rates. But why is this? Simply because at the present moment neither raiyat nor landlord knows what rights he has. There is no record that the Courts will accept, and all is left to hard swearing. The Benares Division is like the Behar Division permanently settled. Its population is the same, the tenures are the same, and the rights ought to be the same. If they are not, it is because in the one province they are properly recorded; in the other they are not. Therefore I say that though the immediate result of this Bill will be a considerable increase of litigation, yet the result of it, and especially I refer to the

Settlement chapter, which will, as His Excellency has told you, be applied only experimentally to a single district in Behar, should undoubtedly be to give a definiteness and stability to rights that are now indefinite and unstable, and thus tend ultimately to a very great decrease in litigation.

"I would now refer to the Hon'ble Mr. Hunter's point about the pressure of the population on the soil, and the necessity for bringing tracts at present lying waste under cultivation. Looking at the question as he does from a philosophical point of view, from a deeper point of view than the particular provisions of this Bill, he says when you define a raiyat's rights and how he is to enforce them, you have only done half your work. He says the question is a question between the productiveness of the soil and the pressure of the population on that soil, and in that view he has successfully urged in connection with this Bill a provision by which landlords should be encouraged to break up the soil and give more room for the increased production of food; but going outside the Bill he also suggested a further measure—that of inquiring into the possibility of a large system of internal emigration. Now there is no doubt whatever that in various parts of Bengal and Assam there are enormous areas of waste land available, while on the other hand there is no doubt that in various parts of Behar and of Bengal there is very great pressure of population on the soil; and if we can transfer the surplus population to these waste lands we shall do more to stave off famine than almost any other measure we can adopt. Now I find that at the present moment there are nine millions of acres in Assam of culturable soil available to anybody who chooses to ask for it, while in Behar there is a pressure of 800 souls per square mile; and from that province some 30,000 persons migrate (not emigrate) annually into Eastern Bengal; they cut the crops and come back to their homes. People naturally ask why these men undertake a long journey of about 200 miles and yet do not settle there. The fact remains that they do not settle down, and we have to deal with facts as we find them. Well the most obvious resource which occurs to every one is a system of State emigration. But I find that wherever attempts have been made by the State as a State to induce emigration, they have not resulted in a brilliant success. They have been attempted in Burma, in the Central Provinces and in the Dooars, but I may be permitted to say that State emigration, so called, has been a failure. I was glad therefore to find that my hon'ble friend did not confine himself to a system of State emigration, that is to say, to emigration assisted by advances from the State, which means not only State assistance and support, but also State supervision, State collections and State prosecutions. The fact is the people who are most ready

to take advances are the people who are least able to help themselves, least likely to work, least likely to repay them. The planter never looks to have his advances directly repaid. The Government must look to it, and yet cannot without discredit resort to the only measures which would effectually enforce it. As State emigration has not succeeded in the past, neither, I am persuaded, will it succeed in the future. But the Hon'ble Mr. Hunter has urged that private enterprise assisted by Government can do what the State working directly cannot do; and I can only say that, while the work is one which I think Government cannot do for itself, I quite agree with him that the State may well encourage private enterprise in this direction and be prepared to give assistance, and the Government will, I am sure, be glad to consider favourably any well digested project of this kind coming before them the initiative in which is taken by private enterprise.

"I have only one word more to say. We have been warned in somewhat solemn terms of the very serious nature of the measure which we are now passing. We have been told what a heavy responsibility rests upon us. I am sure I may say, not only for myself, but for my colleagues who have been associated with me in the labours of the Select Committee, that while we have been working upon it for two years, giving to it our best time, thoughts and energies, we certainly felt the sense of responsibility in what we were doing to be very great. From the very beginning it has been by no means a light task, and it has been by no means with a light heart that we have undertaken it. We have had the energies of the two conflicting interests brought to bear upon us as a heavy burthen in some cases,—I will not say unduly brought to bear,—but we have had to support a good deal of painful criticism, both from old friends and outsiders. However, as was said by my hon'ble friend Mr. Reynolds, I think we may justly claim that what we have done is really an earnest and sincere attempt to carry out under a full sense of the responsibility the duty which the Council imposed upon the Committee two years ago. I do not venture to say that I believe in any Utopia which will be brought about by the operation of this Bill. It takes a very long time for the leaven of land legislation in India to leaven the whole lump of agricultural customs, modes of thought and ways of procedure. Moreover, as I have said already, I believe in the first instance it will lead to considerable litigation. But I do believe that when this agitation has gone down it will be found that we have really gone far to solve a most difficult problem in the way which is most just to the interests of the zamíndárs and the raiyats alike, and in a way which will

certainly conduce to the stability of the country and in the future to the great lessening of litigation."

His Excellency THE PRESIDENT said:—"It is perhaps as well that I should say a few words before putting the motion. Sir Steuart Bayley, in his admirable speech, has explained so fully the views of the Government of India, and has anticipated so many of the points upon which I had felt inclined to touch, that there is but little for me to add. At the same time it is but fair to my colleagues that I should take this opportunity of saying how glad I have been to associate myself with them in the passing of this measure. It is true I have only come in time to take part in its recent stages, but I should be very unwilling on that account to withdraw in any degree from the full responsibility which rightly attaches to the head of the Government of India for any Act passed by this Legislative Council. Moreover, it must be remembered that before reaching Calcutta I was perfectly familiar with almost all the issues raised in this Bill. Similar discussions took place in reference to Act X of 1859 when I was Under Secretary of State for India; and other circumstances have for some years past called my special attention to questions connected with land legislation. It was urged at that time that Act X of 1859 was an infringement of the Permanent Settlement; but I was convinced then, as I am convinced now, and as the British and Indian Governments of that day and of this were and are convinced, that the 'permanency' of Lord Cornwallis' settlement applied to the pledge given by His Excellency never to demand from the zamíndárs an increase of the assessment which at that date was imposed upon them; but that, so far from any quality of permanency having been then officially impressed upon the relations subsisting between the zamíndárs and their raiyats, the Indian Administration of the day and the East India Company reserved to themselves in the most explicit and express manner the right of interfering in the interests and for the protection of the raiyats whenever circumstances might require them to do so. But I have no hesitation in adding that, even if no such reservation had been made by Lord Cornwallis and his colleagues, there would have remained an inherent and indefeasible right in the Government of India to enter upon legislation such as that we have undertaken as a matter of public policy, and in the interests of the community at large. I do not presume, however, to say that, in spite of my conscientious endeavours to master all the intricacies of the Bill, I have felt myself in a position to pass an authoritative opinion upon all the subordinate points which are involved in it. A great number of those points are of a technical character, and can only be properly decided by those who have a practical acquaintance with the

agricultural conditions of the country. Again, there are some parts of the Bill to which I have assented with a fuller and more satisfactory conviction than to others, while there are some with regard to which I have subordinated my indefinite impressions to the opinions and authority of those who were more competent than myself to come to a decision upon them. It was impossible that this should have been otherwise; but, taking the measure as a whole, I have no hesitation in saying, both with respect to its principles, its general features and its chief details, that the Bill as it stands has my hearty and sincere support. I believe with Mr. Reynolds that it is a translation and re-production in the language of the day of the spirit and essence of Lord Cornwallis' Settlement, that it is in harmony with his intentions, that it carries out his ideas, that it is calculated to ensure the results he aimed at, and that it is conceived in the same beneficent and generous spirit which actuated the original framers of the Regulations of 1793. Lord Cornwallis desired to relieve the zamíndárs from the worry and ruin occasioned by the capricious and frequent enhancements exacted from them by former Governments; and it is evident from his language that he expected they would show the same consideration to their raiyats. I am happy to think that all of us assembled here today, no matter what our individual opinions upon various points of this measure may be, are actuated by the same honest and conscientious desire to do justice to each of the interests concerned, and to regulate their relations in such a manner as to secure the rights of the one and to respect those of the other. Nor is there one of us who would not have been ready to have submitted to any amount of additional labour or inconvenience, had there been any hope that by further discussion we could have arrived at a more satisfactory conclusion than that which we have reached.

"These few observations are all that it is necessary for me to say on the Bill generally; but there is one accusation which has been brought against the Government of India, and against its responsible head, so extraordinary and unfounded that it is right I should vindicate both myself and my colleagues in the matter. In consequence of a telegram which has been sent to England for the purpose of being used in Parliament, a statement is about to be made that the Viceroy of India has rushed this Bill with indecent haste through the Legislative Council, in order that he might hurry off to Simla. That statement ought never to have been made. So far from any haste or desire for haste having attended the passing of this measure, I would venture to remind the Council that independent of the long consideration it has received since it was

introduced in 1882—I may say ever since the letter of the Government of India was written in March, 1881—the most ample opportunity has been given to those interested on either side of stating their objections, and of bringing to the notice of the legislature any alterations they might have to suggest. After lengthy debates in Council upon its first introduction, it was referred to a Select Committee. There were 64 meetings of that Select Committee, each meeting lasting nearly four hours—periods which if added together would amount to 19 or 20 days of 12 hours each. At these discussions the representatives of the zamíndárs had the most ample opportunities given them of pressing their views upon their colleagues; and so far from their representations having failed to produce any effect, so far from the observation of an hon'ble member being true that amendments proceeding from the zamíndárs' representatives always failed to meet with due consideration at the hands of the Committee, even since I myself have been in the country,—that is to say, within the last two or three months,—amendments of the most important kind, amendments which the zamíndárs represented as being vital to their interests, have been incorporated with the Bill. Amongst these amendments, I may mention the elimination of the word 'estate', which gave to the clause in which it was found an operation so wide as to be very disadvantageous to the interests of the zamíndárs. The right of transfer which was found in the original Bill was also removed at the instance of the zamíndár party. It was agreed for the same reason that no limit should be placed upon the initial rent to be demanded from the non-occupancy-raiyat, that is to say, that there should be no interference with freedom of contract in respect of rent between the zamíndár and his ordinary tenant; for it will be observed that the Bill has been careful to discriminate between the ancient, customary and acknowledged rights of occupancy and its attendant incidents universally acknowledged to be inherent in the resident raiyat, and the unprivileged status of the non-occupancy-raiyat. Again, it was proposed in the original draft of the Bill to introduce a universal limit to rent, represented by one-fifth of the value of the gross produce. That limitation has been abolished. In the original Bill, fractional limitations were imposed upon enhancements in Court. These fractional limitations have disappeared. There was also a clause which nullified all contracts which had been entered into between the zamíndárs and their raiyats during the last twenty years. That clause was recognised as unjust, and has been excised. There was another chapter, giving to the non-occupancy-tenant compensation for disturbance on eviction. It was pleaded by the representatives of the zamíndárs that the introduction of a novel princi-

ple of the kind would work a great deal of injustice; and it was therefore dropped. In the chapter relating to agreements for enhancements out of Court, the representations of the zamíndárs have been taken into account, as far as circumstances permitted, and a subsidiary clause has been introduced with the object of redressing the hardships entailed by the hard-and-fast application of the 12 per cent. rule. Liberal reclamation clauses were also introduced in the interests of the zamíndárs; and no later than this morning a most important amendment, moved by the Hon'ble Mr. Hunter, was unanimously accepted by the Council in their anxiety to encourage the zamíndárs to improve their properties, and to relieve them of all unnecessary restrictions in dealing with any tracts of land they might themselves bring under cultivation. I do not say that in agreeing to these modifications we were actuated by any other motive than a desire to do equal justice between the two parties. We did not adopt these alterations in order to conciliate the zamíndárs, or by way of offering a compromise. That would not have been consistent with our duty to the raiyats; nor is it within the province of the Government of India to enter into compromises. The Government of India distributes justice, and that is what we have endeavoured to do in this Bill. We agreed to these concessions because we thought the demand for them was just; but I have mentioned the circumstance in order to rebut the assertion that the amendments introduced in the interests of the zamíndárs and by their representatives have been uniformly rejected or disparaged. I fear that the enumeration I have made of these modifications, which have told so largely in favour of the zamíndárs, will have renewed the pang felt by those of my hon'ble colleagues who were opposed to their being made, and who, so far from admitting that the zamíndárs have been hardly dealt with, contend, on the contrary, that this Bill still falls short of giving adequate protection to the raiyat. At all events, if there is one thing more obvious than another, it is this: that the Government of India has had to exercise a very severe watch over its conscience, in order to discriminate with justice and impartiality between the elaborate arguments advanced on either hand by the eloquent representatives of the zamíndár and raiyat seated at this Council Board. We have been told that we have undertaken a great responsibility in promoting a measure of this description. I should be the last person to deny the truth of the assertion. The measure is a momentous one, affecting vast interests, and calculated to produce far-reaching consequences; but I maintain that a far graver responsibility would have weighed upon those who, if their opposition had succeeded, would have stood between the occupancy-raiyat and those rights which every one acknowledges

to be his, and which, every one is equally aware, but for this legislation he would have been in the greatest danger of losing."

The Motion was put and agreed to.

The Council adjourned to Friday, the 13th March, 1885.

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

SIMLA;
The 4th May, 1885.

Govt. of India Central Printing Office.—No. 830 L. D.—21-5-85.—600.