COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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

The Council met at Simla on Monday, the 19th October 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

EXEMPTION FROM REGISTRATION BILL.

The Hon'ble Mr. COCKERELL moved that the report of the Select Committee on the Bill to exempt certain instruments from the Indian Registration Act, 1866, be taken into consideration. He said that, when this Bill was last before the Council, he had noticed what might be deemed to be the principal objection to it, viz., that it would have the effect of disturbing that continuity of the record of interests in immoveable property which the Registration Act especially aimed at providing, and he had expressed the hope that this objection might be met by the insertion in the Bill of a provision for securing the transmission to the registering officer of copies of all exempted documents, with a view to their being recorded in the Registration Office in the same manner as memoranda of decrees of the Civil Court.

The Local Governments were consulted as to the effect of such a provision, and in reply, the Government of the North-Western Provinces raised strong objections to the proposal in regard to settlement records, on the ground of the expense which would have to be incurred in the preparation of copies of those records, and the uselessness of their being recorded in the Registration Office, inasmuch as they were already sufficiently available for inspection by the public.

As this ground of objection would apply equally to the documents specified in the second and third clauses of the schedule, provision had been made in the new section 3 of the Bill for the transmission to the Registration Office of the documents specified in clause 4 of the schedule only, and to secure the certainty of the other exempted documents being made available for inspection by the public, provision had been made in section 2 for persons who might desire information in regard to the subject-matter of such documents, obtaining the same facility of access thereto as they would have enjoyed had the documents been regularly registered or placed on record in the Registration Office.

At the instance of the Governments of Bombay and Madras, the words "maps" and "inám title deeds" have been inserted in the 2nd and 4th clauses of the schedule, respectively.

In the second clause also a distinction had been drawn between general surveys to documents connected with which the exemption was intended to apply, and the mere survey of waste lands which preceded their demarcation and allotment to purchasers. It was not desirable to exempt from registration documents connected with the latter class of surveys.

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL then moved that the Bill be passed.

The Motion was put and agreed to.

PANJÁB TENANCY BILL.

The Hon'ble Sir R. TEMPLE moved that the final Report of the Select Committee on the Bill to define and amend the Law relating to the tenancy of land in the Panjáb, together with the Bill as amended by them, be taken into consideration. He said that the previous history of this Bill would be in the recollection of this Council. For particulars it would suffice to refer to the proceedings of the Council of the 17th January and the 11th April last.

On the last-mentioned date, that is, the 11th April, he obtained leave to refer the Bill to a Select Committee. On the 15th July he presented the preliminary Report of that Committee, together with an amended Draft Bill, and obtained permission to refer the same to the Local Government and to the judicial authorities of the Panjáb. On the 8th October he presented the final Report of the Committee with a Bill reconsidered and amended after receipt of replies from the Panjáb. And he now moved that this report be taken into considera-

tion with a view to the Bill being passed without amendment, or with such amendment as might to His Excellency the President and to the majority of the Council seem fit.

The report now in the hands of the Council was explicit as to the alterations in, or additions to, the original Bill, as proposed by the Committee. He would therefore not recapitulate these, but would merely state the reasons which have actuated the Committee in respect to some of the more important of their recommendations.

The Council would see that the Bill was divided into seven Chapters, I., Preliminary; II., Rights of Occupancy; III., Rent; IV., Ejectment; V., Relinquishment, leases, alienation, succession; VI., Compensation for tenants' improvements; VII., Procedure.

In the preliminary chapter, the most important point was this: the Committee provided in Section 2 for the strict upholding of all agreements between landlord and tenant, when such should have been separately executed, or else recorded by the Settlement Officer. But then the question arose, what was an agreement recorded by a Settlement Officer? In practice, these agreements being very numerous, were not separately recorded, but were usually entered in a general statement or schedule for each village, which important document was attested item by item by a responsible official, and signed by the parties or their representatives either by signature or mark. Such entries, though not supported by separate documents, were nevertheless truly and really agreements. Still, unless some specification were added, the Committee feared lest there might be doubt hereafter as to whether these entries were agreements within the meaning of the Act.

Therefore they proceeded to lay down that such entries, when duly attested, should be held to be agreements within the scope of this section. This was necessary to guard the tenant-rights secured by the Settlement records.

In Chapter II., relating to occupancy rights, the 5th and 6th Sections were in some respects, the most important in the whole Bill; for these defined the status of an occupancy-tenant, and these were intended to answer the primary question as to who were the tenants to be deemed to possess rights of occupancy. Now, the original Bill, as prepared by Mr. E. Brandreth, late a Member of this Council, and then in charge of the measure, described occupancy-tenants mainly as those who had been declared to be such in the Settlement records. When this was first referred to the Panjáb authorities in

February last, this definition was considered to be not sufficiently complete or accurate. So this particular definition was proposed to be modified, and certain other definitions were proposed to be added. Now, after the best consideration which the Committee were able to give, they had adopted most of the additional definitions with certain simplications, but they had retained in its essentials the original definition.

The result was that the Committee had been obliged to classify the occupancy tenants into five categories: the first four categories comprised various superior classes of tenants, and the fifth comprised those who had been so recorded at the Settlement. The fifth, however, was the most important, and really embraced the other four, inasmuch as all the superior classes of tenants were undoubtedly recorded at the Settlement as occupancy-tenants. It would, therefore, suffice to notice briefly the reasons why the validity of the Settlement record had been so carefully upheld in Section 6. This section laid down that a tenant recorded at the Settlement as having a right of occupancy should be presumed to have that right, unless the landlord could rebut that presumption by a regular suit on particular grounds. But then these grounds of rebuttal were strictly limited to circumstances which would prove an actual error in the record. And the practical effect must be that the Settlement record was for the most part to be declared valid by law. Now, what were the grounds for conceding by legislation such validity to the record?

It were needless to dwell on the vast efforts put forth by the Panjáb Government to make that record a really good registration of landed tenures, on the liberal expense incurred, on the experience of the officers engaged in supervision, on the scale of establishments allowed, on the years devoted to the enquiry, on the patient frequency of revision so as to ensure ultimate accuracy. With all this, there was no doubt that mistakes occurred, although, on the whole, the record was, as might have been expected, an admirable one. But in respect to tenant-right, there was probably as little mixture of mistake as in any respect; for, in this particular, there was a clear rule to go by. The Settlement Officers understood that in regard to occupancy-right, they were to look to incidents and circumstances, and quality of tenure, to local custom, and the like. But failing the ascertainment of this, they were, unless there should be reason to the contrary, to regard a tenant who had been in possession twelve years and upwards, as entitled to right of occupancy.

On what reason then was this twelve years' rule founded? In his speech before this Council on 11th April last, he, Sir R. TEMPLE, showed the uncertainty

which hung round all rights, superior or inferior, in land during the period which preceded the introduction of British rule into the Panjáb. If the rights of tenants were weak, so were the rights of landlords. If there were indications which justified the confirmation of proprietary right to the proprietors, there was exactly similar justification for confirming the occupancy-right of the better classes of tenants. If the traces of tenant-right were often dubious, or for a time obscured, the same remark applied to the proprietors. The Sikh government used to treat the proprietor and the cultivator much in the same way. Though acknowledging the existence of proprietorship in the abstract, the Sikhs used to look to the occupant—to the man in possession. On him was cast the then heavy fiscal burden. On him devolved the real labour of management. Thus it happened that, under Sikh rule, all good tenants used to be treated much as under-proprietors, and inasmuch as the burden was so severe, such a mode of dealing was considered as convenient by the proprietor. It was, therefore, deemed but just that, while unprecedented security was afforded to the proprietors, something of the same sort should be secured to the better classes of tenants. Certainly such tenant-right was not opposed to custom: there was no *lex loci* against it; the presumption, indeed, was in favour of such right, according to the circumstances of the Panjáb. But local custom, though often traceable, was seldom quite proveable, or was not absolutely ascertainable. If *that* were to be the sole guide, the opinions of no two officers would agree: in no two districts would the result be similar. In one place there would be a tendency to award occupancy-rights to too many, in another place to too few. It was essential that a line should be drawn somewhere by some better criterion. Under such circumstances, it was inevitable that regard should be largely had to possession and to period of occupancy, which things could certainly be ascertained, and about which there could not be much mistake. Then, if a period of qualifying possession was to be assumed, what was that period to be? Why, the analogy of the older Regulation Provinces was followed, and a period of twelve years was assumed. That was a period well known all over the great Presidency to which the Panjáb was annexed; it had been observed in Courts of Justice since the earliest period of British rule in Northern India; it had been embodied in all directions to the land, revenue authorities; it was understood by the people of the Provinces adjoining the Panjáb.

If then the majority of occupancy-tenants had that position awarded to them at the Settlement by reason of twelve years' possession, that reason was a good one: that rule was *per se* a reasonable one. About this fact of

possession there was little or no error. According to *this* test at least, nearly all the occupancy-tenants were recorded correctly enough without any mistake in fact whatever. The mistakes alleged against the records chiefly related to custom—a thing which, though existing more or less, was yet peculiarly vague at that time in most parts of the Panjáb, and in regard to which it would have been nearly impossible to say what was correctness and what incorrectness.

Moreover, according to the general sense of the people just emerging from troubled, harassed, and even revolutionary times, a period of twelve years' possession *did* give a man some claim. The proprietors not only refrained from objection, not only consented, but were positively willing and often desirous that claims thus supported should be recognized and recorded. They *then* thought it for their best interests that this should be done as tending to organize a staff of tenants who would be the mainstay of the lands in future troubles. They might, indeed, think differently now after the lapse of half a generation, when they saw the value of land rising fast, when they found that the troubles of the past were happily averted, and were not likely to recur under British administration. But a change, real or fancied, in their interest, could not justify the setting aside of agreements deliberately and formally made at that time of Settlement.

Thus it came about that occupancy-rights were recognized as belonging to, or were judicially awarded to many thousands of tenants in the Panjáb. The settlement was made before the people, and was thoroughly known to all parties. It was afterwards confirmed by the Government, and that confirmation was publicly notified. Since the completion of the settlement, years had elapsed, in some districts fifteen, in others ten, and so on. Thus there were thousands of tenants who had been at least twelve years in possession before the settlement, who had then been told by authority that they were occupancy-tenants, and who had been ten or fifteen years in possession since; in all, for nearly one generation. It was too late now to interfere with such tenures, or to deliberate whether the settlement was right or not (though, indeed, there was every reason for supposing that it was right). And these cases, though strong enough, were the comparatively weaker ones. Many cases were far stronger, as the men had more than twelve years' possession, or had something in the shape of custom, if not actually full custom, in their favour.

Various proposals, from first to last, had come before the Committee for re-examining the principles on which the settlement in this branch was made. But, on full consideration, the Committee decided to maintain the substance of Section 6 as it now stood. It was felt that any relaxation would leave

the status of thousands of tenants open to dispute or to revision; and that men should not now be required to defend a position so long ago recognized, so formally guaranteed, so continuously enjoyed. Moreover, even if such enquiry were just (which it really was not), still after such a lapse of time it could not be brought to any satisfactory conclusion.

Therefore Section 6 had been framed so as to uphold the title previously recognized at the settlement as belonging to occupancy-ryots, and to narrow within strict bounds the power of rebutting this presumption.

But while pre-existing rights were fully respected in the Bill, care had been taken to avoid the creation of rights not as yet existing, and so it had been provided that, in the future, no tenant should be deemed to acquire occupancy-right by mere lapse of time. This was desirable for the sake of the landlords.

In Chapter III. relating to rent, due provision had been made in Section 11 for the enhancement of the rent, even of occupancy-tenants, on grounds specified, which grounds, if established, would go to prove that the rent might be reasonably enhanced in justice to the landlord. Herein, however, a margin of privilege and advantage had been allowed to the occupancy-tenant, that is to say, he was to pay so much less than the ordinary tenant. Further, this margin had been apportioned to the different classes of occupancy-tenants, the beneficial margin being for some classes as much as 40 and 50 per cent. of the ordinary rent, and for other classes, 15 per cent.

It had been provided by Section 10 that the rent of no tenant,—occupancy or other,—should (in the absence of agreement) be enhanced without decree of Court. But in the case of tenants-at-will, it must be remembered that the landlord could eject by notice.

The payment of rent in kind had always been known in the Panjáb; indeed, the revenue used often, under Native rule, to be paid in this manner. It was possible that applications might be made for commutation of rents in kind to rents in cash, or *vice versâ*. After full consideration the Committee had decided by Section 16 that, for such commutation, the consent of *both* landlord and tenant should be necessary.

After rent had been enhanced by decree, it was not, Section 13, to be further enhanced for five years, unless there had, in the meantime, been a revision of settlement—the object being to prevent the tenant being harassed by too frequent enhancements.

Questions of abatement seldom arose in the case of tenants-at-will. But with occupancy-tenants, these questions might arise. Therefore, in Section 14 the grounds on which alone an occupancy-tenant could claim abatement had been specified. This was desirable quite as much for the sake of the landlord as of the tenant.

In Chapter IV. relating to ejectment, it was laid down in Section 19 that an occupancy-tenant could only be ejected by decree of Court. And such an ejectment could only be decreed when either there was an unsatisfied decree for rent, or when compensation was to be tendered by the landlord. In this chapter, indeed, the most noticeable part was clause 2 of this section, wherein provision was made for the ejectment even of an occupancy-tenant on payment of compensation. He (Sir R. TEMPLE) had explained, in his speech of the 11th April last, that this provision had been introduced at the special request of the Hon'ble Sir Donald Macleod, the Lieutenant Governor of the Panjab. The grounds on which the policy and justice of this proposal must rest, were fully set forth in His Honour's Minute of the 10th February last. It would suffice to quote one brief passage from that paper:—

"My own opinion is that, while great and permanent dissatisfaction as well as serious obstruction to progress would result from declaring the occupancy of the ordinary hereditary tenant to be permanent, this principle of granting compensation on withdrawal of land, if prudently applied, would operate most beneficially and be readily accepted by nearly all. No sudden or startling change would be thus introduced. * * *. Seeing also how constant is the tendency in India to excessive sub-division, and how rapid the progress of the country promises to be in population as well as in agricultural, manufacturing, and commercial activity, it appears to me to be a matter of no small moment that the transfer of capital from agricultural to other pursuits in the more densely-peopled parts should be as much as possible facilitated."

The principle was no doubt novel to Indian practice, and there had been difference of opinion in the Committee in regard thereto. It had been retained partly in deference to the views of the Local Government, partly because there was every desire to look to the fair interest of the landlord while securing the rights of the tenant, but mainly because the plan, though new, was fair enough in regard to at least the large majority of occupancy-tenants as they were actually circumstanced in the Panjáb. Many were thus recorded at the settlement mainly by reason of a certain period of possession without any special

privileges of tenure. That such persons should be bought out by compensation, seemed to be just enough, provided always that the compensation were substantial. And the Committee had taken care to provide an adequate rate of compensation. Even then, however, doubt would arise as to whether the superior classes of occupancy-tenants should be liable to be bought out. Sir D. Macleod would (as the Committee understood him) specify certain classes of these tenants as excepted from that liability. But on close examination, it had been found difficult to draw a line for this purpose between one class and another. No exception had therefore been proposed. As an amendment was likely to be proposed, or as, at all events, objections were sure to be raised in Council, it seemed sufficient for the moment to state briefly as above the reasons why this clause had been retained.

Tenants without right of occupancy might be ejected by notice from the landlord. It seemed desirable to declare the landlord's power in this respect.

Chapter V. related to relinquishment, leases, alienation and succession. In respect to leases, all tenants having a right of occupancy were to be allowed by Section 32 to let and sub-let their lands. But then by Section 33, the landlord's authority over the sub-lessee had been secured. In respect to alienation, the Committee had carefully considered how far occupancy-tenants should possess this power: the point being one on which custom was not clearly pronounced. It had been decided by Section 34 that the superior classes, described in Section 5, who were almost sub-proprietors, should have this power with merely a reservation of right of pre-emption to the landlord at the market value. All other tenants, including the occupancy-tenants of Section 6, that is, the great majority of occupancy-tenants, must obtain the landlord's consent to proposed alienation. This distinction seemed suitable to the circumstances of the occupancy-tenants in the Panjáb, and showed the caution exercised by the Committee in affirming this privilege

In this Chapter there was an important section (36) regarding the succession to occupancy-right. That such a right should devolve on direct male lineal descendants, had perhaps remained unquestioned. But the question arose as to whether, failing such heirs, the succession should go to collaterals or not. It had been decided that this should go to male collaterals. A further question arose as to whether the condition of residence in the village should be attached to such succession. A condition to this effect had been inserted in the Bill, but there was difference of opinion on this point, and probably objections

would be raised in Council. At all events, the observance of the main principle of succession had been secured.

Chapter VI. related to compensation for improvements made by tenants. The provisions were simple, sufficient for the present state of things. If, from canal irrigation or other cause, a regular era of improvement should set in, further legislation would be needed in detail.

By Section 37, in the case of occupancy-tenants, if the tenant himself or the person from whom he had inherited, had made improvements on the land, then his rent was not to be enhanced, nor was he to be ejected till he had received compensation for the money and labor so expended within the previous thirty years. In the case of tenants without right of occupancy, the same rule was to apply to improvements made by the tenant himself, but not necessarily to improvements made by his father or ancestor. The question arose as to whether he should not be entitled to compensation for improvements made by his ancestor. These were held to be difficulties in making such a rule for tenants-at-will, and so the section stood. There would probably be some difference of opinion on this particular.

It had been provided in Section 41 that this compensation might be afforded by the landlord partly or wholly by a beneficial lease. This of course applied to tenants-at-will. How far a particular lease might be tantamount to the compensation, must be decided by the Court. And Section 40 provided for the determination of disputes of this nature. But if such lease should be for a term of twenty years at the annual rent paid by the tenant at the time of the offer, then such offer, if accepted by the tenant, would bar claim to compensation for improvements.

Consideration had been given as to what should constitute an improvement; and this had been defined in Section 38 to consist of works whereby the letting value of the land had been and continued to be increased. This was necessary, among other things, to guard against compensation being demanded for futile improvements. If further question arose as to the compensation, it must be decided by the Court under Section 40. No reservation had been made of the power of the landlord to take the execution of an improvement out of the hands of the tenant, and to execute it himself. In the case of occupancy-tenants, it seemed doubtful whether such power should be specially reserved to the landlord. In the case of other tenants, the landlord could always reserve such power to himself by agreement. Nor had any allusion been made to the consent of the landlord being necessarily obtained by the tenant. As regarded

occupancy-tenants whose right was a species of property, there might be doubt as to the propriety of making such a provision. As regarded other tenants, if the landlord choses he could impose a restriction beforehand; but if he allowed an improvement to be made by a tenant, and had not objected, his vertual consent was inferrible. On the whole, it was good that the tenant should make improvements, and that in doing so, he should be as unfettered as possible. It was also probable that whatever improvements were made in tenant lands would be made by the tenants themselvs, the landlords in the Punjáb being mostly peasant proprietors fully occupied in working their own glebes.

Chapter VII. merely adapted the procedure to the machinery and constitution of the civil administration of the Panjáb.

Such then were the principal considerations relating to this Bill: further details were given in the Committee's report. Endeavour had been made to secure what was fair both to the tenants and to the landlords.

For the protection of the tenants, the occupancy status, as defined by the settlement, had been preserved, and the engagements then entered into had been adhered to; the re-opening of questions then formally decided had been barred; the enhancement of rent, save by decree of Court, had been stopped; and even then a beneficial margin had been secured for occupancy classes: ejectment of occupancy classes, save by decree of Court, had been prevented; the right to sub-let had been reserved for all occupancy tenants, and the power of alienation had been proposed for some classes of them; the terms of succession to occupancy-rights had been declared; the grant of compensation on eviction for all improvements made by tenants, whether occupancy-tenants or other, had been carefully provided for.

On the other hand, in the just interest of the landlord, the means had been afforded for rebutting the validity of the settlement in cases where real invalidity was apparent. It had been declared that in future, no tenant should be deemed to acquire right of occupancy by mere lapse of time; the power of enhancing the rent even of occupancy-tenants had been affirmed; the grounds on which an occupancy tenant can demand abatement of rent have been limited; the right of ejecting tenants-at-will merely by notice had been declared; the consent of the landlord to alienation even by occupancy-tenants, save those of the superior classes, had been rendered necessary; even in those cases where right of alienation was allowed to the tenant, the right of the landlord to pre-emption had been reserved; the power of the landlord over the sub-lessees of

his tenants had been secured; and lastly a power had been proposed for the landlord of terminating occupancy-rights by the tender of compensation.

Sir R. TEMPLE now submitted this Bill for the consideration of His Excellency the President and of the Council, with some confidence that it would stand the tests supplied even by His Excellency's vast experience. That confidence was based not only on the knowledge he (Sir R. TEMPLE) necessarily had of the people concerned in this measure, having for years pitched his tents among them, but also on the strong support and aid received from his Hon'ble Colleague Mr. Strachey, who had successfully introduced a similar Rent Bill for Oudh, on the thorough examination of principles afforded by their learned Colleague Mr. Maine, and on the care and acumen brought to bear on the drafting of the sections and clauses by the Secretary to the Council, Mr. Whitley Stokes.

The Hon'ble Mr. MAINE said "Sir, there is much in the Bill of my Hon'ble friend on which it will be safe for one who has not passed the greatest part of his life in India to abstain from pronouncing positively, but some questions of principle are raised by it on which I may be entitled to have an opinion. The views which I have formed on them (which happen for the moment not to be popular views), I am the more anxious to state, because, though the subject-matter of the measure has undergone much public discussion, I do not think justice has been done to the side of the questions involved to which I am compelled to incline. Before, however, I come to the merits of the Bill, it is perhaps proper I should say something on a point which was much discussed when the Bill, then in Mr. Brandreth's charge, came before your Excellency's Council. I was not in India at the time, but I see that several Members of the Legislature expressed doubts whether any legislation at all was required, and whether the law, as applied by the Settlement Officers and Civil Courts of the Panjáb, should not be suffered to take its course. The facts of the case are now much more clearly known. We have not before us the statistics of the recent Settlement for the whole province, but we have them for one Division. It appears that in the single division of Amritsar 60,000 heads of households were recorded at the first Settlement of the Panjáb as entitled to beneficial rights of occupancy. At the recent settlement, 46,000 of these cultivators have been degraded to the status of tenants-at-will. If the same proportions be maintained for the whole province, these numbers denote some hundreds of thousands. It would appear, however, from a Minute of the Chief Court of the Panjáb, that, though the Settlement Officers employed the Settlement Regulation of 1822 to produce these formidable results, they did not think fit to follow

the prescribed procedure, but have adopted a procedure of their own, unknown to the law. The Chief Court states accordingly that all the settlement operations have effected is a 'superior description of registration.' But that is not all. It seems that the Settlement Officers, from compassion or compunction, did not in all cases degrade the occupancy-tenant at once to a tenancy-at-will. They allowed him a period of grace, during which he was to retain his rights of occupancy. The Chief Court has decided that they had no power to do anything of the kind, and that in such cases the higher status must continue indefinitely. Sir, I observe with regret that, during the sittings of the gentlemen who recently assembled at Murree to consider the amended Bill, an attempt was made to get some words introduced to it reflecting on this decision of the Chief Court. I do not suppose that anything I may say can add authority to the Court's opinion, but still I am bound to state that it appears to me—and what is more important, I believe it appears to your Excellency—that the Chief Court was entirely and obviously in the right, and that the functions of a Settlement Officer are confined to declaring the class of tenure to which the holding of each cultivator belongs. This decision of the Chief Court, however, in Amritsar alone, affects no less than 22,000 cases. In one division, there have been 46,000 rulings on rights to land, of which 22,000 are bad in law. We are threatened with an agrarian revolution, to be immediately followed by an agrarian counter-revolution. In such a state of things, it is probably superfluous for me to argue on the necessity for legislation, and indeed I greatly lament that the course of circumstances has prevented your Excellency's Government from stepping in earlier, and with a high hand forcing a compromise on the official disputants in the Panjáb.

And now, Sir, as to the Bill before the Council. I do not mean to oppose it. Indeed, as a Member of the Committee, I have joined unreservedly in the recommendation that it be passed. But the chief ground on which I support it is that affairs in the Panjáb have come to such a pass that no arrangement of the matters in dispute is now prudent or politic, except one in the nature of a compromise. The controversy between the officials has extended to the Natives; the fears of one class and the expectations of another have been roused, and it thus become imperative on the Government of India to avert great political evils by taking a decided course and effecting a settlement intermediate between extreme views. I further refrain from placing any impediment in the way of the Bill, because your Excellency, who certainly cannot be accused of any fanatical dislike of tenant-right, does not think that the measure as now settled by the Select Committee will inflict intolerable hardship on

opportunity of coming forward to assert his rights in litigious form, and had power to appeal from decisions which he thought inequitable, and every decision of the Settlement Courts must have indirectly disposed of thousands of cases not actually brought before them. I can scarcely conceive any stronger guarantee given to these rights. A Parliamentary title to property is necessarily somewhat arbitrary; but when a Government sets its courts of justice in motion for the affirmation of rights, bringing them to the very doors of claimants and opponents, it gives a moral guarantee of the highest order. These tenants, therefore, Sir, have been in possession for at least 27 years, and for 15 years of that time have enjoyed their rights under the protection not only of the British Government, but of British courts of justice. Let me now ask whether they are an idle and thriftless class, whom it is expedient to improve off the face of the earth. Sir, the evidence to the contrary, which has been laid before me, is truly astonishing. I have been told of parts of the Panjáb which were little better than a wilderness before annexation, and which now bloom like a garden, mainly through the industry of these tenants. I have heard of villages voluntarily paying more for the mere rent of irrigation-water than the whole amount of revenue, which, at the time of annexation, it was thought fair to demand from them on the part of the Government. Sir, I do not adduce the proved laboriousness of these cultivators simply by way of appeal to compassion. It constitutes my main answer to the proposition so often occurring in these papers that 'it was the British Government which introduced rights of occupancy into the Panjáb.' I do not believe the statement, and I see that the most violent partizans of the theory have now been compelled to relinquish it, for after the most stringent revision of the Amritsar Settlement 15,000 occupancy-tenants remain on the record, which is a conclusive admission of the existence of the tenure before the conquest. But suppose the statement to be true. Why should not the British Government, under the peculiar circumstances of the Panjáb, establish rights of occupancy in the tenants whom it found in the province at annexation? Who is it that has created in the Panjáb the rent of land and its value for sale or letting, which were practically unknown there under Native rule? It is partly the British Government by the peace and security which it has established—partly the cultivators by their industry. Why should the British Government not give some degree of protection to one large section of the class which, jointly with that Government, has produced all this wonderful prosperity? Why should it, on any principle of justice, be bound to place these tenant-cultivators suddenly at the mercy of any body who can make a claim to those faint, vague, and shifting proprietary rights which by general admission alone existed before the annexation?

Sir, the proposal deliberately made to us by one numerous and energetic section of the Panjáb officials is to confiscate, either immediately or after a short interval, the beneficial rights of hundreds of thousands of households, guaranteed as I have described, vested in the class I have described, and gained at the expense of nobody. But what are we to say of derivative rights which in 15 or 20 years have probably flowed from the original rights in the course of the ordinary transactions of life? As there has always been a doubt whether occupancy-tenures were alienable, they have probably not been parted with in any number, but money-lending is active in every corner of India, and undoubtedly these tenures have been the security, direct or indirect, for considerable advances of money. They may not have been expressly mortgaged, but I find from the papers of the Orissa Famine Commissioners that even in the most difficult times, an occupancy-tenant can obtain an advance when a tenant-at-will can get none. What is to become of the security for such advances? It is apparently to be destroyed together with the original rights.

Sir, I am bound to say—remembering always that I speak from an English lawyer's point of view, and subject to the reservation implied in my comparative ignorance of the necessary conditions of administration—I am bound to say that, when these proposals first became known to me, they struck me as really monstrous. Yet things *primâ facie* monstrous may turn out simple and natural, but we may at least expect that a strong defence will be made for them. What defence is made here? The chief, it may be said the only, reason assigned for such proposals is that mistakes were made at the first settlement, and that cultivators were recorded as having a right of occupancy, to whom the custom of the country did not attribute any such right. It will be inferred from what I have said that I decline to regard this as in any respect an answer to the tenants' claim. The true question is whether the title of the occupancy-ryots is not of such a character that it ought to prevail, even though it began in mistake,—nay, even though it began, like many of the Talukdárí tenures of Oudh, in simple violence. I consider, therefore, the allegation that mistakes were made as raising an immaterial issue. But as many estimable persons do seem to attach some degree of importance to the assertion, I may be permitted to enquire briefly on what foundation it rests. And here, Sir, let me say it was a piece of great good fortune for this Council that my Hon'ble friend, Sir R. Temple, joined us at the particular juncture in the history of this measure at which he took his seat. The impugners of the accuracy of the first settlement were very clamorous and positive; its defenders gave, it seemed to me,

but an uncertain sound. But my Hon'ble friend, who had an intimate connexion with this settlement—which, I believe, most of its present critics know only by tradition—who in the Central Provinces has had proceeding under his eye a settlement conducted on precisely the same principles, was able to assure us that the imputation of carelessness or empirical precipitation was absolutely groundless, and that as much pains were taken as with any other settlement of revenue. Your Excellency is further aware that since it became known in England that these charges were being made, the Government has received letters from gentlemen who were engaged in the settlement in high positions, and who indignantly repudiate the imputations directed against their carefulness and sagacity. I have read the papers most diligently, and I find the only error worth mentioning, which is charged against the original Settlement Officers, is that they took the state of the facts existing during the 12 years previous to annexation as proof of the state of the rights. Now, Sir, with a view to ascertaining in what degree the Settlement Officers were blameable for taking this course, permit me to read a passage from a Minute of the present Lieutenant Governor of the Panjáb, who, it must be recollected, is a very high authority on opinions and ideas in purely Native states of society:—'The state of things,' he says, 'existing in the Panjáb, for a long series of years preceding annexation, was such as almost to extinguish proprietary rights in land, or at all events to deprive them of mostly all their value. The people in consequence possessed very indistinct ideas in regard to those rights, so that the best security for a correct ascertainment of the rights and relations of the several classes connected with the land was wanting.' Other authorities who have joined in this controversy have made the same admission even more strongly, so much so that it may almost be inferred from their language that, under Sikh rule, there was no such thing as eviction, and no such thing as the rent of land. Nor is this last statement as incredible as it may seem, for it may well be that the Sikh government took so much from the cultivator in the form of Revenue, that nothing, or next to nothing, was left to him but the means of subsistence and cultivation, and consequently there was nothing, or next to nothing, which could go to the landlord in the form of Rent. But what was the problem before the first Settlement Officers? To discover whether tenants were occupancy-tenants or tenants-at-will—whether they could be evicted, and their rent enhanced at pleasure—and this discovery had to be made in reference to a state of society which included neither eviction nor rent. Really, Sir, the customary mode of doing that which was never done—the customary mode of dividing the non-existent—strike one as belonging to that class of questions on which it is best to decline giving a confident opinion. Why then, when the

conditions of enquiry were these, why should the Settlement Officers be condemned for preferring one of the best established principles of jurisprudence to an investigation of the 'very indistinct ideas' described by Sir D. Macleod. There is, in a memorandum recently sent up, a dictum of the Settlement Commissioner that 'the recognition of periods as tests of rights is the very mischief.' Well, Sir, the recognition of a period of time as the test of a right may in the Panjáb be called a mischief, but it is known to jurists as a prescription; and not only are prescriptions common in all systems of jurisprudence, but it so happens that the free use of prescriptions has been selected by jurists as the criterion for distinguishing good and civilized systems of law from those that are bad and barbarous. And the reason is notorious. The accumulated common sense of ages has shown that, even in societies which have very distinct ideas as to property, enquiries into rights which are unfrequently and intermittently exercised are, if carried far back, as nearly as possible worthless.

But, Sir, assuming that the adoption of the twelve year rule led to the recording of some rights which would not have been recorded if a different mode of investigation had been followed, let us see whether the officers engaged in the recent settlement had any advantage in prosecuting their enquiries over their predecessors of twenty years since. And first, Sir, I put aside the assumption which I regret to see occasionally made in the papers of superior sagacity and care in the present Settlement Officers. There is no evidence for the assumption, which at best is not very graceful; and it is probably safe to take it for granted that at both settlements all parties did their duty to the best of their ability and up to the measure of their lights. But is it not evident, Sir, that from the very nature of the case, the present Settlement Officers were not only not at an advantage, but at a vast disadvantage, as compared with my Hon'ble friend, Sir R. Temple and his colleagues? I must again quote from the Lieutenant Governor the admission that, property having little or no value before the annexation, 'very indistinct ideas' prevailed on the subject of proprietary right. This then was the subject-matter of enquiry—a mass of 'very indistinct ideas' which were entertained on a particular subject twenty years ago. Then, Sir, the nature of these ideas had to be established by the oral testimony of very ignorant men. It is necessary, Sir, to put this clearly, for some of the papers appear to me to disclose a very curious misconception of the Settlement Officers. They seem to have supposed that what they had to enquire into was the present ideas of the people on the subject of property and tenancy. But that, Sir, cannot be. The true question was whether the first settlement of the Panjáb was at variance with local customs, and the business in hand was

to take evidence of those customs as they existed before the annexation. And as to these customs, or rather ideas as to customs admitted to have been 'very indistinct,' they had to accept the oral testimony of very ignorant witnesses, and, if possible, to make that testimony prevail against a written record made very shortly after annexation. Well, Sir, it is almost a proverb in India that oral testimony is of very little value. The strongest statement I have seen on the point fell from the eminent Native Judge who sits on the Bench of the High Court at Calcutta. Nor is it necessary to assign moral defects in the witness as the cause of this untrustworthiness. The truth is, Sir, that the power of answering questions intelligently is a fruit and result of the habit of interrogating yourself; and men who do not look into their ideas, who take outward facts as they find them, and remember nothing but their actual experience, cannot answer questions except as to the barest matters of fact. The only effect of interrogating them is either to reduce them to confusion, or to get any answers out of them which the questioner pleases. Now I will show presently what was the character of the questions put to the witnesses; at present I will only say that their testimony was oral, and it related to 'indistinct ideas' belonging to the past. But surely, Sir, in the Panjáb as well as elsewhere, evidence grows weaker in proportion as it grows older, and therefore necessarily, though the mere fact of its relating to matters of old date, the evidence taken during the recent settlement operations was incalculably weaker than that taken immediately after annexation. But the age of the evidence adduced before them was by no means the heaviest disadvantage with which the present Settlement Officers had to struggle. Surely it must be evident that the motives to false testimony had vastly increased, at least on the part of one class. Property in land which had little or no value before the annexation, has now a very great and distinct value, and the real struggle obviously is whether, in the case of the occupancy-tenants, the new profits shall be divided between them and the landlords, or shall go wholly to the landlords. The position, therefore, of the two parties to this contention in the Settlement Courts was this: on the one side you had very ignorant men, asked very difficult questions as to indistinct ideas of old date. On the other, you had witnesses, a shade better educated, more thoroughly aware of the matter in hand, but under the strongest temptation to adapt their testimony to their interests.

Sir, there is much in the detail of the Panjáb settlement proceedings which relates to matters which are quite foreign to my experience. There are, however, certain peculiarities in the method of enquiry pursued, on which it is not presumptuous in me to form an opinion, and certainly those peculiarities

have not given me a favourable impression of the value of the investigation. I observe, for example, that in a great number of cases, the persons under examination, whether landlords, tenants, or witnesses, were asked whether a particular class had a Right to do a particular thing, and the point was frequently put for decision to the committees who acted as referees. I do not mean to say that the word right was invariably used, but the questions constantly implied the notion of a Right, or some shade of it. Now, everybody who has paid even a superficial attention to the subject is aware that there is no more ambiguous term than Right, and no idea less definite. I do not suppose that in the Oriental patois in which these questions were asked, the word is less equivocal than in the cultivated European languages, and yet in Europe it is only the strictest and severest jurists who speak of Rights with accuracy. *Primâ facie* when you ask whether a class had rights of a particular kind, you mean legal rights; but legal rights imply a regular administration of fixed laws, and there was confessedly no such administration under Sikh rule. Yet I find the Settlement Officers enquiring about rights of eviction or enhancement, without explaining (and apparently without being conscious of the need of explaining) whether the rights in question were of the nature of legal rights, or whether moral rights were meant, or whether what was intended was merely the physical power of the stronger to do what he pleased to the weaker. And these difficult and ambiguous questions—questions which in reality sometimes involved highly refined abstractions—questions which I do not hesitate to say that, even if I had been cognizant of the facts, I could not always myself have answered without fuller elucidation of their meaning—were put to ignorant and uneducated men, to men therefore who, like all ignorant men, are capable only of thinking in the concrete and in connection with actual facts, and were put moreover with reference to a state of facts which ceased to exist twenty years ago. Perhaps, Sir, it may be said that the rights about which enquiry was made were customary rights—rights arising under a Custom. But here, so far from having my ideas cleared, I find myself in greater difficulties than ever. For it appears to me that in the papers relating to the recent Panjáb settlement, the word 'custom' is used in a sense certainly unknown to jurisprudence, and I believe also to popular usage. A custom is constantly spoken of, as if it were independent of that which is generally, if not universally, considered to be the foundation of a custom. According to the understanding of lawyers, and I should have said according to the understanding of all men, barbarous or civilized, the foundation of a Custom is habitual practice, a series of facts, a succession of instances, from whose constant recurrence a rule is inferred. But the writers of these papers perpetually talk of customs of eviction, of

enhancement, or of rack-rent, and in the same breath admit the non-existence of any practice of the kind alleged. Some broadly state that there never was an instance of the customary right being exercised; nearly all allow that its exercise was as rare as possible, nor do they attempt to show that the rare instances of its exercise were not simple acts of violence. Indeed, a good deal of the papers is taken up with conjectural explanations of the reasons why the custom was not acted upon, or, as I should venture to put it, why there was in point of fact no custom at all. A curious illustration of these (to me) remarkable ideas about customs occurs in the suggestions of the gentlemen who lately assembled at Murree for the revision of the Bill as settled by the Select Committee. The Bill contained, and still contains, a provision allowing the presumption of occupancy right, created by entry in the settlement record, to be rebutted by showing that 'tenants of the same class in the same or adjacent villages have ordinarily been ejected at the will of the landlord.' The so-called Murree Committee proposed to reject this provision, and even the more moderate section proposed to substitute another to the effect that rebuttal should turn upon proof that the entry was opposed to a custom locally recognized and acted upon. Obviously they considered that it would be impossible to show that tenants were ordinarily evicted at will by their landlords. As a mere matter of curiosity, I should really like to see the evidence which would be tendered to a court of justice for the purpose of establishing a custom, in the face of an admission that instances of the exercise of the alleged customary right had never occurred or were extraordinary occurrences. Sir, I must say that, on this ground alone, the claim preferred for the recent settlement to be superior to all former settlements, must be held to fail. I do not pretend to have an exhaustive acquaintance with the voluminous literature of Indian revenue settlements; but I know something of it, and I think I can see that the older investigators of Native customs proceeded on a mode of enquiry which is perfectly intelligible. They enquired for the most part into practices and into facts, not into vague opinions. They inferred a rule from the facts they believed themselves to have discovered, and then they stereotyped it. No doubt they may have made mistakes. They may have generalized too rapidly, may have neglected local exceptions, and may have made a usage universal which was only general or even occasional. But at all events their undertaking was perfectly practicable, whereas I doubt whether the method followed in the recent settlement enquiries was not fatal to any trustworthy result.

That, Sir, however, is not my case. I say that even if these beneficial rights of occupancy were really planted in the Panjáb by the British Govern-

ment, they have grown up and borne fruit under its shelter, and that it is not for its honour or interest to give them up to ruthless devastation. Nor is it solely for the interest of the British Government that they should be protected—it is for the interest of everybody who has a vested right in property, whether moveable or immoveable, and whatever be the form it may take among the innumerable forms which proprietary right assumes in India. There could be no more dangerous precedent than the wholesale obliteration by the Government of vested rights which the Government created fifteen or twenty years ago, merely on the ground that the Government made a mistake. I know, indeed, that it is a point against me that this view does not seem to be taken by the Lieutenant Governor of the Panjáb, whose name is not to be mentioned without respect. But I cannot help thinking that Sir Donald Macleod reconciles these proceedings with his sense of justice and expediency by his belief that a system might be devised of buying out the occupancy-tenants on the principle of equitable compensation. Now, Sir, I have always thought that over limited areas of land in India, particularly in the vicinity of great cities, where capital is abundant, and where great cultivation is possible, a system of buying out occupancy-rights for fair value might have much to recommend it, and might solve many embarrassing difficulties. But I am satisfied that, for a whole province like the Panjáb, such a system would be quite impracticable, and I say this the more confidently, because the plan has evidently been suggested by what seems to me an erroneous view of the functions of the English Copyhold Commissioners. It has been truly said, in the first place, that the office of the Copyhold Commission is to get rid not of the class corresponding to the tenants, but of the class corresponding to the landlords. It is the lord of the manor who is bought out, not the copyholder. Thus it is the few who receive compensation from the many, not the many from the few. Moreover, the compensation proper to be given for the heriots and other manorial dues is calculable with comparative ease, and scarcely amounts in any whole year a very serious aggregate sum. Still, with all these facilities, the Copyhold Commission is notoriously cumbrous and dilatory in its action. A body of functionaries, however, charged with arranging compensation for all the tenants affected by the recent settlement proceedings, would have a herculean task before it. The rights to be paid for hardly admit of estimation, and the mass of those rights is enormous. Although, too, the Panjáb has advanced so extraordinarily in prosperity, it may be doubted whether it contains the means for the pecuniary compensation which would be required; and, indeed, I venture to think that if an attempt were made over territory so vast as that comprised in a whole Indian province to buy out occupancy-rights on equitable principles, no system would be possible, except that

recently tried in Russia—a system of dividing the land between landlord and tenant, which would probably be infinitely more unpopular with the proprietary class than the present system of dividing the profits.

Sir, I have stated my doubts as to this Bill as strongly as possible, chiefly because, as I said before, I do not think that side of the question has had fair play. But I do not in the least wish to withdraw from the compromise which the Bill embodies. The article of that compromise which involves the greatest concession on the part of those who agree with me, is the erasure from the settlement record of all the tenants, once registered as having occupancy-rights, who have admitted before the present Settlement Officers that they can be evicted by their landlords. I will not enquire too closely or curiously whether the admission was intelligently given, whether the tenant was or was not thinking of the moral right of his landlord, or of his power as the stronger man. Every compromise must involve concession, and if there is any of these rights which it is equitable to destroy, they are those which the owner has in some sense or other disclaimed. One point, and one only, remains for me to notice. It may perhaps appear at first sight a merely legal point, but it is in reality one of the most far-reaching importance. Sir, what is the proper construction to be put on certain provisions of Regulation VII of 1822? On the annexation of a new country to the British Indian Empire, two operations are carried through,—the revenue payable to Government is settled, and a Record of Rights in land, which has hitherto been considered the surest guarantee of the stability of those rights, is framed by the Settlement Officers. When the period for which the revenue has been settled expires, everybody agrees that it can be re-settled according to the increased or diminished profits of the land. But can the Record of Rights be re-cast by the Settlement Officers at new settlements, not on complaint, but officiously and of their own motion? This is the claim of the Panjáb Settlement Officers, which I deny on grounds both of reason and of expediency. I admit that the language of the old Regulation is incautious. The truth is, these older enactments were not intended to stand the tests now applied to them; if they were carried out in a sense not intended by their framers, an executive order, which in fact emanated from an authority identical in point of *personnel* with the Legislature, corrected the error. But, I believe, chiefly because the authors of the Regulation were great men and men of strong sense, that they intended nothing so preposterous as a periodical, wholesale, officious revision of the Record. Moreover, it is only the 'spirit' of the Regulations which has been extended to the Panjáb, and whatever be the exact meaning of the distinction, it is assuredly the letter, and not the spirit, of the Regulation which countenances these late proceedings. For

just see what is claimed. The land in India is the foundation of society, and it is asserted that once every ten, fifteen, or twenty years a number of gentlemen, many of whom it is surely not disrespectful to call young gentlemen, may go in and reconstruct the very basis of society. I have sometimes heard and seen the advocacy of tenant-right called socialistic, but what Communist in his wildest dreams ever imagined a wholesale re-adjustment of rights in land once every fifteen years? There is not, moreover, the smallest security for the principles on which such re-adjustment would take place. If an ordinary contingency of Indian life had happened, and certain able and energetic officials had fallen ill during the late settlement, I am not sure that it would have concluded on the principles on which it began; and, for all I know, if these pretensions be allowed, and if the whirligig of Indian opinion goes round as rapidly as it has done in my time, we may have tenant-right introduced universally fifteen years hence, possibly in imitation of Irish legislation which might have occurred in the interval. There is no question, Sir, I suppose, that the extraordinary burst of prosperity which invariably follows the annexation of a new State to British India is chiefly owing to the stability which we give to property—more to that perhaps than to the protection we give to life and limb. If, however, these novel views as to the unlimited supremacy of Government officers over property prevail, I am not sure we shall not by such experiments arrest the progress of the country in civilization even more than did the dispossessed Native ruler by his tyranny and oppression."

The Hon'ble Mr. TAYLOR.—"Mr. Maine has so entirely expressed the views which I myself entertain on the question of tenant-right in the Panjáb, and as to the necessity for legislation at the present time, that it is quite unnecessary for me to attempt to follow my Hon'ble friend over the same ground. I desire only to explain to the Council very briefly why I concur in the general recommendations of the Select Committee in regard to this Bill, and why I object to the proposed clause in section 19 empowering the landlord by tendering compensation to eject a tenant with a right of occupancy.

I may begin by saying that I regard a tenant with the right of occupancy, acquired by prescription or in the manner which is declared in this Bill to constitute such right in the Panjáb, as a co-proprietor of the land in his occupation, who cannot be ousted on any pretence whatever so long as he pays the rent which is properly chargeable thereon. Such a man is not to be confounded with a tenant-at-will, a term which is unknown to the old Regulations. Tenants-at-will are for the most part the servants and labourers of the occupancy peasant-proprietary, usually of a different caste, and whose rights are governed

by prescription or custom peculiar to each part of India. It may perhaps be said, as Sir Richard Temple did in fact say in Committee, that my notion of the proper status of an occupancy-ryot is derived from the state of things with which I am familiar in the Southern Presidency, where the ryots are real peasant-proprietors, absolute owners of the land they occupy or cultivate. This opinion of my Hon'ble friend is no doubt true to some extent. I should, indeed, be glad to think that the peasant-proprietary of every part of the vast Bengal Presidency were in a fair way of being raised to the position which is fortunately occupied by the ryots to the south and west of India, whom I regard, not as the pauperised tenantry which they are described to be by persons very imperfectly informed, but as the true landlord class which the ryotwar system, when properly administered, is calculated to produce.

We have to deal, however, with matters as we find them in the particular province to which our legislation relates, and it has certainly been my wish in common, I feel sure, with that of my colleagues in the Committee, that the principles of this Bill should be as closely as possible adapted to the circumstances known to exist in the Panjáb. I believe that this measure, which, after infinite trouble and lengthened discussions with those most intimately acquainted with the wants of the province, has been devised as a compromise between two extreme views, will, in the main, provide a satisfactory settlement of the long pending question.

I hold in my hand a paper on the subject of this Bill written at my request by Mr. Forsyth, the able and experienced Commissioner of the Jalandhar Division, who is distinguished by the moderation of his views on the tenant-right question. He very justly remarks that 'the truth in this, as in most controversies, lies in the mean between two extremes,' and it is this mean which it has been the object of the Bill to hit. After the picture which has been drawn by Mr. Maine of the hapless condition of the many thousands of the occupancy peasantry who have been degraded from their former rights by the proceedings of the Settlement Officers, the Council will hear with satisfaction from one who speaks from personal knowledge, that 'it is a great mistake to suppose the Panjáb generally to be in a state of agitation regarding the tenant-right question. Such agitation is confined to the Amritsar and Lahore Divisions, where a general up-heaving or disturbance of the rights of tenants has been made. In many districts the landlords themselves have come forward to propose that their tenants should be protected.' After stating as an undoubted fact that many mistakes were made in the earlier settlements, and describing why this was unavoidably

so, Mr. Forsyth goes on to say that as years passed by, 'the people, ignorant and careless, continued in their old ways, taking no heed, and probably unconscious of the erroneous entries. But now, as lapse of time gives a validity to titles otherwise untenable' (and he might have added, as land has increased in value), 'we are frequently assailed by petitions to correct alleged errors.

'For the correction of such errors, some steps were necessary, but Mr. Prinsep went too far in assuming that *all* entries in the records required to be submitted to fresh enquiry.

'It was remarked by a Panjáb proprietor that there was no stability in our principle, for twenty years' tenants have been recognised as having certain rights; now we are told Government has changed its policy, and they are to have no rights. Perhaps in another twenty years, another change of policy may take place.

'The proposed Bill provides a sufficient remedy in allowing manifest errors to be brought before a regular tribunal.'

Mr. Forsyth then proceeds to comment on several of the details of the Bill, and I must admit that he takes a somewhat lower view of the status of an occupancy-ryot than that which I myself hold. I think, however, that the Council will consider his testimony, as given in the extracts I have quoted, to be very valuable and generally favourable to the measure now under discussion.

There is one fact of which every year's experience and observation only strengthens my conviction, which is that, however much local circumstances, habits, customs, and even tenures and interests in land may vary in different parts of the country, the normal condition of the cultivating peasantry in reference to the land is essentially the same in every province of India. Their position is that of hereditary occupiers at customary fixed rates of rent, but without a transferable interest in the soil. This rent is payable either to the Government direct, or to a middle man, a superior zamíndár, or proprietor with certain well understood rights and privileges which are recognised by the Government. Now, one of the main objects of this Bill, as it was the object of all similar enactments like the Oudh Bill and the Bengal Act X of 1859, is to confirm and strengthen this tenant-right of occupancy, not by curtailing the proper rights and privileges of the superior landlord, but by giving to the tenant such security of tenure as will enable him with confidence to employ his capital and his labour upon the improvement of his land. What is chiefly wanted in order to effect this, is permanence of assessment and the power of disposing of his property as he pleases. Both these advantages are confirmed to the peasant-occupant under the present Bill. He remains in undisturbed possession of his land so long as he pays the rent, or at least he will so remain if the amendment of my Hon'ble

friend, Mr. Strachey, be adopted, and he may alienate it to whom he pleases after first offering it to his landlord at the market price. But if to these conditions of his tenure you attach the penalty of ejection from the land at the will of the landlord or proprietor, on payment of such compensation calculated on the annual net profits as a Court may think fit, in order, I suppose, that the landlord may put in a relative of his own or a stranger who offers a higher rent, you completely neutralize the benefit intended to be conferred upon the occupancy-tenant; what you give with one hand you take away with the other; you reduce his tenure in fact to that of a mere tenant-at-will, and deprive him of the right of doing what he pleases with his own; you at once depreciate the value of his property, for the occupancy-right *is* a property in the strictest sense of the term, and you destroy the feeling of secure possession which it is so desirable to encourage. I consider this to be a move in the wrong direction. If any one is to be bought out, I would buy out the so-called landlord rather than the tenant. According to my view, the better policy in the interests of all parties is to convert the permanent holder of the land, who is in fact a co-proprietor, into the actual owner of the property on the sole condition of the regular payment of his rent. The hereditary cultivator is the real man of progress; as a rule, it is he and no other who puts his labour and his capital into the land, and it is upon his industry and frugality that all agricultural improvement depends. It is clearly, therefore, to the advantage of the landlord to deal with him as the permanent occupant, and thus give him a direct incentive to improve the property.

The only restriction which by the common law and usage of India has hitherto been imposed upon the co-proprietary or occupancy-right of the hereditary cultivator is the prohibition or disability to alienate without the consent of the Government or the landlord. In the south and west of India, where the ryots hold direct from the Government, this restriction has been removed and the cultivator's interest in the soil has, under our permissive acquiescence, been developed into a transferable right of property. The Bill proposes to confer this right, though qualified by the landlord's right of pre-emption. This is a valuable concession so far as it goes, but I should prefer to give the tenant the power of purchasing out and out this transferable right, once for all, for a fair equivalent. On this subject I beg to refer to a Minute which I wrote several years ago when the question of the relative rights of zamíndárs and ryots in Lower Bengal was under discussion. I then said, when referring to several points which affected the condition of landed property under Lord Cornwallis' Permanent Settlement,—'another point is the advantage that would accrue by converting into a saleable property the bare hereditary right of occupancy

enjoyed by the ryots of Bengal. The earlier Regulations and Act X of 1859, in providing ejectment for non-payment of rent, do not regard the right of occupancy as a saleable property, and this no doubt is strictly correct. But this restriction upon the transfer or sale of the ryot's rights is worth little or nothing to the zamíndár so long as the ryot can transmit the occupancy to his heirs and relations without limit; and the removal of this restriction by adding very materially to the value of the land would indirectly benefit both parties. It seems to me, therefore, to be within the province of the Legislature to provide by law for the compulsory enfranchisement of the restricted tenure of the occupancy-ryots by the payment to the zamíndár, say, of two and a half times the annual net profit enjoyed by the ryot, which would be about equal to 'one year's full rent of the land.' This of course is a matter for calculation, but as regards lands paying the full rent, the value to the ryot is the surplus after rent and all expenses of tillage are defrayed, which on the average cannot amount to much more than half the rent. 'On payment of this fine once for all, irrespective of the ordinary yearly rent, the ryots would acquire a transferable property in the land occupied by them.' I added that such a measure would have a very beneficial effect upon the present imperfect condition of landed property in Bengal. Probably, however, for the present as regards the Panjáb at least, the Bill goes far enough; and if the one flaw to which I have referred be removed, I for one shall be content if its provisions should become law."

The Hon'ble Mr. STRACHEY.—"Sir, I feel that the time has past in which it was possible to hope for a more satisfactory settlement than this Bill affords of the difficulties that have arisen in regard to these questions connected with the tenure of land in the Panjáb. But while I admit this, and while I express my concurrence with those who desire that this Bill may now pass into law, I wish to state the opinions which I hold regarding the circumstances that have rendered legislation necessary. This necessity, as my Hon'ble friend, Mr. Maine, has just shown, has been forced upon us by the proceedings which have been lately taken by the officers of the Settlement Department in the Panjáb. In my opinion regarding those proceedings, I agree so entirely with everything that Mr. Maine has said, and I think his statement of the facts, and the conclusions which he has drawn from those facts, so complete and so unanswerably true, that I should have felt inclined to remain silent during this part of the discussion on the Bill, did I not feel it to be my duty, as a Member of this Council, not only to assist in repairing by legislation, so far as this may now be practicable, the actual mischief that has been done, and in preventing such mischief for the future; but not to lose this opportunity of publicly declaring my belief that those

proceedings have neither been right in principle nor practically expedient, but, on the contrary, that their tendency has been injurious to the most important interests of the country.

The principal questions which have been under discussion are those connected with rights of occupancy in the land, and these are questions on which, as we all know, Englishmen hold views of the most opposite and irreconcilable character.

Notwithstanding these differences, there has been, up to a certain point, a remarkable unanimity in regard to the facts from which our conclusions are to be drawn. The principal of these facts are those connected with the conditions under which land was ordinarily held in the Panjáb before the British conquest.

My Hon'ble friend, Mr. Maine, has read to the Council the opinion of His Honor the Lieutenant Governor of the Panjáb, to the effect that for a long series of years before the annexation of the Panjáb, proprietary rights in land had become almost extinguished, or had been deprived of nearly all their value. The Financial Commissioner has written to the same effect. He states that, although there were numerous co-existing interests in the soil, 'sixteen years ago there was neither landlord nor tenant in the Panjáb, according to our acceptation of those terms.' And in another place he writes as follows:—

"The terms of landlord and tenant, as familiar to us in England, are likely to mislead when applied to the classes we have to deal in the Panjáb, whose relations to each other we are now called upon to determine. If His Honour the Lieutenant Governor will refer to the several settlement reports quoted by Mr. Prinsep, he will observe how very general the testimony is that, on the advent of British rule, the so-called privileged tenants were found occupying a status so similar in all respects to that of proprietors that in some cases it was difficult to distinguish between them. The Sikh Government had not, it is true, by any formal proclamation, such as was issued recently by Lord Canning in Oudh, confiscated the rights of proprietary classes; but by settled policy, persistently pursued for years, it had effectually confiscated all such rights, and during this time the burden upon the land was so heavy that the obligation was not on the part of the proprietor who gave the land, but on the part of the man who took the land on the condition of meeting the Government demand upon it. * * This and other settlement reports, and the experience of every officer who has enquired into the tenures of the Panjáb, will bear me out in saying that, while, on the one hand, property in the European sense of the term has been created by the British Government in the Panjáb, on the other hand there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted like any other heritable property from father to son, and for which either no payment was

made to the so-called proprietor, or if payment was made, it was of the nature of the dues for lands of copyhold and customary tenure in England to the lords of manors, rather than for those paid by tenants to proprietors.'

It would be easy to multiply quotations to show that the highest authorities in the Panjáb have concurred in these opinions regarding the tenure of land under the Sikh Government.

Under such a condition of things as this, it is clear that neither proprietors nor tenants practically possessed any rights in the land at all. And, indeed, as Mr. Maine has observed, it is idle to talk of rights of property in a state of society in which there was no law, and no administration of justice, and no possibility of enforcing any claim, however equitable it might be. This much seems to me to be certain that, although the cultivator of the soil had no rights capable of being maintained against the will of any one more powerful than himself, there was no part of India in which rights of private property in land were weaker than they were in the Panjáb when we took possession of the country. There can hardly be a better sign of this than the fact stated by Mr Prinsep, and to which Mr. Maine has referred that in one division, out of 60,000 tenants recorded at the settlement as having rights of occupancy, no less than 25,000 were found to have paid under the Sikh Government no rent to the nominal proprietors.

A great deal has been said in condemnation of the settlements that were made after the annexation of the Panjáb. I am far from denying that many mistakes may have been made, and I fully admit that those mistakes ought to be corrected so far as this, after the lapse of so many years, is now possible without leading to greater hardship and injustice than that for which it is desired to apply a remedy. But notwithstanding such mistakes, I believe, from all the information that I have been able to obtain, that no more careful and better settlements have, all things considered, ever been made in India than those which were made in the Panjáb. I think that the reports of those settlements show that they were made in all essential respects on sound principles, and, I will add, on principles far sounder than those in accordance with which it has been proposed to alter them. These settlements were based on the rules which had been laid down and acted upon for many years in the North-Western Provinces. It was the object of the Settlement Officers to ascertain the existing customs, under which land had actually been held, and to secure to every one the advantages which he had actually enjoyed, and to declare judicially that all classes interested in the land should thenceforward hold by right the benefits which they had previously possessed under a most uncertain tenure.

Such an undertaking was necessarily a most difficult one, and it was impossible that errors should not be committed in recognizing and recording, through the length and breadth of a great country, rights in the land which were often of the obscurest kind, and which were for the first time recognized as rights at all. If, as Mr. Maine has said, it was difficult shortly after the occupation of the Panjáb, to ascertain the nature of the advantages which, under the Sikh Government, had been derived from the land by parties possessing conflicting interests, how much more difficult, not to say impossible, must this be now, when so many years have elapsed, when the condition of the country has become absolutely changed, and the people have learned the value of the rights which have been bestowed upon them. I believe that the most careful investigation that can now be made into the condition of things existing in any given estate, before the annexation of the Panjáb, must, from the nature of the case, be almost invariably worth much less than the most cursory investigation made under the orders of the Settlement Officer fifteen or twenty years ago. I decline to believe in the superiority of the records of rights that have been lately made in the Panjáb over those that were made at the first settlement, under much more favourable circumstances, by officers of not less zeal and ability than the officers of the Settlement Department at the present time.

The truth, I believe, is that this desire to alter the arrangements of the old settlements has had its origin in that strong belief which is ingrained in the minds of so many Englishmen that the rights over the land of the man who happens to be called the landlord, have necessarily something of a peculiar and an almost sacred character. It is seen that the limitation of the demands of the Government upon the land, the protection given to property by our laws, and all the other causes which have made the country tranquil, and rich and prosperous, have given to the land a value which it did not possess before, and that, in fact, a new property in the land has been created. It seems to many Englishmen the plainest justice that this new and valuable property should be deemed to belong to the so-called proprietors of the land, and they think it the extremest injustice that a large proportion of it should, in consequence of the system followed at the first settlement, go not to the landlords, but to the actual cultivators of the soil.

It seems, Sir, to me that such feelings are in the Panjáb altogether out of place. If the settlement proceedings had taken away from the so-called proprietors anything which they had formerly possessed, I should be among the first to say that they had been unjustly treated, and that they deserved

redress. But I totally fail to see that any injustice was committed. I am now speaking generally. I do not deny that injustice may have been done in particular cases, and, as I have already said, where this has happened a remedy should, if possible, be applied. Speaking generally, I see no reason to doubt that the settlement in the Panjáb secured to the landlords everything to which they were equitably entitled. Justice would have been done if there had been secured to them no greater profit from the land than that which they had actually enjoyed before, but in fact much more than this was given to them. When it was found, as it was actually found in many thousands of cases, that tenants so-called had been from time immemorial in possession of their holdings, and that they had never paid any rent to the so-called landlords, there seemed to the settlement authorities no reason why the position of such men should be altered, or why, because a man happened to be called by a name which people chose to translate by the English term proprietor, he should receive, at the expense of other people, advantages which he had never received before.

And it is important to remember that, in making the first settlement in the Panjáb, no great political questions were involved, similar to those that have been involved in some other parts of India, and especially in Oudh—a country of great and influential landholders. Such landholders in the Panjáb are, I believe—and if I am wrong, your Excellency will, I trust, correct me—comparatively speaking, very few in number. The Panjáb is and always has been a country of peasant-proprietors, occupying their own small holdings: not a country of great landlords. Under these circumstances, it would have been meaningless to have adopted in the Panjáb what has been called an aristocratic policy, such as that adopted by Lord Canning in Oudh, with the avowed object of enlisting in the support of our Government the natural leaders of the people. The settlement in the Panjáb was made in accordance with the system which had been adopted for many years in the North-Western Provinces. While I do not believe that the just rights of landlords were set aside, it must be allowed that the main tendency of that system was towards the improvement of the position of the class of peasant-proprietors, and of the tenants having permanent and hereditary rights of occupancy in the land. That system assumed that it was desirable, for the agricultural prosperity of the country, that the people who actually occupy and cultivate the land should have a permanent interest in it; and that so long as they fulfil the obligations under which they hold, they should be protected against arbitrary ejectment, and against unreasonable enhancement of rent. I believe, for my part, that these principles are right, and whether they are universally applicable or not,

they were the only principles that were applicable in the Panjáb. I believe that there is no country in the world where the notion of absolute property in land is more foreign to the people than it is in India; and I think that these voluminous papers which have been laid before the Council, show that there is no part of India in which this idea of absolute property in land had less existence than it had under the Native Government of the Panjáb. If the Settlement Officers in the Panjáb erred in giving too great an amount of protection to the actual occupiers of the soil, I believe that they at least erred in the right direction. I am satisfied that it is true that the class of small proprietors cultivating their own land, and the class of tenants with a permanent interest in their holdings, are the classes from which almost all real improvement of the land in India is derived, and that, without security of tenure and some limitation of rent, it is vain to expect agricultural progress. England is the only country in the civilized world in which any other doctrines are seriously held; but when we see what is going on in regard to the position of the occupiers of land in Ireland, it seems hardly possible to doubt that great changes in the tenure of land may not be far distant even in our own country.

I believe that these principles would be true even if Indian landlords were improvers: but in point of fact they are not improvers. Nor does Indian agriculture require for its success the investment in the land of the money of capitalist landlords. That success depends far more on the careful and unremitting attention to all the operations of husbandry given by men who feel a direct and personal interest in their work, and who know that they will themselves reap the benefits of their own labour. It is the too common custom of Englishmen to doubt the wisdom of any systems which differ from those of their own country. Even in England, where circumstances are altogether peculiar, and where the tenure of land is, to the last degree, exceptional, I believe that the principles which I advocate are generally true. In all other countries, of which I know anything, and especially in India, I believe them to be true without qualification. However this may be, I cannot understand how any one who has seen, as I have seen myself, the admirable results which have been arrived at in many of the civilized countries of Europe by peasant-proprietors and tenants possessing permanent interests in the land, should doubt the future capabilities of a similar system of agriculture in India.

Holding these views, I think it matter for much regret that rights, the recognition of which at the settlement was, as I believe, in accordance both with the feelings of the people and with sound policy, should have been so rudely shaken by the proceedings which have made present legislation necessary.

In regard to the absolute illegality of those proceedings, my Hon'ble friend, Mr. Maine, has said everything which can be said, and I can add nothing to the well-deserved reprobation which he has given to them. It seems to me truly extraordinary that so monstrous an invasion of the rights of property and of common justice, as that which Mr. Maine has described to us, should have taken place in a British province. Whatever may have been the original foundation of these rights, they had been enjoyed uninterruptedly, under the guarantee of our laws, ever since the British conquest, and it might have been supposed that they were as secure as any other rights of property in the land. I cannot profess to think that this Bill affords a complete remedy for the injustice that has been done. But I feel that nothing better can now be hoped for, and therefore, with some exceptions, which I shall find occasion presently to notice, I am prepared to accept it."

His Excellency the COMMANDER-IN-CHIEF said that the Council had now been addressed by four Members of the Committee, and His Excellency the President would bear him out in saying that those Hon'ble Members had shown very clearly that they all belonged to the same school of thought in the matter under consideration. The Hon'ble Mr. Taylor wanted apparently to evict all the landlords, and this perhaps not only in the Panjáb, but throughout India. In short, Mr. Taylor would provide for improving the landlord out of his property altogether. The Hon'ble Mr. Maine had, indeed, gone far to shake the value of the report of the Committee, for he had told us that the evidence on which the Committee had come to its conclusions was worthless. The Hon'ble Mr. Strachey went even beyond Mr. Taylor in his animosity towards a landlord or proprietor's interest. Quoting his experience of the Continent, he would have us believe that English institutions, so far as regarded the system on which land was held and cultivated, and property generally upheld, to which we were in the habit of attributing the stability of British institutions, were false and wrongful. He would forbid us to contemplate this great exemplar of inviolability of property, and he would have us believe that it was all a fatal mistake. Mr. Strachey referred to the institution of a peasant-proprietary on the continent of Europe as an instance of the greatest political and social benefit; but it was well known that the practical wisdom of that institution was questioned by political economists and social politicians, at least as numerous and authoritative as those by whom it was upheld. HIS EXCELLENCY did not wish to make an opposition speech, but he confessed he saw the gravest cause for apprehending dangerous results from the present measure, unless it were greatly modified. He fully acknowledged the necessity of legislation, and of thus resolving doubts which had assumed a somewhat serious form. It was impossible to listen to the facts brought for-

ward by Mr. Maine, or to look at the figures which appeared in the papers which had been laid before them, without coming to the conclusion that the Government of the Panjáb, whether impelled by causes beyond its control or influenced by its subordinate officers, had arrived at a point where legislation was absolutely forced upon us in order to prevent the worst evils occurring. When making this assertion, HIS EXCELLENCY begged it might be understood that he imputed blame to no one. He well knew the exigencies or events which at times compelled a Government to move, or to allow a movement, almost against its will, and as for the subordinate officers, they of course simply acted with the full cognizance of their Government.

His Hon'ble friends, in their anxiety to plead the cause of the occupancy ryots, had treated the Settlement Officers with somewhat scant courtesy. He, the COMMANDER-IN-CHIEF, had the honour of knowing some of these gentlemen; he had read their copious and exhaustive papers which had been circulated from time to time, and he was bound to say that the language used by the Hon'ble Members to whom he referred was not such as to encourage officers of Government in a very important part of their duty, viz., not to conceal opinions which they might think it their right to lay before their superiors, which was intimately bound up with the peace and content of the country, and which was the result of the most careful investigation and profound reflection.

If we examined these papers carefully, it would be found that the weight of evidence showed that during the Sikh rule, the right of occupancy recognised in the Bill had no existence whatever, though practically ryots were not evicted, owing, doubtless, to their utility to their landlords. The Hon'ble Mr. Maine had dwelt on the disorder and anarchy which prevailed in the Panjáb before our annexation of that province, and he proceeded to quote the Lieutenant Governor on his side, and to endeavour to make it appear that Sir Donald Macleod coincided in the opinion that, owing to that state of anarchy, there was no possibility of arriving at the conclusion that any right, or shadow of right, as regards the land, existed in the Panjáb under the Sikh rule. But what did Sir Donald Macleod really say? He would read the 23rd paragraph of Sir Donald Macleod's Minute of February 10th:—

"It has been urged by some that proprietary rights have acquired reality and value solely by the action of our Government, and that we have the right to dispose, as we think best, of what we have thus created. But I do not believe we can thus deal with rights in land without injustice and imminent danger. If any suppose that proprietary rights in land, however depressed or kept in abeyance, have ceased to be recognized and tenaciously cherished, I would refer them to the third part of Mr. Prinsep's printed papers, where, at the eighth and following pages, he goes pretty fully into this question. It was pointed out by Lord Metcalfe

many years ago, in a passage which has been often quoted, how, after one or two generations had been driven out of a village in India by violence or oppression; succeeding generations would return on the first available opportunity to resume possession, each family occupying the precise plot vacated by its sires; and we may rest assured that there is nothing in regard to which it is more imperative on a Foreign Government desiring peace, prosperity, and permanence, to show the utmost consideration and tenderness than proprietary rights in land."

That was the opinion of the Lieutenant Governor, as was seen in the quotation, and it was sanctioned by the great authority of Lord Metcalfe.

There was another authority even greater than Lord Metcalfe—Mountstuart Elphinstone. He, in one of the earlier chapters of his History, called the village community which was found everywhere in India on which Indian Native society was universally based "the indestructible atom of civilization." This being so, were we to be told, because anarchy and violence prevailed for thirty or forty or even for a hundred years in the Panjáb, that no rights of property existed there? That, because we failed on annexation to recognise the exact status of proprietors, it was therefore impossible to ascertain and confirm their rights? He (the COMMANDER-IN-CHIEF) ventured to say that any one with the smallest practical experience of any other part of India would reject with astonishment the proposition. He well recollected that in the Bombay Presidency, certain tenures became the subject of legislation. There was the Mírásí tenure, which no doubt would be held by Mr. Taylor to be of no importance, but which nearly every one else familiar with Southern and Western India, would describe as being considered of the utmost importance by those affected by it, a tenure which especially applied to lands held by absolute hereditary proprietorship under certain conditions. Sir George Clerk was always particularly strong on this point, and absolutely declined to permit the weakening or invasion of such tenures and the rights belonging to them. Then there were the Khots in some of the Mahratta Provinces. They descended from officers who had exercised certain hereditary duties, and for them a law was especially passed by the local legislature. Again, for the neighbourhood of Kattyawár we had legislated for the assistance of hereditary rights, and the perpetuation of the families enjoying them. That country and the districts in which the Mírásídárs and Khots to whom he had referred were found had been disturbed by anarchy and civil war quite as much as the Panjáb. The evidence in favour of the existence in every part of India of rights aristocratic and territorial never, so far as he knew, used to be questioned till the school of Mr. Bird and Mr. Thomason came to be in the ascendant—a school which, as was well known, had been always hostile to the proprietors, and had been triumphant in the North-Western Provinces. The permanent settlement of Bengal had, on the contrary,

been founded on a notion of rights which were now declared to have no existence. We were now in the hands of a school different from that which ruled British India, and which, at the end of the last and during the early part of the present century, laid the foundations of the system existing in Bengal Proper at the present day.

He, Sir WILLIAM MANSFIELD, did not on this occasion offer an opinion either of approval or disapproval of that system. He merely wished to show how different had been the views prevalent in the early part of the century from those which had now become fashionable, and that the notion of the difficulty of ascertaining rights of property was a new one.

He repeated that he did not wish to make an opposition speech. He would therefore now content himself with laying down this proposition,—that while the Legislature determines not to invalidate the rights of the ryot, as amended after the annexation of the Panjáb, it ought to take care not to add to those rights. Now, it seemed to him that the present Bill gave occupancy-ryots two most important privileges which were never contemplated by the original framer of the Bill, and which had not been recommended by the Lieutenant Governor. First, the Bill in declaring by section 36 that a right of occupancy should devolve on the tenant's male lineal descendants, and failing them on his male collateral relatives, would, HIS EXCELLENCY apprehended, when taken in conjunction with the definitions contained in section 3, be held to confer the power of creating, by adoption, an heir to a right of occupancy which would otherwise have merged for the benefit of the proprietor. This right of adoption had caused so much trouble in dealing with larger affairs that he could not understand why it should be introduced so as to create similar difficulties in smaller but infinitely more numerous transactions. In any case, it was the creation of a new right for the benefit of the tenant and to the disadvantage of the proprietor.

HIS EXCELLENCY spoke with diffidence on a matter relating both to law and to local custom, but surely the provisions of section 34 conferred an enormous and a novel advantage on occupants. If we looked to the Blue Book, we found that Mr. Leslie Saunders was strongly against the existence of any right of alienation such as that section proposed to confer on the ryot. Mr. Saunders said,—

"I believe the rule allowing, where exchange of land has occurred, occupancy still to be considered as continuous occupancy, to be entirely opposed to what has hitherto been considered the custom of the country, for in hundreds of cases I have myself investigated I have invariably found this incident to be admitted by the tenants as one of the main proofs of their not having

right of occupancy. Such exchange of fields before annexation may be deemed by Courts voluntary, because no tenant would have been upheld in such opposition to the will of the land-owner."

Then Mr. Forsyth,—

"I have not given my assent to clause 23 (regarding right of transfer by tenants), because I consider that a commission of some kind should be first appointed to ascertain the general feeling and wants of the people before we create new rights, which tend to perpetuate a double property in the soil."

Then Muhammad Hayat Khán,—

"By the usage of this country, the right of occupancy of tenants does not extend to the power of exchanging their lands. Most owners, fearful lest tenants should claim hereditary tenures at intervals of a few years take away from them lands already in their possession, and give them others in lieu to enable them to make their livelihood."

It would be easy to multiply opinions to the same effect. Here was another, that of Muhammad Sultán Khán,—

"But as rights exist, and justice and custom both demand that they should be accepted on good and sufficient cause being shown, no small matter should be allowed to set the acknowledged right aside. The tenant's right so acquired is simply that of continuous occupancy; to give them the right of selling and mortgaging at will will trench on the right of the proprietor; it was never known to exist and is opposed to justice: if allowed, what difference will exist between the tenant and proprietor?"

His Excellency confessed that he entirely sympathized with the writer of the passage last cited. It was impossible to find any difference between proprietor and an occupancy-tenant with such a power of alienation as the Committee proposed to confer on the latter.

His Excellency had just been reminded by his Hon'ble friend, Mr. Maine, that the privilege of adoption to which he had referred was founded upon some decision of the Chief Court. That might be, but while we were legislating, no judicial opinion was necessarily binding upon us. It would be observed that Mr. Saunders and Mr. Forsyth raised an important question when they expressed opinions that a broad scheme ought to have been framed for the enfranchisement of the double rights in land. It certainly appeared to him (Sir William Mansfield) that it was extremely to be regretted that this hint had not received the attention deserved by its great importance. In short it was a matter of something more than regret that the Committee, while dealing with the Bill, had not taken the opportunity of expressly extinguishing the double rights in the same property which the landlord and the ryot were said to possess, according to some one or other of the various modes known to the law of civilized countries. This might have been done so as to ensure the status of the

ryot who had been found to possess occupancy rights, to provide a just compensation to the landlord, and to get rid of the complication of interests which now existed, and which the Bill, if passed, would sanction. Hon'ble Members were perhaps aware of what the Austrian Government had done in Gallicia, and of what had subsequently been done throughout some of the larger provinces of Russia. Although there was no similarity between British subjects and the serfs of Russia, still when what was called freedom was conferred on the latter, question arose regarding their relation towards the proprietors and to the land, which were not without a certain analogy to the interests under consideration. When those great countries dealt with such matters, they went to work in a different fashion from that favoured in India. The problem with them was how, while giving freedom to the serfs, the respective rights of property should be separated and preserved from the dangers of endless dispute and litigation. Thus instead of giving double rights in the same piece of land after the manner proposed by the Bill, the Russian Government gave a freehold to the serf and compensation to the landlord. The manner in which this had been worked out both by Austria and Russia was not likely to commend itself to a legislature composed of Englishmen; but the idea lying at the root of the arrangements referred to was nevertheless sound, and, as tending to obviate recourse to future litigation, eminently expedient in a popular sense. A similar solution might have been attempted in the Panjáb, according to an English plan to which it was probable no objection could have been reasonably taken. Thus, long leases, say for two or even three lives might have been given in favour of all ryots with proved occupancy claims, those claims including what had been created under the original British settlement. This arrangement would have exactly fitted in with that part of the Bill which proposed to give compensation for improvements to out-going tenants.

It was too late now, however, to discuss a plan which at an earlier stage might have adjusted the controversy in a manner compatible with English notions, and which admitted of being made agreeable to the two parties concerned. But an idea, such as that which he had just thrown out, might be brought forward on some future occasion and adopted by the Panjáb Government if they were not then trammelled by additions to the rights or privileges which the present Bill proposed to give to the ryot,—additions which had not been contemplated by His Honour the Lieutenant Governor.

His Excellency would therefore once more say that, while in no way desiring to interfere with the rights of the occupant which had already been secured to him, he viewed with regret and alarm, the provisions of the Bill

which added to the occupant's position, and therefore still more prejudiced the proprietor.

The COMMANDER-IN-CHIEF concluded by stating that he reserved to himself the right of moving any amendment which might appear expedient to him in the sense of the foregoing remarks.

The Hon'ble Mr. MAINE said that the Commander-in-Chief had mistaken the purport of the remark to which His Excellency had referred. Mr. MAINE had intended to say that the Chief Court had established the heritable character of occupancy-tenures; but so far as he (Mr. MAINE) was aware, it had made no decision on the question of adoption.

The Hon'ble Sir R. TEMPLE desired to rejoin briefly to various remarks that had fallen from the several Hon'ble Members who had addressed the Council.

As regards Mr. Maine's remark that there would probably not be capital enough in the province to enable the proprietors to buy out the occupancy-tenants, this expectation might be very correct, but it rather went to show that the measure proposed by the Committee was safe enough.

Again, Mr. Maine had dwelt with great truth and force on the evils which would ensue if the rights recorded at the time of settlement were to be revised every time the settlement itself was revised. But, in fact, the general understanding in the Panjáb had been that the rights and titles so recorded were permanent; and that the revision of settlement referred only to the revenue demand which was limited for a period, and might be retained, raised, or lowered after the expiry of that period. But the rights and interests in the land, once settled, were never to be altered afterwards. And this was usually explained to the people.

Further, Mr. Maine had alluded to the provision whereby the presumption of occupancy-right in the record might be rebutted if the tenant had admitted himself subsequently to be only a tenant-at-will. But the Bill provided that such an admission must be *voluntary*. The framers of the Bill felt confidence that hereafter the Courts would take notice of this wording. The admissions which might have been drawn from a tenant on cross-examination by a revising officer, or an admission inferred constructively from the tenor of replies and statements, would not be admissions within the meaning of this Act. The admissions intended by the Act must be voluntary, that is made spontaneously by the tenant of his own accord, *ex proprio motu*.

In respect to Mr. Noble Taylor's remarks to the effect that it would be well if the peasantry of the Panjáb could be brought up to the same status as the ryots who were made virtually proprietors by the ryotwari settlement of Southern India, it might be observed that, although the tenants concerned in this Bill were differently situated from the ryots of Madras, yet the great mass of the peasantry in the Panjáb were peasant-proprietors with as perfect a tenure and title as could possibly be found anywhere.

As regards the doubts expressed by His Excellency the Commander-in-Chief as to whether occupancy-right had formerly any existence in the Panjáb, that was a matter of fact, on which a lengthened statement need not be made after all the discussion which had occurred. The allegation of the supporters of the Bill of course was this, that, despite the want of proper recognition, and despite many drawbacks, something tantamount to such a right did exist, and existed, too, at least as much as proprietary right. Sir William Mansfield had dilated with much truth on the importance of proprietary right, and had asked whether it was not possible to validate that right. No doubt it was possible, and the right had been thoroughly validated at the Panjáb settlement. He (Sir R. TEMPLE) had when a Settlement Officer been at pains to show that proprietary right in the abstract had been always understood, and at least nominally respected under Sikh rule. Of course, the confirmation which followed at the British settlement was something very superior.

From some of Sir W. Mansfield's remarks, it might perhaps be inferred that the modern school of Indian administrators, who derived their traditions from the great Mr. Thomason, and according to which traditions this Bill had been framed, differred in respect to the maintaining of proprietary right from the original school of Indian statesmen, such as Metcalfe and Mountstuart Elphinstone. But in one most essential particular, these two schools were the same, namely, in the definition and confirmation of peasant proprietorship. No set of officers had done more for the communities of village proprietors in Northern India than the disciples of Mr. Thomason.

It was remarked by Sir W. Mansfield that this Bill introduced two things not contemplated when the settlement of the Panjáb was made, namely, the succession of an adopted heir to an occupancy-tenure, and the power of alienating an occupancy-tenure. As regards adoption, if this tenure were recognised at all, it must be allowed to an adopted heir according to Hindú custom. And the rule of adoption was not new, but was set forth in the Panjáb Civil Code, which was promulgated at the time when all these settlements were going on. As regards alienation, in some sense it might be looked on as a novelty; but

then it was strictly limited in this Bill, and, instead of being extended to all occupancy-tenants, was narrowed to those superior classes of these tenants, whose status almost approached that of sub-proprietors.

It was apparently held by Mr. Strachey that even this Bill, good as it might be, would hardly afford perfect remedy to the occupancy-tenants for the objectionable revision which had been attempted to be made of their status. However this might be, he (Sir R. TEMPLE) was confident that this Bill did succeed in meting out justice to the tenants, and in securing to them their fair rights.

His Excellency THE PRESIDENT said—"Reserving my judgment on details, I must state in the strongest terms my anxiety that this Bill should become law to-day without alteration in any essential particular. The problem which it attempts to solve has now been under consideration for several years, and has been before this Government for three years. During this period, inquiries have been going on through a number of districts, by which the rights and the interests of a large portion of the agricultural population have been greatly influenced, and of course their feelings and anxieties have been seriously excited. We cannot stop here. What is wanted is to distinguish and define the relative rights and liabilities of the landholder and the ryot, and to lay down equitable rules for the guidance of Settlement Officers in deciding the questions which ordinarily arise between different classes of the agricultural population. We have heard a good deal to-day of the relative rights of landlord and tenant. But the facts of the case, in the Panjáb at least, are sufficiently simple, though doubtless any one with a little ingenuity could make out a pretty plausible case, especially in favour of a landlord on one side, a tenant on the other, and perhaps a superior proprietor over them both. When the Jalandhar Doáb was being settled, I remember asking the Hill Rájás, to whom did the land belong? With one voice they answered, 'to us, the Rájás.' Then when I asked the same question of the dominant section of the villagers, they said that the land belonged to a particular class or caste in the village, the Rájputs, Bráhmans, or the like. The cultivators, lastly, would affirm that while the lands held by the village-proprietors and the waste lands certainly belonged to those parties, the lands in possession of the cultivators also belonged to that class. The real explanation of all this is simply that the land, as a rule, exclusively belonged to no one class. In exceptional cases, the chief of the country or the State might cultivate certain lands by means of the services of serfs or servants, and in that case would take what represented the Government revenue and the profits of cultivation. But as a rule, it may be fairly

said that the State took the land-tax, which was usually so heavy as to leave no more than a bare subsistence to the other parties. But whatever was left was divided between the other classes, the proprietor getting nothing or next to nothing from the cultivator beyond the revenue due from the land he occupied. Thus up to a certain point, both in the Panjáb and the North-West Provinces, the right of both parties was scarcely discernible until, by the moderation of the Government demand, a margin in the shape of rent was created. Even under the British Government, where land was plentiful and cultivators scarce, it was not uncommon for the cultivators to be placed by the proprietors on the same footing as themselves, and to share equally in the profits of the lease which they received of the land assessment from Government.

But to keep to the particular question now before us, the fact is that no doubt proprietary rights in the soil do exist in the Panjáb, and do descend; but, nevertheless, wherever the Sikh official, whether Názim or Kárdár, in former days, had any interest in disregarding these rights, he did so as a matter of course. Where the cultivator was a good farmer, he was maintained in his holding, despite the wishes of the proprietor; on the other hand, where the cultivator was idle or unskillful, or where the proprietor represented a strong class, the cultivator went to the wall. Mr. Prinsep knew this very well. He has said that this occurred in the interest of revenue. Truly so. But this does not change the state of the case. The ryot, that is the cultivator, was liable to ejection, but from one circumstance or another was very seldom ejected.

A good deal has been said during the controversy as to the perfunctory mode in which the investigation regarding tenures of land in the Panjáb had been made during the past settlement. My learned friend, Mr. Maine, has not ill described the state of the case. Every one who has any knowledge on the subject must be aware that there was under Sikh rule neither private deeds, nor public records relating to the ownership of land; and that there was nothing but oral testimony to guide our settlement officers. That was absolutely the fact. Even where written leases of the annual revenue a village had to pay existed, that was no proof of proprietary right. The parties whose names were entered in the document were often strangers who farmed the revenue, and collected the different quotas from the occupiers of the land, or divided the produce with them. Or what was more usual, the individuals in whose names the lease was made out were the leading elders of the village, some of the co-parcenary body, who accepted the engagement on their own part and that of the brotherhood. There was no detail of how the lands were occupied, except perhaps with the village accountant, and then the nature of the tenure in each case was not

given. The Settlement Officer had thus to go into all the numerous and complicated questions arising from this state of things, and to determine them by oral testimony. There was seldom any difficulty as to the respective rights or shares of the different co-sharers. But as to the old tenants, things were far more obscure; and from one cause or the other, though mainly from the excessive pressure of the revenue, they for the most part held their land from father to son without being ever evicted. The exception to this state of things was so rare that as Mr. Maine has remarked it practically formed the rule that the tenant was not evicted.

In Hazára and in Multán, the Muhammadan proprietors of the land were ousted by hundreds and thousands by the Sikh government and their Názims or Governors. When we annexed the Panjáb, these lands were held by the cultivators, who were admitted to engage direct with the State for the revenue. In the Jalandhar Doáb even the Rájputs and Bráhmans had in many cases been ousted by the Játs, and other industrious races, inferior in caste, but superior in frugality and enterprise, and therefore better able to bear the fiscal burthens of the State. No doubt, as Sir Donald Macleod has said, these were cases of great injustice, and should not be taken by us as precedents to follow. Nevertheless they showed that the proprietor's right was not strong, and that the inducement to maintain the cultivator, provided he were industrious, was so great as sometimes to convert him into absolute proprietor, and usually to make his occupying tenure very secure. It was not that the tenant could not be evicted by the proprietor, but that the latter had no inducement to follow this course, and when he wished to do it would often be prevented by the Government official.

While speaking on this subject, I can recall to mind the evidence of a Sikh chief of some mark, now an elderly man, bearing on the light in which the proprietary rights in land were viewed in former times under Sikh rule. This Sirdár is a Jágírdár, and if I recollect right, a small proprietor of land also, and has an intimate acquaintance with such matters. His evidence is the more valuable, as it was given incidentally on a different, though in some degree a cognate, question—that of a claim to a Jágír. This Sirdár only a few months ago made the following remarks in reply to queries put to him in writing by the Panjáb Government:—

'The above was all the property of the Kanhye Sikhs, that is to say, it was in their Jágír; they were not proprietors of the soil. *The Sikhs never regarded proprietary right. They always put in or ousted proprietors as they pleased,* for the zamíndárí rights were nevertheless considered separated from the Jágír rights.'

The fact was that, while the Sikhs in their social relations to each other set a high value on proprietary rights in land, more particularly when these

were ancestral, their rulers acted very differently, and cared little who held or who cultivated these lands, provided that the revenue was punctually paid. And this circumstance, added to the fact that there was scarcely any, if any, margin left for rent, after the revenue was paid, is the true explanation how it was that the position of the hereditary cultivator was practically very much on a par with that of the proprietor in the same village. Rájá Sáhib Dyál, himself a jágírdár and a proprietor, and formerly like his father a large kárdár, or collector of revenue, under Sikh rule, in his replies to the queries put to him by the Settlement Officers, stated that the cultivators did not pay more than five per cent. rent to the proprietors of the land which they cultivated, and often nothing at all.

Mr. Prinsep in the different papers which he has written on the subject of the status of the cultivator under Sikh rule, quotes the evidence of different officers, all admitting that the proprietor of the land had the power of eviction. I will read extracts from the statements of two of those officers, both of whom were well acquainted with the subject on which they were writing. The first, Lieutenant Colonel Elphinstone, at one time the District Officer of Futtehpore Gogharah in the Multán Division, and subsequently holding the same position in the Jalandhar District, wrote as follows. Alluding to the condition of things in Futtehpore Gogharah, he said :—

'The distinction between hereditary and non-hereditary cultivators is a creation of our Government. Under the Native rule in this part of the Panjáb, it was altogether unknown. Proprietors had the right to eject any tenants whom they disapproved of, however long the latter may have resided on the estate. It is remarkable, therefore, that the cultivators should in some portions of the district, notwithstanding their uncertain tenure, have had the right to sell the 'kásht,' or cultivation of land. Instances of such a right being acknowledged frequently come under the cognizance of the Settlement Courts. This claim to sell the right of cultivation was always founded on the fact of the claimant having been the first plougher of the soil. It was therefore of some importance, when determining the position cultivators were to occupy, to ascertain to whom the claim of 'Buti már,' or first ploughing of the land belonged. In accordance with instructions issued on this subject by superior authority, all cultivators who could make out their claim to the 'Buti már' were recognized as hereditary cultivators, a privilege also conferred on those who had cultivated for eight years, if residents in the village, and twelve years if non-residents.

'Land, however, is so abundant and the population so scanty, that I have never found proprietors object to have their cultivators entered in any class, the latter might prefer themselves. The privilege of being a 'Maurúsí,' or hereditary cultivator, is by no means highly prized, facility of removal being the chief object aimed at. Now the idea is very prevalent among them that, by becoming hereditary cultivators, they may ultimately be

made responsible for the Government jama in case of failure on the part of the proprietors, a belief which has probably been strengthened by the fact that Tahsíldárs, during the summary settlement, often realized from the cultivators themselves. It is not very surprising, therefore, that cases should frequently occur, in which this privilege of becoming hereditary is most strenuously declined, to the despair of the proprietor, who, in the desire of his asámis to become non-hereditary, recognizes a sure indication of their being prepared to leave his village whenever superior temptations shall be held out to them by his neighbours.

'If with our light assessments, proprietors are not only ready but anxious that the holdings of their tenants should descend from father to son, how much more must they have desired this when they were rack-rented by the Sikhs? And if the mere fact of his being the first plougher of the soil entitles a man to sell his tenure, what shall be said of the proposal to reduce to the status of a mere tenant-at-will a man whose ancestor not only reclaimed the soil, but met all the revenue engagements of the proprietor when he was unable to do so himself, and who transmitted it to his descendants as an heritable property, and who, in the assurance of their tenure being a fixed one, have expended capital in building houses and agricultural buildings'.

Mr. Wynyard, the Settlement Officer of Ambála, who was conducting these duties so long ago as 1846, when I was Commissioner of the Jalandhar Doáb, made the following remarks in one of his reports:—

'309. Rights of tenants. I have stated above that I have not experienced much difficulty in deciding the amount of rents to be paid by the tenants, but numerous and somewhat difficult cases have arisen turning on the question—who is a tenant and who is a proprietor? As I have before observed, the Sikhs made no distinctions between proprietors as a body and tenants. With the exception of one or two headmen, or favored individuals, all were treated alike; zamíndárs and asámis were alike made to pay the high rents demanded of them; nor were matters much mended under our early revenue administration. Now, however, when the khewat and khatáon are carefully read out in the village, and thoroughly explained to the people, and when they understand that the zamíndár has to pay only two-thirds of the rent, whereas the tenant has to pay the whole; in short when they understand that we acknowledge the difference between proprietors and tenants, the latter persons, who have hitherto been in as bad a position as the zamíndárs, who have not engaged for the Government revenue, think that they ought now to be placed in an equally good position, and have urgently pressed their claims to be admitted as proprietors. Each case has been tried, either by Panchayat (jury) or on its merits, and separately disposed of; many of the claims are utterly futile, and founded solely on length of possession, which, though it does give a right to continued occupancy without enhancement of rents, gives him no right whatever to a share in those rents.

'I have never failed to keep this distinction clearly before me, and to urge on the officers working with me the great difference which exists between a right to possession of land at a fixed rent and a right to hold lands paying only the share of jama due for those lands. The admission of tenants to the proprietary right is a certain way to weaken the responsibility of the brotherhood.

'310. And yet it is not easy to dismiss the claim of a man who has for years been bearing up against heavy assessments, and paying his share with the proprietary brotherhood. He is entitled to praise and consideration, but he is not entitled to another man's birthright, and I have thought it quite sufficient, if he is not one of the bhaiyáchárá, to record him as a tenant, and to fix, if he requires it for his protection, a money rental 30 per cent. in excess of the revenue rents.'

These extracts are quoted by Colonel Lake in his letter of the 26th May 1865 to the Secretary of the Government of the Panjáb. Mr. Strachey has alluded to passages in this letter. And I will only therefore read a few words in it. In paragraph 20, alluding to Mr. Wynyard's report, Colonel Lake says—

'This and other settlement reports and the experience of every officer who has enquired into the tenures of the Panjáb will bear me out in saying that, while on the one hand, property in the European sense of the term has been created by the British Government in the Panjáb, on the other hand, there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted, like any other heritable property from father to son, and for which either no payment was made to the so-called proprietor, or if payment was made, it was of the nature of the dues of copyhold and customary tenure in England to the lords of manors, rather than of those paid by tenants to proprietors.'

Colonel Lake, when he thus wrote, was Financial Commissioner of the Panjáb, in which he had served since 1846, and is justly eulogized by the Lieutenant Governor as one of the ablest and best officers in the province. He was employed in making settlements of the land-revenue in that year, when the Jalandhar Doáb and Kangra District were ceded to the British Government by the Sikh Power.

Then again, if I turn to the schedule prepared either by Mr. Prinsep himself or under his direct authority, and which is signed by him, 'showing the relations existing between landlord and tenant as reduced to a set of rules, showing the main classes of tenants, the rights and usages prevailing, and when exceptions are allowed to oppose the usage in each class,' what do I find? I find that there are recorded no fewer than thirty-eight conditions, under which the cultivator is exempted wholly, or in part, from eviction. I will enumerate a few of them.

'(1). Provided occupant has not exercised the powers attending absolute ownership on improvements, such as sinking wells, planting gardens, &c.

'(2). If the person is merely occupying for an absentee or for some proprietor, not in possession of his share or rights, and a claim is made by latter for restitution, and intermediate outlay has been incurred, then compensation for losses must be paid before the occupancy of such shareholders can be disturbed.

'(4). Provided the occupancy did not arise out of an order of a Kárdár or of a Jágírdár, or ruler of the day.'

'(5). Or that the land was not made over for cultivation as unto an ordinary tenant, with permissive occupancy by the so-called landowner, who has never previously exercised power of grant, lease, exchange of fields, or eviction.

'(12). Provided that the tenant did not originally reclaim the land from waste.'

Thus it appears to me clear from this evidence and much more which might be adduced, that various classes of cultivators had beneficial interests in the land in the Panjáb under Native rule, and that it is sound policy that we should define and maintain these interests, placing them on a secure basis. It is this which the proposed law now under consideration aims at. It is a fair and wise compromise between conflicting interests of great magnitude, on which the prosperity of the Province largely depends.

Mr. Prinsep is of opinion that as regards the rights and position of tenants in particular, the enquiries of the Settlement Officers were insufficient, and that whenever it would appear that he had been twelve years in possession of his land, he was recorded as an hereditary cultivator with rights of occupancy. But from the quotations I have made, as well as from the settlement papers generally, it is abundantly evident that the Settlement Officers knew what they were doing. If mistakes were made, and I have no doubt that such was the case, the proprietors of land and their representatives, the village headmen, had only themselves to blame. The Native officers who prepared the village papers went into a village or collected the village-accountants and elders, and took down from the former in presence of the latter all the particulars regarding the lands, and classified accordingly the village-measurements. Where there was no dispute, no contest, the returns were filled up at once, and signed by the patwárí and lumberdárs. Where disputes arose, they were disposed of or referred to superior authority. When the records of a village were completed, a proclamation was, if I recollect right, put up in the village hostelry calling on dissatisfied parties to appear and make their complaints. These settlement operations went on in the same district for months and even for years, during which time appeals were open to the Commissioner of the Division.

As I have before said, errors may have been committed, but they were not so numerous as has been asserted. Proprietors of land in those days were content to give cultivators rights, which they did not consider it worth while to claim, but which they now desire to resume. But allowing that there were errors committed, I hold with Mr. Maine that, considering that almost in no case had

the tenants in whose favor these errors were made, held for less than twelve years, and that in many instances they and their ancestors had been in possession for generations, it would have been better to have maintained what had been done. In such cases the adverse rights of the proprietor had remained dormant so long as practically to have become extinct. Surely at any rate under such circumstances, we are right to require that the burthen of proof that the tenant may be evicted should rest on the proprietor.

His Excellency the Commander-in-Chief has cited in support of his arguments against the tenant the writings of Sir Charles Metcalfe and Mountstuart Elphinstone. There are few names which I hold in greater reverence than those of these two statesmen. But with deference to His Excellency, I do not think that he quite understood the circumstances under which Sir Charles Metcalfe expressed that celebrated opinion to which reference has so often been made. I am quite sure that it was never intended to bear against the cultivator. Sir Charles Metcalfe was at that time Resident at Dehli, and from long personal experience and considerable knowledge of the landed tenures in the Dehli territory, I can say with confidence that there were no large proprietors there. The lands were held by village communities, by co-parceners forming brotherhoods, descended from common ancestors. Probably ninety-nine out of a hundred of these proprietors were mere yeomen or even peasants. Most of them were Játs in race, holding their lands on tenures closely resembling those of the Panjáb. The only difference between these yeomen and those of a large part of the Panjáb was one of religion. In the Dehli territory they are generally Hindús: in the Panjáb they have become Sikhs and Muhammadans. So far from an aristocratic state of things existing near Dehli, the social condition of these yeomen is essentially republican. These famous village municipalities which Sir Charles Metcalfe had in mind, when he wrote, were then, as they are now, in a more perfect condition than those in the Panjáb, because the Native government had not interfered with them.

Then as regards Mountstuart Elphinstone, no doubt he intended to describe the ancient system which prevailed in India, regarding which his account was accurate. But in Western India, of which he had most knowledge, the village commonal system had generally disappeared. In that part of India, we constantly find it asserted that there is no proprietary right among the people at all. There it has often been affirmed that the land belongs to the State, and I believe that as a rule no third party intervenes between the Government and the cultivator of the soil. No doubt there are here and there petty Mírásí proprietors, but these are quite exceptional.

They are the remnants of the great mass of proprietors who have long been swept away. Although no doubt to a great extent the authorities deal with these cultivators as if they were proprietors, allowing them to engage directly for the land-revenue for their several occupancies, nevertheless there seems no common bond of union among those of the same village, and if they refuse to pay the enhanced rent or revenue demanded, or lay claim to the waste lands within the area, in the first case they would be liable to ejectment, and in the other the claim would be denied. On this side of India, everywhere a considerable margin between rent and revenue is allowed, which in most cases accrues to the proprietor; in Western India, as I understand the matter, either the State takes that difference in the shape of increased revenue, or what is probably the case, it is divided between the State and the cultivator.

In Western India it is notorious that during the period which elapsed from the time of the wars of Aurungzebe in the Dekkhan and Central India to the close of the Pindárí and Mahratta depredations, nearly all the proprietary rights in the soil were swept away, and the mass of the people destroyed, so that the land to a great extent lay waste until things were restored by the peaceful influence of British rule.

On this side of India, I refer more especially to the Upper Provinces, whether it was from the innate force and vigour of the mass of the people, and their capacity for uniting in self-defence, things were different: the proprietary rights in the land, though no doubt often assailed, and even often usurped, were more generally maintained; and when usurped, the village communities kept together, and from time to time asserted their rights. But it is equally certain that these rights were not absolute, and that the Government of the day maintained its right to take as much revenue as it could possibly realise, and to interfere with a high hand even with the landed tenures. It is only under British rule, and mainly from the date of the now much decried settlements of 1832 and 1833, that a real limitation on the demands of the State has been fixed, and a reasonable margin in the shape of rent has accrued to the proprietors of the land.

In this Bill the Committee have dealt with the matter in a fair and liberal spirit. They have not declared and confirmed the interest of the proprietor to the exclusion of those of the cultivator, nor have they treated the proprietor as if he were a mere incumbrancer on the land, the right to which was really vested in the ryot. That is the right way of settling the question. The Government has a right to deal with it. The Government has sacrificed revenue in reducing assessments on land. They have thus created rent where none previously

existed. We have a right to apportion the property so created, and if the present Bill is passed, we shall give the proprietors a large share of that property, while leaving to the cultivator a sufficient reward for his labour."

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL then moved that the whole of section 2, clause 2, be omitted; and

That for section 6, the following be substituted:—

"Every other tenant whose name appears in the records of a regular or revised settlement of land revenue sanctioned by the Local Government, as having a right of occupancy in land which he or the person from whom he has immediately inherited, has continuously occupied from the entry of his name or the name of such person (as the case may be) in such settlement, shall be presumed to have a right of occupancy in the land so occupied, unless, during the progress of any subsequent settlement of the revenue of such land he admits, in the presence of the Officer employed in making such settlement, or before any Officer authorized to attest the entries in the record of the same, that he is liable to be evicted at the will of his landlord, and such admission is recorded by the Officer so employed or authorized,

or unless the landlord establishes in a regular suit that the tenant's right of occupancy was recorded through a mistake of fact or without the consent of the landlord, and contrary to the custom prevailing in the District wherein such land is situate within forty years previous to the institution of such suit."

He said:—"I propose with your Excellency's permission to put before the Council in one motion the first two amendments, of which I have given notice, as both are founded on the same ground of objection to the Bill, viz., that it purports to assign to the registration of certain rights in property, a degree of authority in regard to the validity of such rights which I believe to be without precedent in previous legislation.

By the letter of the Secretary to the Government of India in the Foreign Department, dated the 31st March 1849, addressed to the Board of Administration of the Panjáb, the Courts of that Province were enjoined to proceed in the adjudication of matters coming before them in accordance with the spirit of the Regulations in force in the Bengal Presidency. Chief amongst those Regulations relating to land revenue settlements is Regulation VII. of 1822, and if the proceedings of the Settlement Officers of the Panjáb were governed by any law, they must be deemed to have been guided by the provisions of that enactment. By Section 1, Regulation VII. of 1822, the principal efforts of the Settlement Officers were directed to the object of 'ascertaining, settling, and recording the rights, interests, and properties of all persons and classes occupying or cultivating the land;' and by Section 9 of the same Regu-

lation, Collectors and other Settlement Officers were enjoined, whilst making or revising a settlement of land revenue, 'to ascertain and record the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community.' For this purpose it was added, 'their proceedings shall embrace as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.'

By Section 14, Collectors, when making or revising settlements, were required 'in cases in which any dispute might be found to exist in regard to the nature of the tenure of any person occupying the soil, to declare in an official proceeding to be incorporated in the rúbakárí of settlement, the nature and extent of the interest actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction the grounds of his determination.'

It is clear from these sections, that in disputed cases only, and after full investigation of the evidence offered by both parties, the results of which examination were set forth in an official proceeding, could the Settlement Officer's action as regards the record of the rights of the occupier of the land be deemed to be in the nature of a judicial award. This award which, in the Regulation Provinces, might be set aside in a regular suit if brought within the period fixed by the law of limitation for the time being in regard to such suits, was in the Panjáb made final (subject of course to the usual appeal) by the orders of Government, dated 1st September 1849.

Any other record of rights and interests in the land under settlement amounted to no more than a simple registration entitled to a certain degree of weight as evidence *pro tanto* of the subject-matter comprised in it, or (to use the words of the Regulation) admissible 'only as one means of proof in regard to the interest' evidenced by it, but conclusive of the validity of the rights recorded only so far as it could be shown to represent the true facts of the case as regards the existence of the rights recorded at the time of settlement and their prescription by local usage.

I am aware, Sir, that in laying down this position in regard to the state of the law applicable to the record of tenant-rights at the time of settlement, I am stating an apparent contradiction to the statement made by the Hon'ble and learned member opposite (Mr. Maine) on a point on which he is necessarily far more competent to speak authoritatively; but, if I rightly understood the Hon'ble member, his assumption that every record of rights and interests in the land made at the time of settlement in the Panjáb, obtained under the orders of Government in regard to settlement-awards in that Province the force of a decree of Court, was founded not upon his own construction of the law, but upon the supposed opinion of the Chief Court to that effect. I think that my Hon'ble friend was in error in attributing such an expression to the Chief Court. I have before me a copy of the Court's minute on the subject of this Bill, and I will read to the Council an extract therefrom. 'The Court in stating the facts of the case as regards the extent to which the special orders of Government had restricted the jurisdiction of the Civil Courts in regard to the awards of Settlement Officers, cited a passage from the letter of Government addressed to the Board of Administration of the Panjáb, which declared that the decisions of the Settlement Officers under their authority should be considered final (subject to the usual revenue appeal) in all cases decided on their merits.'

I submit that it is plain from this extract, that the orders of Government, applied only to cases in which the Settlement Officer made a regular judicial award, and that the Chief Court in citing the passage affirmed no more than that the effect of the Government orders was to make the Settlement Officer's proceedings final and conclusive as to the validity of the record in such cases only.

Rights and interests in the land evidenced by any other settlement record or registration, and it is to such rights and interests that the Bill is chiefly designed to give validity, were liable to be disallowed by the Settlement Officer on a revision of the original settlement, or by the action of the Civil Court at any time.

I know that it has been doubted whether, under the Regulation above mentioned, the Settlement Officer has the power of amending the record in regard to the rights and interests of the occupants of the land under settlement; but I can recognize no reasonable grounds for such doubt. The provisions which empower or rather require the Settlement Officer to record the fullest information in regard to such rights and interests, apply as expressly to the time of revision of settlement as to the time of making

the original settlement, and although there is nothing in the section conferring these powers on the Settlement Officer to show that the record of rights in the land prepared at the revision of settlement was to be substituted for and supersede the record of rights framed during the previous settlement, yet, from the words which occur in section 1 of that Regulation, 'until the same shall have been formally altered, or it shall be shown by the result of a full investigation in a regular suit, that the proceeding or record of the Collector was erroneous or incomplete,' it is to be inferred that such substitution, *i. e.*, a formal alteration of the record made otherwise than as the result of a regular suit, was contemplated by the enactment.

I know of no authority, moreover, for the assumption that the Legislature in framing the Regulations relating to the settlement of land-revenue, designed to accord to the settlement record any greater permanency in respect of the rights and interests of the occupant of the land to which it related, than it possessed in regard to the assessment of the Government revenue on such land.

It is necessary to consider here how far the existing law, as regards the status of the settlement record, will be affected by the provisions of the Bill to which my proposed amendments have reference. By the 2nd clause of section 2, all entries in respect of matters comprised in Chapters 3, 4, 5 and 6, *i. e.*, such matters as enhancement, ejectment, sub-leases, alienation, and compensation of the Bill are, when attested by the proper officer, deemed to be agreements, and, as such, to bar the operation of the Bill in regard to such matters. We have no evidence to show to what extent entries relating to these subjects were made in the records of former settlements; but from the unanimously expressed opinion of the several officers of the Panjáb who, under the designation of the Murree Committee, have reported on this Bill, that the clause, if retained, 'would, to a large extent, neutralize the operation of the Act,' it is to be apprehended that such entries in the settlement record were frequent, and that the interests of a large number of persons will be prejudicially affected by them.

It seems to me that it is altogether unreasonable to assume the intelligent assent of both the parties affected thereby to the subject of any entry in the settlement record comprehended by this clause; yet it is upon such an assumption only that the retention of the clause can be held to be justifiable.

The fact of a right of occupancy being vested in any tenant having been recorded in any former settlement sanctioned by Government, is, under section 6 of the Bill, to be held to validate such right unless the landlord proves in a

regular suit, (1), that other tenants of the same class have, within 30 years previous to the institution of such suit, been *ordinarily* evicted from their holdings; or (2), that the tenant in whose favour the right of occupancy was recorded, has voluntarily admitted in the presence of a Settlement Officer that he is not entitled to the right so recorded.

The result of this provision, as I understand its effect in regard to the landlord's second ground of resistance to the presumption raised by the record in his tenant's favour, will be that, whilst every admission of the incorrectness of his previously recorded status made by the tenant during the revision of settlements made prior to this Bill becoming law, will possibly be upheld by it, and the reliability and credibility of such admissions or proofs of the incorrectness of the former settlement records thereby acknowledged, the rectification of errors in other such records in future revisions of settlements will be absolutely barred; for the Settlement Officer must, in future, presume the correctness of the record and the validity of the recorded right of occupancy until the contrary be proved.

From admissions of his not being entitled to a right of occupancy made by the tenant in former revisions of settlements, the landlord can only derive benefit after a successful regular suit; and the insertion of the word 'voluntarily' in the clause which provides this ground, is calculated to suggest a vexatious defence by the tenant and to impose an unreasonable burden of proof on the landlord.

Except, therefore, in the cases in which admissions of the incorrectness of the former record have been made during the revision of settlements in the Amritsar Division, and which the landlord may succeed in substantiating in a regular suit, he is reduced to the single ground of resisting the status accorded to the tenant by the record by proof in a regular suit that other tenants of the same class have been ordinarily evicted within thirty years previous to the institution of such suit.

This last ground of resistance left to the landlord is in no small degree vitiated by the use of the term 'ordinarily,' which is so indefinite as necessarily to raise a question most difficult to determine, and which is certain to be variously interpreted, viz., what number of evictions must be proved to establish a fair rebuttal of the presumption in the tenant's favour?

Moreover the period within which such evictions must have been effected, fixed by the Bill, is calculated to make the clause in all probability almost, if not wholly, inoperative; for, it is generally admitted that since the establishment

of British rule in the Panjáb, ejectments of tenants have not occurred, and that for several years previous to the annexation, the state of the country was so disturbed, and the difficulty of procuring cultivators was so great, that their ejectment in any circumstances at that time was hardly to be expected.

Practically, therefore, the Bill sets up an almost absolute right of occupancy in favour of the tenant to whom such right has been assigned in the record of former settlements, save in the cases in which, at the time of the revision of those settlements, the right has been disowned by the tenant.

Is such legislation justified by the circumstances of the case as regards these records of former settlements so far as they are known? For, what are the circumstances of the case? Why, in the course of the revision of those settlements which has been going on for the last five years, in the Amritsar Division alone, out of about 60,000 cultivators who were recorded at the former settlement as having a right of occupancy, no less than 19,000 (or nearly one-third of the whole number so recorded), admitted that they were mere tenants-at-will. I put out of account altogether the large additional number of disputed cases in which the revising Settlement Officers held that the status of a right of occupancy had been wrongly conferred in the former settlement, and I submit that the undisputed results of the revision of the former record of tenant rights, so far as it has gone, prove clearly, if other evidence was wanting, that numerous mistakes were made in the preparation of the former settlement records.

The law under which those records were prepared required that they should contain a faithful representation of the rights and interests in land, as they existed at the time of settlement, it is abundantly evident, however, from the reports of the Settlement Officers written at the time of the former settlements, that the rights of occupancy then recorded were created by the settlement, for the most part, on the purely arbitrary test of an actual occupancy for twelve years or upwards, and that previous to that settlement, such rights had no recognized existence.

In proof of this, I will read to the Council extracts from those reports, and first I will quote the statement of the Hon'ble mover of this Bill, who conducted the first settlement of the Jalandhar district. In paragraph 207 of his report of that settlement, Mr. Temple stated that '*the rights of occupancy apart from proprietary rights were unknown.* * * * The Government may have partially recognized it, but the people did not; however long a patch of land may have been occupied, *the proprietor would at his pleasure resume it without ceremony, and the cultivator would resign it without demur.*' Again, in para-

graph 298,—'it was not attempted to fix any terms of occupancy which should *per se* entitle a cultivator to rank as hereditary, but it will be found that cultivators who have been in possession of the same field for 13 years and upwards, *have at the present settlement generally been vested with hereditary rights*;' and in paragraph 302,—"*the distinction between hereditary and non-hereditary cultivator is not indigenous to this part of the country. It has been introduced by the settlement.*"

Mr. Davies, in his settlement report on the Gurdaspúr district, paragraph 25, stated that,—'a right of heritable occupancy has been conceded to a large proportion of the cultivators of the tahsíl: the title is commonly founded on a prescription from 12 to 20 years.'

In Mr. Cust's report of the settlement of Shakargarh, a pargana of the Gurdaspúr district, it is stated (paragraph 36),—'the status of the hereditary cultivators, or tenants with right of occupancy, *was created in this pargana as elsewhere by the Settlement Officer*; it was defined to be cultivation of one plot for 12 years uninterruptedly accompanied by residence within the village, or uninterrupted cultivation of 20 years without residence.' In his report on the settlement of the Lahore district, Mr. R. Egerton, the present Financial Commissioner of the Panjáb, wrote (paragraph 15),—'the rights of the hereditary cultivators *have been entirely created under our rule.* Under the Sikhs, the proprietor had *always the right of ousting a tenant whenever he chose.*'

It appears to me, Sir, that stronger evidence than is afforded by the foregoing extracts from the reports on the former settlements of land revenue in the Panjáb, could hardly be adduced to show that the records of those settlements so far from representing the rights and interests in land, as then existing under the prescription of local usage, were, as regards those rights and interests, framed on an arbitrary principle initiated by the Settlement Officer at the time of settlement, and that the rights of occupancy then recorded were distinctly opposed to the previously existing custom which governed the relations subsisting between landlord and tenant on the question of the permanency of the tenure under which the latter occupied his land.

Officers employed in conducting the first settlements of the Panjáb, recorded the fact, as the result of their enquiries, that under the Sikh rule evictions of tenants by the landlords were commonly allowed and made, and this statement was recorded, it should be remembered, at a time when the question now at issue excited no interest whatever, and men's minds consequently were necessarily free from any possible bias in the matter.

The principle on which rights of occupancy were allowed for the record of former settlement, which rights, as I have already shown, are almost absolutely validated by the provisions of this Bill, *i. e.*, the fact of a continuous occupancy for twelve years or any other arbitrarily fixed period is wholly consistent with section 9 of the Bill; and this inconsistency deprives the proposed legislation of any support from what might otherwise have been cited as the analogous conditions on which rights of occupancy were conferred on the tenant by Act X of 1859.

Lastly, I have to draw the attention of the Council to the manifestly partial spirit of the provisions of this Bill towards the interests of the tenant as evidenced by section 8. After exhausting in the previous category of tenants having a right of occupancy, every known ground on which a shred of a claim on the part of a tenant to maintain a right of occupancy against landlord could be supposed to exist, the Bill goes on to provide in this section that if the tenant can set up any other ground of claim, he shall not be precluded from doing so. The benefit of a recognized local custom ignored when the landlord's interests were at stake, is thus conceded to the tenant.

No doubt it will be said that this provision was introduced at the suggestion of the Committee of Officers of the Panjáb, assembled at Murree for the purpose of considering and reporting on this Bill; the fact is, however, that the Murree Committee proposed this section merely as a rider to a section which they desired to substitute for the existing section 6, and which, if adopted, would have secured in the manner contemplated by my amendment the recognition of local custom as a ground of rebutting the presumption raised in the tenant's favor by the settlement record. That Committee in their proposals were manifestly actuated by a sincere desire to do justice to both parties. The majority of the Committee readily accepted so much of the proposition as would subserve the interests of the tenant, but rejected its counterpoise in favor of the landlord.

I cannot conclude these remarks without expressing the regret and surprise with which I heard the proceedings of the revising Settlement Officers characterized by an Hon'ble member opposite (Mr. Strachey) as 'monstrously illegal.' I have already stated my own conclusions as to the authority of the existing law for the alteration of the record of tenant-rights by the Settlement Officer when engaged in revising the settlement. I will now read to the Council an extract from the Minute of the Chief Court of the Panjáb, which has already been cited by Mr. Maine as authoritative in laying down the state of the existing law which regulates the proceedings of the Settlement Courts of that Province.

In paragraph 18 of its Minute, the Court remarks as follows :—

'Now it cannot be doubted that Mr. Prinsep had full warrant of law for correcting errors and omissions in the records of the previous settlements, but the question has arisen as to the legal force and effect of his proceedings when taken and recorded.'

That is the opinion, Sir, of the highest Court of the Province in which the Settlement Commissioner was employed as to the perfect legality of his taking cognizance of the errors of the record framed at the former settlement. I submit, therefore, that the imputation which has been made in this Council on the character of the Settlement Officers' proceedings was not warranted by the facts of the case; I agree with His Excellency the Commander-in-Chief in the remarks which fell from him on this subject. I hold that in any case such remarks in this Council are ill-advised as calculated to harass zealous and conscientious public servants in the faithful discharge of their duties. Moreover in the present case, it cannot be unknown to Hon'ble members, who have perused the printed papers on the subject of this Bill, that the Settlement Commissioner at the very outset of his proceedings, earnestly solicited an expression of the views of Government in regard to the question of amendment of the settlement record, and that he thereafter continually pressed the subject upon the attention of Government. The Lieutenant Governor of the Panjáb in his Minute has expressly and emphatically accepted the responsibility of the Settlement Commissioner's proceedings, even if those proceedings had been unauthorized by the existing law, any personal censure on that officer could not have been justified.

It has been charged against the Settlement Officers that they have fomented public agitation on the subject of rights of occupancy, which subject had no real or deeply-felt interest to the people when left to themselves. That this imputation is ill-founded I hold to be conclusively proved by the following extract from the Lieutenant Governor's Minute, dated 10th February 1868 :—

'Para. 15. * * * * For *many years past*, the conviction which has urged Mr. Prinsep so persistently and warmly to urge the necessity for a change—the conviction, viz., that the existing state of things was rapidly undermining all good feeling between the most important classes of the agricultural population—has strongly impressed itself on those of our officers who are most careful to enquire into the feelings of those about them * * *.'

The Hon'ble MR. MAINE said that it was not he who had spoken of the "monstrous illegality" of the proceedings of the Settlement Officers. He did not deny that those proceedings had some colour of legality. His objection was that the Settlement Officers had not observed the procedure prescribed by law, and had revised the settlement record not upon complaint, but officiously and of their own motion. As to the observations of his Hon'ble friend (Mr. Cockerell)

on the effect of investing the first Settlement Officers with judicial powers, Mr. Cockerell had apparently taken for a legal argument what was intended to be an argument of another kind. Mr. MAINE never intended to say that a mere entry on the first settlement record constituted the matter described *res judicata*. It was plain upon the orders of Government that no such effect was intended. But Mr. MAINE had dwelt on the moral guarantee implied in bringing courts of justice to the doors of the people at the moment when rights were under investigation, and opening those courts for the establishment or rebuttal of occupancy-rights in disputed cases. He had meant to say that every decision of those courts must have disposed of hundreds of cases on all fours with the point decided. It was not necessary for him to discuss his Hon'ble friend's amendment at any length, since he had unwittingly anticipated what appeared to him the proper reply. On the operative part of the amendment, he had, however, to say, first, that he did not completely understand what was meant by making "mistake of fact" a ground of rebuttal. He could only say generally that he objected to opening mistakes of fact after such a lapse of time. The next words introduced by his Hon'ble friend were apparently intended to obviate the difficulty felt by Mr. Cockerell as to the effect of the word "voluntarily" in section 6 of the Bill in casting the burden of proof on the landlord. Mr. MAINE held on the principle that no one can be forced to prove that which is wholly beyond the range of his knowledge, it would be for the tenant to show that the admission which he was proved to have made was not voluntarily given. To the last word proposed by his Hon'ble friend Mr. MAINE would not have objected but for the ideas which appeared to be entertained by the Punjab Settlement Officers as to the nature of a custom. *Primâ facie* it was quite right and proper that the presumption created by the entry on the record should be rebutable by establishing a custom of eviction. But when Mr. MAINE found those officers coupling the assertion of the existence of a custom with the admission that there was no known instance of the exercise of the customary right, he could not help thinking that the introduction of the term would be dangerous. It was safer to require the landlord, as the Bill required him, to prove the practice which every court of justice would compel him to prove as the foundation of a custom in the legal sense.

His Excellency the COMMANDER-IN-CHIEF said:—"With reference to Mr. Cockerell's final remarks, I should like to put a question to my Hon'ble friend Sir Richard Temple. During the debate on these amendments, I have been advised that there was a condition in the former settlement to the effect that tenants thereby declared to have a right of occupancy were only to have that right subject to alteration or revision if, on further examination, any such change

appeared to be required. If this were so, a great deal turned upon an important point. It was said that the decisions of the officers on the original Panjáb settlement assume the weight of judicial decisions. But if my information be correct, the greatest doubt must be thrown on the inferences drawn by my Hon'ble friends, Mr. Maine and Mr. Strachey. When the conditions of section 7 of the Regulation of 1822 are considered, it appears that they hang strangely together with the information I have received, and almost prove the latter to be free from error. What I want to know is whether those tenants were warned of the possible alterability of their tenures, and if so, whether this were done in the pursuance of any rules for the guidance of the Settlement Officers? Had I had more time, it would have been possible for me to have ascertained by reference to the rules under which the Settlement Officers had acted. But it would be recollected that the revised Bill and Report had only been for four days in the hands of Hon'ble members. If the information is declared to be incorrect in which my question is based, I should like to be favoured with documentary authority."

The Hon'ble Sir R. TEMPLE:—"I have no hesitation in denying positively that there was any such condition in the former settlement. There was such a practice in the Central Provinces, but it never existed in the Panjáb."

His Excellency the COMMANDER-IN-CHIEF asked Sir Richard Temple to produce any books in support of his denial, observing that a great deal of doubt had been thrown to-day on the value of oral evidence.

The Hon'ble Mr. MAINE observed that anonymous information was also open to doubt. On ordinary principles some *primâ facie* case should be made out before Sir R. Temple was called upon to prove a negative.

After some further conversation, the PRESIDENT interposed and the debate proceeded.

The Hon'ble Sir R. TEMPLE, in opposing Mr. Cockerell's amendment, said that any such modification of the terms of the Bill would open a door to the revision and reconsideration of the status of the mass of occupancy-tenants in the Panjáb; it would admit of the proprietor contesting the title of every such tenant, and would tend to throw the burden of proof on the tenant. All this, for the reasons repeatedly given, would be most objectionable.

Most of the points in Mr. Cockerell's argument had already been answered, and further reply in detail would not be needed. The main point was Mr. Cockerell's allegation that, as regards occupancy status, the settlement

record had been made in mistake of fact and in opposition to custom. Now, the main fact on which the record had, in this respect, been founded, namely, twelve years' possession, was not mistaken at all, but was undeniably correct. And as to custom, no such thing in the sense intended, namely, a specific and demonstrable custom, existed in the Panjáb with respect to occupancy-right.

Then Mr. Cockerell had implied that the settlement record, excepting only the separate judicial awards, was simply a registration. But in fact it was much more than a registration; it conveyed titles to tenures and titles to land and to the interests bound up therewith. If any doubt had been cast on its validity regarding tenant-right, that doubt would be removed by the Bill.

It seemed to be supposed by Mr. Cockerell that the Regulations of 1822 and of 1833 were the only rules under which the Panjáb settlements had been made. But, in fact, there were other rules; notably the directions to Settlement Officers and the circulars of the Board of Administration, to which indeed observance was mainly paid by the Settlement Officers.

A quotation had been made by Mr. Cockerell to show that tenant-right had been "created" at the settlement. The force of this entirely depended on the meaning of "created." If it meant something not before existing, then occupancy-right had not been created, for occupancy had largely existed before. If it meant something precariously existing but now confirmed, then, in that special sense, occupancy-right might be said to have been created. But in that sense, proprietary right had also been created. In short, occupancy-right had been no more created than proprietary right.

Again, Mr. Cockerell had quoted his (Sir R. TEMPLE's) settlement report of 1850-51 to show the *non*-existence of occupancy-right. Hereon it would suffice to refer the Council to his (Sir R. TEMPLE's) speech of the 11th April, in which the very passages quoted by Mr. Cockerell had been quoted by Sir R. TEMPLE himself. But at the same time other passages were quoted by Sir R. TEMPLE, which showed that, though in some respects tenant-right was not acknowledged, yet that in reality it existed. It would not do to quote these passages singly; they must be taken together, so that their collective sense might be gathered. But was there anything inconsistent between this Bill and the settlement made by Sir R. TEMPLE in 1850-51? Quite the contrary; there was perfect consistency. For in truth this Bill confirmed by legislation exactly what was done at that settlement.

As to the Lieutenant Governor's opinion quoted by Mr. Cockerell, to the effect that the recognition of proprietary right engendered ill-feeling among the

proprietors, this must allude to the circumstance already explained, namely, that once they were willing from natural self-interest to acknowledge tenant-right, but that now, from a change, fancied or actual, in their interest, they were sometimes disposed to repent of that acknowledgment.

The Hon'ble Mr. COCKERELL.—"I wish to offer some explanation in reference to a remark which fell from an Hon'ble member opposite (Mr. Maine) as to the intention of the words 'through a mistake of fact' which occur in my second amendment. It has been already stated that rights of occupancy were created at the first settlements, and for the most part on the strength of an actual twelve years' occupancy. It might easily have happened in the preparation of the record that the fact of such twelve years' occupancy was erroneously assumed,' and the words referred to have been inserted in the amendment to give the landlord the power, which is not allowed to him by the Bill, of obtaining the rectification of such errors. There was a clause in the Bill as originally drawn providing a means of setting aside any entry in the settlement record, which could be shown to be at variance with the rules *laid down by the Settlement Officer, and recorded at the time of settlement;* this clause was expunged from the Bill at the suggestion of the Murree Committee in the propriety of which I fully concurred; for, whilst it had the specious appearance of serving the landlord's interest, by its admitting of the correction of such mistakes in the proceedings of the Settlement Officer as that to which I have referred, inasmuch as it is nearly certain that, as a matter of fact, *no rules* in regard to the record of tenant-rights were laid down by the Settlement Officer at the time of settlement, the clause would not have operated to secure the rectification of such errors as are contemplated by the terms of my amendment."

The Motion was then put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Cockerell.	Hon'ble Mr. Taylor.
The Hon'ble Sir G. Couper.	Hon'ble Mr. Maine.
	Hon'ble Mr. Strachey.
	Hon'ble Sir R. Temple.
	Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Mr. COCKERELL then moved that, for the third ground of enhancement in section 11, the following be substituted:—

"That in the case of a tenant belonging to any of the classes specified in clause 2, 3, or 4, of section 5 or section 6, the rate of rent paid by him is, if he belong to any of the classes

specified in clause 2, 3, or 4 of section 5, more than 30 per centum, and if he belong to the class specified in section 6, below the rate of rent usually paid in the neighbourhood by tenants of the same class not having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff, not exceeding such rate or not exceeding such rate less 30 per centum, as the case may be."

He said that the amendment had two objects,—

1*st.*—To remove from the third ground of enhancement in section 11 of the Bill, the tenants whose status was described in clause 1, section 5;

2*nd.*—To admit of the enhancement of the rent of tenants having a right of occupancy under section 6, to the full amount paid by tenants of the same class having no such right of occupancy.

It would be observed that the tenants described in clause 1, section 5, already paid the full amount of Government revenue assessed upon the land in their occupancy, plus the village cesses, whatever they might be; and it was stated on the authority of the officers of the Panjáb who constituted the Murree Committee, that tenants without rights of occupancy did not pay rent in excess of double the rate of the Government revenue. Hence the amount already paid by the class of tenants above-mentioned was already in excess (to the extent of the amount of the village cesses) of the higher amount to which they could be subjected under the operation of the Bill. Such being the case, the provision in the Bill in regard to this class of tenants was mere surplusage, and might well be omitted.

In regard to the tenants obtaining a right of occupancy under section 6, he Mr. COCKERELL submitted that there was no ground whatever for the share of the fair rent of the land in their occupancy which it was proposed to assign to them. To give to this inferior class of tenants a quasi-proprietary interest in the land occupied by them was to go far beyond the privilege conferred by Act X of 1859, on tenants whose status was created simply bya continuous occupancy of 12 years. The validation of the right to retain the occupancy of land without the consent of the owner had been defended by the assertion of the expediency of upholding the former settlement record; but that record guaranteed no beneficiary status in the matter of rent, and the provision in this Bill, which accorded such interest, was, in his (Mr. COCKERELL's) opinion, wholly indefensible.

The Hon'ble Mr. STRACHEY:—"The first portion of the Hon'ble Mr. Cockerell's proposed amendment would affect the class of tenants described in the first clause

of the 5th section of the Bill,—tenants who have hitherto never paid any rent, or rendered any service to the nominal proprietor, and who have paid nothing, except the land-revenue to the Government and the village cesses. I think, Sir, that in regard to this class of tenants, my Hon'ble friend, Mr. Cockerell, is, up to a certain point, right in saying that section 11 of the Bill will be inoperative, and that there will be no means of enhancing their rent. But this will only be true in cases in which the Government revenue amounts to half the rent. My Hon'ble friend may be correct in the assumption that, as a general rule, the Government demand will not be less than this amount, but we have no right to take it for granted that this will be always true. It is not only possible, but it is extremely probable, that the Government revenue may sometimes be less than this proportion, and in such cases the rent of the tenant can be enhanced. I confess, however, that personally I should have been very glad if this class of tenants had been treated differently, and I should have desired, on other grounds than those stated by Mr. Cockerell, to protect them against any enhancement of rent. It must be remembered that these people have hitherto paid no rent at all, and have rendered no services to the landlord. I have always thought it to be a serious blot on this Bill that they should be treated as tenants-at-all. They have been, to all intents and purposes, proprietors, and I can see no reason why they should not have been considered under-proprietors, as they would have been in Oudh, with complete rights of property in their holdings.

With regard to the other classes of tenants with rights of occupancy, the limitations put on their rents by the Bill are admitted to be arbitrary. No reason can, I believe, be given for preferring the particular figures stated in the Bill to others that might be proposed, but there has been a very general concurrence of opinion that it is desirable to limit the rent payable by these classes of tenants to an amount considerably less than the rack-rent payable by tenants-at-will, and I think that the allowances made by the Bill in favour of these classes cannot be considered too liberal. My Hon'ble friend, Mr. Cockerell, has, I think, omitted to remember that but for this Bill, there could have been ordinarily no enhancement of the rents payable by these classes of tenants during the whole term of settlement. Even with the advantages secured to them by the Bill, they will be decidedly worse off than they were before. Mr. Cockerell has observed that in the provinces in which Act X of 1859 is in force, a tenant with a right of occupancy may pay as high a rent as that which is paid by a tenant-at-will, and that in that Act there are no such limitations as those laid down in the present Bill. My Hon'ble friend possesses, I have no doubt, a more intimate acquaintance with the working of Act X of 1859

than any to which I can pretend, and he will, I hope, correct me if I am wrong. But it seems to me that he has forgotten one very important difference between the law that is in force in Bengal and in the Panjáb. In the former province, the courts will not give decrees for rents which are not in themselves 'fair and equitable.' The decisions of the High Court of Calcutta, in regard to such questions, are very favourable to tenants, and I doubt whether the provisions of this Bill, in regard to enhancement of the rent of tenants with rights of occupancy, will give advantages to that class equal to those given by the provisions of Act X of 1859, to which Mr. Cockerell has referred."

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Mr. Cockerell.	His Excellency the President.
The Hon'ble Sir G. Couper.	His Excellency the Commander-in-Chief.
	The Hon'ble Mr. Taylor.
	The Hon'ble Mr. Maine.
	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Mr. STRACHEY then moved "that in section 19, the figure "(1)" and the word 'or' be omitted in lines 5 and 6, and that the clause numbered (2) be also omitted." He said—"I have failed to discover justification for this proposition, which authorizes landlords to appropriate to themselves the property of their tenants. Why these unfortunate tenants are to be selected for possible ruin, as if they were public enemies, is more than I can understand. We are deliberately declaring by this Bill that these tenants possess a heritable, and, with certain conditions, a transferable right of property in the land which they occupy. Their interest in the land may sometimes, as was shown just now in the debate on the Hon'ble Mr. Cockerell's proposed amendment to section 11, be quite as valuable as that of the landlord himself. They may have paid no rent in the past, and may be liable to no payment in the future. They will sometimes be in fact proprietors of the land in everything but name, and I can conceive no reason why these rights of property should be liable to be swept away at the will of a perhaps merely nominal landlord. I think that we may advantageously in this matter follow the example which England and other countries have given to us. My Hon'ble friend, Mr. Maine, has referred to the enfranchisement of copy-holds in England, and that subject has been more than once noticed in the papers that have been laid before the Council.

It seems to have been thought by some that this Bill recognized a principle similar to that which has been acted upon in regard to copyhold tenures in England.

There could hardly be a more complete mistake. The Lieutenant Governor of the Panjáb has more than once said, and the Financial Commissioner has stated the same in a passage which I have to-day read to the Council, that the position of the English copyholder to some extent resembled that of our tenants with rights of occupancy. Measures have been taken to relieve the copyholder from the obligations under which he stood to the lord of the manor, but the clause in this Bill to which I am now objecting proposes the exact converse of the measures that have been adopted in England. It proposes, as a learned friend of mine very justly observed, not to enfranchise the copyholder but to enfranchise the lord.

It would, I think, have been altogether proper if the Bill had given power to the hereditary occupier of the land to buy out the rights of the landlord.

A remark to this effect was made by my Hon'ble friend, Mr. Taylor. His Excellency Sir William Mansfield has spoken as if Mr. Taylor had made a somewhat extravagant proposition, but it seems to me that Mr. Taylor really did no more than give his approval to a principle which has been fully accepted and acted upon in England and in other countries of Europe.

My Hon'ble friend, Sir Richard Temple, in his speech on the motion to take this Bill into consideration, spoke as if His Honor the Lieutenant Governor had approved the clause to which I am now objecting. But if I understand His Honor's views correctly, I doubt very much whether he would think it right that this clause should become law, unless further provisions were added for the protection of the tenant. For I find that in remarking on a section in Mr. Brandreth's original Bill, similar in effect to this clause, the Lieutenant Governor stated his opinion that a section ought to be added, giving power to the tenant to buy out the rights of the landlord, if an enhanced rent were demanded from him. If this proposition had been adopted, the effect would have been highly beneficial to the tenants, and it would have added materially to the value of their interests in the land.

I desire also to call the attention of the Council to the remarks on this subject made by the Lieutenant Governor in his Minute of the 13th September 1866. He there said, speaking of certain classes of tenants with rights of occupancy:—'This class of persons, it seems to me, should be regarded very much in the same light as 'copyholders' in England. Those only can claim

this last-named designation whose names have appeared on the court roll 'time out of mind,' and, although this period of incumbency can be claimed by but few in this province, the class to which I refer appears to me to occupy here a very analogous position to the copyholder of England. * * Five statutes at least have been enacted during the present reign to enable copyholders to enfranchise their tenures, or convert them into free-holds, and it would, I think, be exceedingly desirable to hold out similar facilities to this highest class of tenants or sub-proprietors in this country to purchase for themselves the status of proprietors in full.'

This is exactly what I maintain would have been the proper course to follow. Sir Richard Temple spoke as if he believed that if this clause became law, it would remain almost a dead letter. This may be true, but it would not therefore cease to be mischievous. We should have upon the statute book a recognition by the Legislature of a false principle, and one that has been recognized hitherto by no law in any country of which I have ever heard.

I think it very objectionable that the law should seem to encourage the belief that it is desirable to get rid of tenants having permanent interests in the land, and to substitute for them tenants-at-will, liable to ejectment as the landlord may arbitrarily please, and whose rents are limited neither by law nor custom, but depend only on competition. I protest against any legislation which tends to abolish a tenure which is economically good, and to substitute for it a tenure which is economically bad.

When the sacrifice of private interests is necessary for the public benefit, the sacrifice must of course be made. In the present instance, it is proposed to authorize by law an infringement of private rights, not only with no pretence that this is necessary for the public good, but, as it seems to me, in violation of the obvious requirements of public policy."

The Hon'ble Mr. TAYLOR,—"In seconding the motion of Mr. Strachey, I have nothing to add to what I have already said on the subject of the clause to which it relates, except to express my entire concurrence in the objections which my Hon'ble friend has advanced against the novel, and, as it seems to me, unjust principle it seeks to introduce.

I must, however, take the opportunity of saying that Mr. Strachey has exactly stated the position which I advocated in regard to the rights belonging to the proprietor and the hereditary cultivator respectively in relation to the

land. He has very correctly explained the real scope and effect of my proposal to enfranchise the restricted tenure of the ryot, a proposal upon which His Excellency the Commander-in-Chief has put an interpretation which my words were certainly not intended to convey. Nothing can be further from my wish than to weaken or destroy proprietary right, or, as Sir W. Mansfield expressed it, 'to improve the landlord off the face of the land.' On the contrary, my desire is, and always has been, to 'comfort' tenures, and to strengthen rights in land wherever they are found to exist.

I repeat that I regard the tenant-right of the registered cultivator, the occupancy-ryot, or other hereditary holder of land throughout India, as that of co-proprietorship: he shares the proprietary right with the Government in those parts of the country where the direct ryotwary system is in vogue, and he shares it elsewhere with the proprietor, whoever he may be, who is recognized by Government, and to whom he pays the rent. I understand Sir William Mansfield to maintain that this co-proprietary tenure should be destroyed by degrading the hereditary occupier into a tenant-at-will; whereas I contend that it is for the advantage of all parties, and of the country generally, that the restricted tenure of the industrious farmer of the land should be enfranchised in the manner I have described, by the payment of a fine, or compensation to his co-proprietor.

Nor am I unmindful of the superior tenures such as mírásí and others, which exist in some parts of India, to which His Excellency has alluded. In the Minute from which I have already quoted, and which is now before me, I find that I stated several years ago when discussing the various interests connected with the land in India as follows:—'Speaking, generally, the interests of the cultivating or village communities of India are of two kinds,—the first is a transferable interest, constituting a perfect right of property, and is derived from a grant of the sovereign power, whether of a special individual character or consisting of a more general concession in favor of the whole body of cultivators. Of this description are the mírásí tenures in parts of Southern and Western India, where the village communities have claimed from time immemorial the possession of a transferable right of property in the soil.' This description of tenure, though it has very generally disappeared, is still in existence in one small district of the Madras Presidency, and I believe, also in parts of Bombay; and wherever it exists, the rights of the mírásídárs in the waste, as well as in the cultivated, lands are strictly respected by the Government, and they dispose of both by transfer or sale at will. In most other parts of the Empire, this transferable interest is not enjoyed by the

registered cultivators, and the proposal which I have ventured to advocate is that they should be allowed to purchase this right as regards the cultivated lands in their possession."

The Hon'ble Sir R. TEMPLE confessed himself unable to answer Mr. Strachey's arguments about the injustice of compelling tenants of the superior classes or of very old standing to be bought out. But as regards the rest of the occupancy-tenants, the arrangement would be fair enough. He would oppose Mr. Strachey's general amendment, on the understanding that, if it were lost, he (Sir R. TEMPLE) would propose a subordinate amendment, to the effect that tenants of the superior classes and of very old standing should be exempted from the liability to be compulsorily bought out.

His Excellency the COMMANDER-IN-CHIEF:—"When I read this section, I imagined that there had been for the moment a feeling of compunction towards the landlord. It seemed to me that in framing it, a sentiment of compassion had actuated the Committee—a sentiment developing itself in an equitable provision, for it can hardly be denied that this Bill is an occupants' Bill with the single exception of this section, which my Hon'ble friend, Mr. Strachey, would now wish to sweep away. I may cite in support of my opposition to this amendment the opinion of the experienced gentleman who lately officiated as Secretary in the Foreign Department, and is known to be a very staunch advocate of the principles favoured by the Bill.

He says,—

'Although I am in favour of the principle of empowering landlords to buy out hereditary tenants, and the hereditary tenants to buy up the landlord's right under certain fixed conditions, &c., &c.'

The Hon'ble Mr. STRACHEY:—"His Excellency the Commander-in-Chief has quoted the opinion of Mr. Aitchison in favour of this clause of the Bill; but I wish to point out that this opinion was qualified to so great an extent by Mr. Aitchison himself that I am, I think, fairly entitled to claim his authority in support of the views which I have advocated. 'Although,' he said, 'I am in favour of the principle of empowering landlords to buy out hereditary tenants, and hereditary tenants to buy up the landlord's right, under certain fixed conditions, I strongly dissent from the decision of the majority of the Committee embodied in section 22 of the amended Draft Bill. The section as it stands, without a corresponding provision in favour of hereditary tenants, is unjust. There are hundreds of men who under this Bill will be tenants with rights of occupancy, whose position differs little in reality

from that of landowners. They have cultivated the land from time out of mind; they have paid no rent other than the Government revenue; they have paid revenue by *bách* like proprietors; they are occasionally even recorded as entitled to a share of *shámilát* lands in the event of partition. These men, merely from the fact of their having been regarded as *tenants*, whatever that may have meant at the time, will come under all the liabilities of tenants with rights of occupancy under this Bill. Over such men the landlord's right is merely potential, and it is unjust to give a preference to such potential rights over rights of a very valuable kind which have been long actually enjoyed. In such cases if the power to buy up rights is given at all, the tenant with hereditary right should have the power of ridding himself of the landowner's hold on him.'

I think, Sir, that this quotation shows clearly that if Mr. Aitchison's authority be quoted, it must be quoted in support of the views which I have maintained, and not in opposition to them."

His Excellency Sir William Mansfield has spoken as if this Bill were in the nature of a compromise, and as if having given a great deal to the tenants, we ought now to maintain this clause, which has at least the appearance of giving an advantage to the landlords. I cannot admit that such reasons as this ought to influence the Council in its decision. The real question is what is just and proper. And I wish to remind the Council that it has never been pretended by any one that this clause is in accordance with any custom that prevailed in the Panjáb before the British conquest, or with any custom that has grown up since. It is admitted to be an absolute novelty, and it seems to me to be a novelty that is thoroughly unjust and altogether opposed to public policy.

The Hon'ble Mr. COCKERELL said that as a member of the Select Committee on this Bill, he was in a position to state that His Excellency the Commander-in-Chief's conclusion that the 2nd clause of section 19 was designed to be in the nature of a compromise, is perfectly correct. The necessity for some such provision as a counterpoise to the immense advantages which the Bill confers on the tenant, had been consistently maintained from the first; it was introduced into Mr. Brandreth's original Draft Bill on the ground that without it great hardship might be inflicted on the peasant proprietor who had relinquished the cultivation of his land to a tenant and had by so doing suffered adverse rights to spring up, which precluded him from re-entering on such land as an occupant, although the occupancy might be required for the support of his family. The clause stood in its present shape when the Bill after first amendment by

the Select Committee was referred to the Government of the Panjáb. To cancel the provision now would be highly impolitic and unjustifiable, as it constituted the sole compensation which the proposed legislation offiers to the landlord for the rights of which it deprived him.

The Hon'ble Mr. MAINE said that he did not intend to support the amendment, but he could not allow the Commander-in-Chief's observation that the Bill was entirely in the interest of the tenant, to pass without remark. Under clause two of section six, no less than 19,000 out of the 46,000 erasures from the settlement record, recently made by the Settlement Officers, would be sustainable; and that was independent of other grounds of rebuttal. The compromise, therefore, was on merely numerical principles, not unfair.

His Excellency the COMMANDER-IN-CHIEF said that he was aware of the second sentence in Mr. Aitchison's letter, which he had read more than once. But he had also read the mass of papers which had been laid before the Council, and had been given to them as evidence of the state of things prevailing in the Panjáb prior to the annexation of that Province, and he also bore in mind the denial of rights which had been expressed by those to whom he was unhappily opposed. Now it was clear that if the alleged anarchy had swept away rights in the Panjáb at the time alluded to, that there were no records to refer to, and that there was no vestige of trustworthy custom, it was obvious that the argument held against one side as well as the other, and therefore that Mr. Aitchison's pleading might be dismissed with the other arguments about rights which it was declared were of no avail. But in fact in considering these things, we might fall back on the feeling of equity in dealing with both classes, and this it was that made him use the expressions that the Committee had drafted the section in compunction and in a spirit of compromise towards the proprietors.

The Motion was then put and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency the Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Sir R. Temple.
The Hon'ble Colonel Norman.	The Hon'ble F. R. Cockerell.
	The Hon'ble Sir G. Couper.

So the Motion was lost.

The Hon'ble Sir GEORGE COUPER moved that in section 34, clauses 1 and 2 be omitted, and that in clause 3 for 'every other,' the word 'any' be substituted. In other words, he said that the right of alienation conferred by the section

on a tenant having a right of occupancy might be struck out. The late Mr. Thomason, who was the first authoritative expounder of the great doctrine of tenant-rights of occupancy, never went so far as to say that those rights were susceptible of alienation. The 'Directions to Settlement Officers' were not at hand to refer to; but he thought His Excellency the President would bear him out when he said that those rights were therein defined to be 'hereditable but not transferable'. And the Committee which were assembled under the express instructions of His Excellency in Council to enquire into and report on the provisions of this Bill, had recorded the following opinion with reference to this section:—"with regard to the right of alienation, the Committee concur in thinking that as the power of alienation so conferred is entirely contrary to existing custom and to the existing law and records of early settelements, it is undesirable to introduce it." And the Hon'ble the Lieutenant Governor of the Panjáb than whom, except His Excellency the President, there was no higher authority on these matters, had remarked that the "Committee had been composed of some of our ablest and most experienced men representing various shades and diversities of opinion. They had considered all matters discussed in the Bill most fully, laboriously and conscientiously, and had, His Honour firmly believed, arrived at conclusions in consonance with the feelings of the people and the interests of justice. His Honour sincerely trusted therefore that these conclusions might be accepted."

He thought then it would not be denied, and that he might safely affirm that, up to this time, the right of alienation on the part of the tenant having a right of occupancy had never existed. By this section it would be created. Now, why should it be created? His Excellency the Commander-in-Chief had, in effect, put the same question, and was informed in reply by the Hon'ble Member who had charge of the Bill that the privilege was extended to superior classes only, and was "most strictly limited." But that was no answer; and as a matter of fact, the privilege was extended to every single tenant who was deemed by the Bill to have a right of occupancy.

He was therefore of opinion that no ground had been shown for the creation of this right in a Bill which purported to be a compromise between the claims of the respective classes of landlord and tenant, especially as its creation would be contrary to the concurrent and earnest advice of all the local officers who were best qualified to form an opinion on the subject.

The Hon'ble Sir R. TEMPLE said that the power complained of was given only to a superior class of tenants, and would be exercised subject to the right of pre-emption conferred on the landlord by the second clause of section 34.

His Excellency the PRESIDENT said that, doubtless no power of alienation was given by the Settlement Directions; but in the cases contemplated by the first and second clauses of section 34, the tenants had nearly a full proprietary right, and might fairly be allowed the power of alienation, subject to the landlord's right of pre-emption.

The Motion was then put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Cockerell.	The Hon'ble Mr. Taylor.
The Hon'ble Sir George Couper.	The Hon'ble Mr. Maine.
	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Sir GEORGE COUPER then moved that in section 37, line 1, the words 'at will with his landlord's consent' be inserted after 'tenant,' and the words 'he or' be inserted after 'occupancy' in the second line. In dissenting from the provision that a tenant-at-will should be entitled to compensation for improvements effected without his landlord's consent, he was again merely representing the views of the Committee whose report he had before referred to, and those of the Hon'ble the Lieutenant Governor of the Panjáb, which he had already quoted. Moreover, the terms of the section appeared to him to involve a contradiction. For how could a man be held to be a tenant-at-will who, by the performance of an act without his landlord's consent, could compel the landlord, in his turn, to compensate him for that act before he could evict him or enhance his rent? He ceased to be a tenant-at-will. He became a tenant subject to certain conditions imposed upon his landlord by the Legislature, and he thought it inexpedient that the Legislature should interfere between man and man and impose such conditions. It might be said it would be hard that a hard-working, frugal tenant-at-will, who had expended money or labour on his holding, should be liable to eviction in order that his landlord or another might reap what he had sown. And if the section only prevented this, it might not be objectionable. But it went further, and enabled a thriftless, revengeful tenant-at-will, who had been properly evicted, to bring an action against his landlord for compensation for improvements which might never even have been made at all. It might be said that in such case, the tenant would lose and the landlord would win the suit. But under

no circumstances was a lawsuit a pleasant thing. And there was nothing which a Native of rank, or even of ordinary respectability, more heartily hated than the prospect of having to undergo the risk, the anxiety, and the expense consequent on having to defend a suit. The section, as he had already said, enabled a malignant tenant-at-will to drag his innocent landlord through some portion of this dirt, that is, to entail upon him some amount at least of unnecessary risk, annoyance, and expense. Therefore he would say 'let well alone, do not interfere by legislative enactment in matters which may safely, which had best, be left to be settled by the parties concerned among themselves.' And if a tenant-at-will chooses to expend money or labour on his holding without protecting himself by an agreement, or without taking even the simple and ordinary precaution of obtaining previously the consent of the man at whose will he holds, 'let him abide the consequences of his own folly.'

The Hon'ble Mr. STRACHEY:—"My Hon'ble friend, Sir George Couper, has objected to this section of the Bill entirely on general grounds. He has not asserted, nor, so far as I am informed, has it been asserted by any one that in the matter of tenants' improvements, there are special reasons why the principles laid down in the Bill should not be made applicable to the Panjáb.

Now, so far as the general principle at issue is concerned, it must be remembered that only three months ago the Oudh Rent Act was passed by this Council. The sections in the present Bill, which refer to tenants' improvements, are, with one slight alteration, in favor of the landlord taken *verbatim* from the Oudh Act. There is absolutely nothing in this part of the Bill which has not already received the sanction of the Legislature.

The Council is aware that every part of the Oudh Act was discussed by me and by the present Chief Commissioner and Financial Commissioner with the principal talukdárs. Although there was a great deal of controversy regarding many other parts of the Bill, I can say confidently that in regard to this question of the right of tenants to claim compensation for improvements made by them on the land, there was really no controversy at all. I well remember the most intelligent and the most influential of all the talukdárs of Oudh saying to me that he did not see how there could be any objections to such provisions as these, because it was impossible that the landlord should suffer injury from having his land improved by the tenant. I cannot understand how a reasonable landlord could come to any other conclusion.

Since my Hon'ble friend, Sir George Couper, has raised this question on general grounds, and not on grounds peculiar to India or the Panjáb, I think

that he might have noticed the fact of the almost constant discussions on the subject which have been going on for several years past in the British Parliament. The question of compensation for tenants' improvements has been debated and reported on and written about to such an extent that it is really impossible to say anything new regarding it. I think that no question could be named which has been more completely argued out than this, and that this is true can hardly be better shown than by the fact that both the great parties of the State have practically agreed in regard to the principles on which the question is to be disposed of. In principle, there is hardly any difference between the Bill brought into Parliament in the last Session by the present Conservative Government and that brought in two years ago by Mr. Chichester Fortescue on behalf of the Government of which Mr. Gladstone was the head. I have not got the Bill of the present Session to refer to, but I have no doubt that I am right in saying that it allowed improvements of the character described in section 38 of the Bill now before us to be made by the tenant without the previous consent of the landlord. This principle, indeed, has been so generally admitted, that no future event can well be more certain than this, that whatever party be in power, we shall see before long an Act of Parliament giving to tenants in Ireland authority to make certain classes of improvements on their holdings without asking the previous consent of the landlord.

My Hon'ble friend, Sir George Couper, has spoken as if it were proposed by this Bill to place restrictions on the freedom of contract between landlord and tenant. But, in reality no such restrictions will be imposed. The landlord and the tenant will be free to enter into any agreement that they please in regard to the making of improvements. All that the Bill says is, that if no agreement has been made, it will be assumed that improvements made at the expense of the tenant have been made with the tacit consent of the landlord. It is a matter of simple justice that, in the absence of any agreement to the contrary, a man shall reap the benefit of his own industry, and that the property which he has invested in the improvement of the land, without objection on the part of the landlord, shall not be liable to confiscation if the landlord chooses to commit so gross an act of injustice. My Hon'ble friend has spoken as if claims would be made to the serious injury of the landlord on account of purely imaginary improvements. My answer is that the Bill distinctly declares that no compensation shall be claimable except for *bonâ fide* improvements, by which the annual letting value of the land is increased; and a landlord can never be called upon to pay to a tenant a farthing more than the additional value which has been actually given to the land by the expenditure by the tenant of his own money and labour. In case of difference between the parties

as to the amount of compensation to which the tenant is fairly entitled, the Bill provides that application may be made to the Court on paper bearing a stamp of eight annas, requesting that the matter may be determined There will be no suit, and the procedure followed will be of the simplest kind possible.

I was not aware, until my Hon'ble friend's amendment was actually proposed, that it was his intention to raise this question. If I had known that this amendment was to come forward, I should have brought with me some papers which would have enabled me to lay before the Council some information of interest in regard to the manner in which even in England, where there is no written law on the subject, tenants practically obtain the benefit of improvements which they have made at their own cost. I happen, however, to have with me a book from which I should like to read a passage in illustration of what I have now said. It contains an account of a case which came before Justices Coleridge and Erle in the Court of Queen's Bench on the 26th November 1861 by way of appeal from a County Court in Derbyshire. The tenant was a yearly tenant on the terms that he should use and cultivate his farm in a good and tenantable manner according to the rules of good husbandry. The tenancy was determined by notice to quit given by the landlord, and the tenant then claimed to recover £50 for drainage works made without the knowledge or consent of the landlord. 'The custom was proved that every out-going tenant should be entitled to claim from the landlord compensation for works, though done without the landlord's knowledge or consent.' It was contended for the landlord that the alleged custom could not be supported as being unreasonable and bad. Mr. Justice Coleridge said—'It seems to me not an unreasonable custom that a tenant who is bound to use the farm in a good and tenantable manner, and according to the rules of good husbandry, should be at liberty to charge his landlord with a portion of the expense of draining the land that requires drainage according to good husbandry, though the drainage be done without the landlord's knowledge or consent.' Mr. Justice Erle said: 'if it be not unreasonable as a contract, I do not see that it is unreasonable as a custom.'

It seems to me, Sir, that these principles, which are those laid down in the present Bill, are principles of obvious justice and of universal application, and I hope that the Council will refuse to agree to the amendment that has been proposed."

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Sir George Couper.	All the other Hon'ble Members.

So the Motion was lost.

The Hon'ble Mr. STRACHEY moved that in section 36, lines 4, 5, 7, 8, the words "residing in the village in which such land is situate" and "residing in the same village" be omitted, and that in line 14 for "the same village," the words "the village in which such land is situate" be substituted. He said:—

"This section, as it now stands in the Bill, is based on a decision of the Chief Court of the Panjáb, dated the 5th December last, and it may be considered to represent the view which has been taken by the highest judicial tribunal of the province in regard to the existing law which regulates the succession of hereditary cultivators to rights of occupancy. In proposing my present amendment, I am, therefore in fact, proposing to make a change in the present law, which declares that a collateral heir in the male line can only claim the right of succession if, on the death of the tenant, he is residing in the same village.

Now I do not deny that such a rule as this may formerly have been reasonable enough. When these rights of occupancy were, strictly speaking, no rights at all, and when they often consisted in the mere right to cultivate, there was perhaps nothing very unreasonable in considering that no one ought to succeed to the occupation of the land who was not present in the village and ready to carry on the cultivation. His Excellency the Commander-in-Chief observed with much truth that we ought not to pay more attention to mere custom than the custom may deserve, and that we must base our legislation on more solid foundations. There can be no doubt that the courts of all civilized countries act in accordance with this principle, and refuse to recognize customs which have clearly ceased to be beneficial.

As the old legal maxim says, *malus usus est abolendus.* It seems to me that this maxim may be fairly applied in the present instance. For these rights of occupancy, which were formerly so vague and indefinite, have now become actual rights of property, and, as it has been shown to-day, they may sometimes be actually more valuable than the rights of the nominal proprietor of the land. The tenant may belong to the class which has never paid any rent, or rendered any services to the proprietor, but has paid the Government revenue and the village cesses. In all other parts of India with which I am acquainted, these would be considered the most obvious signs of proprietorship, and indeed it is difficult to see what better signs of proprietorship could be given.

I have been assuming that the rule of succession laid down in the Bill is in accordance with the custom prevailing in the Panjáb, but in reality I do not

understand the Chief Court to have asserted this, and in order that the Council may fully understand the grounds of the Court's decision, I will read a portion of the judgment to which I have referred:—'The law on the subject is contained in paragraph 128 of directions to Settlement Officers, North-Western Provinces, and Clause 13, Section XXI, Part I of the Panjáb Civil Code. The former says that 'sons or their immediate heirs residing with them in the village would succeed;' the latter that the 'next male heir or heirs will succeed to these privileges.' This language of the Code is wide enough to admit of the interpretation that the same rules apply to succession to the rights of hereditary cultivators and to succession to the rights of ownership of land, and the words 'immediate heirs' in the above quotation are rather vague; but the best authorities have held that the succession of collaterals in the male line is limited, and the only question is the extent of the limitation. There has been considerable difference of opinion upon this head, and the point is not without doubt; but the rule laid down in the above quotation from Cust's Revenue Manual, with the qualification that the collaterals must also reside in the same village as the land is situate, seems on the whole to be better supported.'

I think it will be clear from this quotation that I have really proposed no great innovation on existing customs, if indeed there be any innovation at all. I do not think that it can be maintained that when legislation on this subject has become necessary, we ought to declare that the right to succeed to a man's property shall depend on the accident, whether at the time of his death, the natural heir happens to be living in a certain place, and that if he is not living in that place, the property shall pass absolutely to a stranger. Such a law would, I think, be unreasonable and unjust, and I therefore ask your Excellency and the Council to agree to the amendment which I have proposed."

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the President.	The Hon'ble Mr. Maine.
His Excellency the Commander-in-Chief.	The Hon'ble F. R. Cockerell.
The Hon'ble Mr. Taylor.	The Hon'ble Sir George Couper.
The Hon'ble Mr. Strachey.	
The Hon'ble Sir R. Temple.	
The Hon'ble Colonel Norman.	

So the Motion was carried.

His Excellency the COMMANDER-IN-CHIEF said that he had taken note of Sir Richard Temple's statement with respect to the Panjáb Code having

generalised the principle of adoption even in matters to which it was not previously admitted by the custom of the people. There must have been some reason for the custom being against it in this instance. His Excellency submitted that there could be no doubt that there would be great inconvenience in permitting the practice of adoption to apply to cases of succession to rights of occupancy. The Hon'ble Mr. Strachey's amendment had removed one great evil with which the law as hitherto administered had allowed succession to remain encumbered. He, the COMMANDER-IN-CHIEF, in a spirit of fairness to the proprietors, would now go a step further and relieve the law of another *malus usus*. He would therefore, with His Excellency the President's permission, move that the following explanation be added to section 36 :—

"*Explanation.*—The words 'descendants' and 'relatives' in the former part of this section do not include adopted sons."

The Hon'ble Sir R. TEMPLE protested against limiting the right of adoption which every Hindú possessed. No distinction had ever been made, either by usage or by the courts, between the exercise of the power to adopt in cases of succession to an occupancy-right and the exercise of the same power in other cases.

The Hon'ble Mr. STRACHEY expressed his concurrence with the Hon'ble Sir R. Temple.

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Maine.	The Hon'ble Mr. Taylor.
The Hon'ble Mr. Cockerell.	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.
	The Hon'ble Sir George Couper.

So the Motion was lost.

The Hon'ble Sir R. TEMPLE then, with His Excellency the President's permission, moved that to section 19 the following clause be added :—

"Nothing in the last preceding clause shall be deemed to apply to a tenant belonging to any of the classes described in section 5, or to a tenant when he or the person from whom he has inherited shall have continuously occupied such land for thirty years or upwards."

He said that this amendment was intended to prevent injustice arising in the manner averred, with some truth, by Mr. Strachey. If carried, its

result would be that those occupancy-tenants who were of the superior classes, or of ancient standing, could not be bought out at all; and that the others, if they were to be bought out at all, must be arranged with in a reasonable brief time before they become ancient, and thereby entitled to exception.

The Hon'ble Mr. COCKERELL submitted that the amendment proposed by the Hon'ble mover of the Bill was practically the same as that just moved by Mr. Strachey, and vetoed by the Council. So far as we had any means of judging of the effect of this provision, it might be assumed that it would include very nearly, if not absolutely, the whole of the tenants comprehended by section 6. Mr. COCKERELL trusted, therefore, that the Council would not, in the present state of its information on the subject, accept the Hon'ble mover's proposal.

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency the Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Mr. Cockerell.
The Hon'ble Sir R. Temple.	The Hon'ble Sir George Couper.
The Hon'ble Colonel Norman.	

So the Motion was carried.

The Hon'ble Mr. COCKERELL asked His Excellency the President to republish the Bill, under the 29th Rule for the Conduct of Business, before the Motion "that the Bill be passed" be put.

He said that he made this request because a most important amendment, the effect of which the Council had not yet had a full opportunity of considering, had been somewhat hurriedly carried at this late hour of the day, and it was highly desirable that those whose interests were most materially concerned by this change in the Bill, should have an opportunity of expressing their views on the matter before the Bill as amended became law.

The Hon'ble Sir R. TEMPLE expressed his hope that the President would not comply with Mr. Cockerell's request. The Bill was urgently needed, and there had been far too much delay already.

The Hon'ble Mr. STRACHEY said that, so far from the Bill having been discussed too little, in his opinion it had been discussed too much. He referred, of course, not to discussions in this Council, but to the discussions that had

taken place in the Panjáb. He thought that, on grounds of political expediency, it was highly necessary that the Bill should become law at once.

His Excellency the PRESIDENT declined to accede to the Hon'ble Mr. Cockerell's request.

The Hon'ble Sir R. TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned to Wednesday, the 28th October 1868.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 20th October 1868.

Govt. Branch Press, Simla.—No. 2080, 2-11-68.—195.