Friday,
21st October, 1898

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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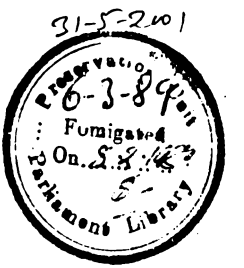

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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 21st October, 1898.

PRESENT:

His Excellency the Earl of Elgin, P.C., G.M.S.I., G.M.I.E., LL.D., Viceroy and Governor General of India, *presiding*.
The Hon'ble M. D. Chalmers.
The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.
The Hon'ble Sir A. C. Trevor, K.C.S.I.
The Hon'ble C. M. Rivaz, C.S.I.
The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis, C.I.E.
The Hon'ble J. B. Fuller, C.I.E.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. RIVAZ moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces be taken into consideration. He said:—

"When Sir John Woodburn introduced this Bill on the 1st October last year, he remarked that the main change which was proposed in the existing tenant law of the Central Provinces was that in regard to the class of tenants who are called 'ordinary tenants,' that is, all tenants who are not included in the two more privileged classes of 'absolute occupancy' and 'occupancy,' authority should be given to the Settlement-officer to fix their rents at the time of settlement for a term of seven years, and that, should the landlord propose to enhance any rent thus fixed after the expiry of this period, the tenant would have a right of reference to a Revenue-officer, who would proceed to fix a fair rent at which the tenant would be entitled to hold. These provisions of the Bill as introduced have been maintained by the Select Committee, except that, for the reasons given in paragraphs 45 and 51 of their report, we have omitted the provisions for progressive rent enhancements, which were adopted from the Bengal Tenancy Act, and have also struck out the provision under which a

tenant who refused to accept a rent determined by a Revenue-officer would have been entitled to compensation for disturbance as well as to compensation for improvements. Under the Bill as now amended, a refusing tenant will only be entitled to compensation for improvements, but, on the other hand, we have made a proviso which will limit the enhancement of rent in such cases to 33 per cent. except in cases where the existing rent is merely nominal. The effect of these changes will be, I am informed, to extend to about 700,000 tenants the right to remain in possession of their holdings so long as they pay fair rent. It is a matter for great congratulation that the bestowal of this privilege has been generally accepted by the landlords as fair and reasonable, especially when it is considered that they have for some years past had actual experience of its effects upon their own interests. The enquiries made in the course of the current operations for the resettlement of the land-revenue in the Central Provinces indicated that, especially in certain localities, the rents of ordinary tenants had been enhanced by their landlords beyond the limit within which they could be paid regularly and without hardship, and some nine years ago it was determined to make endeavours to procure their reduction by consent of the landlords. These efforts have generally proved successful, and are indeed the foundation for the legislative action now proposed. The provisions of the Bill in this matter will in fact merely confirm rents already fixed by consent, but they will give an authoritative basis to rent fixation in future—protecting tenants from being victimized by the refusal of their landlord to a fair rental assessment—and they will secure tenants against excessive enhancement on the expiry of the term for which their rents were fixed at settlement.

"Sir John Woodburn also mentioned that the Bill which he was introducing made two further important alterations in the existing law. He explained that the first such alteration was made in the interest of the landlord, its object being to prevent a landholder when selling or otherwise parting with the proprietary rights in his holding from being able to also transfer or part with the right of remaining in possession, as an occupancy-tenant, of the lands composing his *sír* or home-farm, except when specially permitted to do so; and that the second alteration consisted in withdrawing from tenants of the occupancy and ordinary classes the powers of alienating their holdings which had been conferred upon them for the first time in 1883. As regards these two matters, the Select Committee have proposed the following alterations in the Bill as introduced. We have provided that sanction is not to be refused to the transfer by a proprietor of his *sír*-land without reservation of a right of occupancy, in cases when the transferor is not

wholly or mainly an agriculturist, or when the property which is the subject of transfer is self-acquired or has been acquired by the transferor otherwise than by inheritance within the past twenty years. We have also enlarged the discretion of the Local Government in regard to its grant of sanction to such transfers in other cases. In the matter of prohibited transfers by occupancy and ordinary tenants, we have reduced the period within which a claim may be preferred by the transferor's heirs or landlord to set aside any such transfer to two years from the date on which the transferring tenant loses possession; we have provided for such cases being dealt with by Revenue-officers instead of by the Civil Courts; for the objector to the transfer being placed in possession subject to his acceptance of the liabilities of the transferor for arrears of rent and advances made for the necessary expenses of cultivation, as determined by the Revenue-officer; and we have debarred the transferring tenant from himself taking advantage of his illegality and claiming re-entry except in cases where the transfer is by way of sub-lease and was made in ignorance of the law, and then only on payment of the consideration money for which the lease was granted. We have dealt on similar lines with cases of surrenders of their holdings by occupancy-tenants, saving at the same time *bonâ fide* surrenders which have not been made with the object of evading the provisions of the Bill against transfers. And, lastly, in fulfilment of the assurance which was given by Sir John Woodburn to my Hon'ble friend Mr. Chitnavis at the Council meeting of the 21st March last, we have provided that retrospective effect shall not be given to the prohibitions now being imposed on transfers and surrenders.

"The modifications which I have thus enumerated are all of them distinct, though in our opinion reasonable, concessions to the party represented by my Hon'ble friend. On the other hand, we have, on the advice of the Central Provinces Administration, materially extended the scope of section 61 of the Bill as introduced, and have made its provisions applicable to the case of any non-cultivating tenant who may misuse his position by rackrenting the actual cultivator of the holding.

"I may also mention a few further points on which the Committee have proposed alterations of some importance. The Act provides that when a landlord levies from a tenant anything in excess of the rent legally payable, or when he refuses to give a receipt for the payment of rent or gives a defective receipt, or when he illegally distrains the produce of a tenant's holding, or a tenant illegally removes produce in respect of which a notice has been served for an arrear of rent, the offender shall be liable to a specified penalty. We have

adopted a suggestion made by the Central Provinces Administration, and have provided that such cases shall be dealt with by a Revenue-officer instead of by the Civil Court.

"Also, for the reasons given in paragraph 31 of the Committee's report, we have restored the provisions of the present law under which a decree for arrears of rent due from an occupancy-tenant is executed by ejectment of the tenant and not by sale of the tenure.

"Also, on the recommendation of the present Chief Commissioner of the Central Provinces, we have, in the manner explained in paragraphs 57 to 60 of the Committee's report, amended, in the interests of the landlords, the present procedure for the execution of decrees for arrears of rent. The very long period of grace which a defaulting tenant enjoys under the present law before he can be ejected from his land has, I have reason to believe, acted as an encouragement to non-payment. The law will now provide that rents are no higher than can be fairly demanded, and we can reasonably lay greater insistence on punctuality in payment. The amendments which are proposed will be of very substantial benefit to the landlords of the province.

"The remaining alterations which the Committee have proposed are either verbal amendments or of minor consequence, and I need not take up time by specifying them; but I may notice two points before concluding my remarks. My Hon'ble friend Mr. Chitnavis, in his dissent from the report of the Select Committee, has expressed an opinion that in the sections of the Bill in which matters affecting the rights of agriculturists are committed to the decision of a Revenue-officer, it ought to be distinctly laid down that his decision is to be passed after making and recording a full enquiry of a judicial character. As to this, it is of course intended that a Revenue or Settlement Officer in disposing of any matter in respect of which authority is given to him by the Bill shall make a proper enquiry and record the reasons for such order as he may pass. By section 99 of the Bill power is given to the Chief Commissioner to make rules of procedure and practice, and I have no doubt that in framing such rules he will make due provision accordingly. The second point is that in a memorial which has been received from Nagpur it has been urged that the further consideration of this Bill ought to be postponed until Your Excellency's Council meets in Calcutta. Well, as to this, what are the facts? The Bill was introduced during the Simla session of last year. It was duly published for general information, and more than four months after such publication Sir John Woodburn during the last Calcutta session moved its being referred to

a Select Committee. Full opportunity was thus given for the discussion of the Bill in Calcutta, an opportunity of which my Hon'ble friend Mr. Chitnavis availed himself, but no other non-official Member of the Council offered any remarks or criticisms. The Bill has since then been very fully considered, I think I may say, by the Select Committee, which has been very materially assisted in dealing with it by the representatives of the Central Provinces, my Hon'ble friends Mr. Chitnavis and Mr. Fuller. The report of the Select Committee was published four weeks ago, but we have only received this one memorial from Nagpur objecting to some of its provisions. In these circumstances we can hardly be reasonably charged, I think, with undue precipitancy in wishing to pass the Bill into law without further delay. As I said at the last meeting of the Council, it is very desirable that the Bill should be passed before Your Excellency leaves Simla, and I hope that it will be passed to-day."

The Hon'ble MR. CHITNAVIS said:—My Lord, there is one point in the speech just delivered on which I feel I must say a word, and that is to thank the Hon'ble Mr. Rivaz, in the name of the people of my Province, for the kind assurance we have received this morning that all enquiries by Revenue-officers mean enquiries properly made and duly recorded, and that provisions will be made by the Chief Commissioner to enforce such procedure. I feel that this assurance is most important, and the expectation that it was to be given has prevented me from moving an amendment on this subject.

"My Lord, I also desire to place on record that, although I have been obliged to express my doubts in regard to several important classes of rights with which the Bill deals, I believe the amended Bill taken as a whole makes substantial improvements on the original draft, and that, where it alters that draft, the changes are, with two or three exceptions, expedient and just.

"As regards the general principles of the Bill, the Council is already aware of my views, and I may say I still adhere to them. I do not, however, propose to advert to them, nor am I going to take up the time of the Council by urging amendments which I can well see from the course of the debates that have taken place in the Select Committee would have very little chance of being accepted.

"I will therefore, with Your Excellency's permission, invite the attention of the Council to only four amendments which I believe will be found necessary and reasonable, and to which I hope the Council will accord their sympathetic support. If these few amendments also do not carry conviction, I shall consider myself somewhat unfortunate.

"Before concluding, I would enquire of the Hon'ble Member in charge of the Bill if the word 'liabilities' in sections 36, 47 and 71 includes reasonable interest, and whether any provision will be made in the rules by the Chief Commissioner to include this very necessary item."

The Hon'ble MR. RIVAZ said:—"As regards the enquiry which has just been made by my Hon'ble friend, the word 'liabilities' as used in the sections to which he refers is certainly intended to include interest in cases when such a charge may be reasonable and proper, and I have no doubt that the Chief Commissioner, in making rules under these sections, as he is empowered to do, will recognise this."

The motion was put and agreed to.

The Hon'ble MR. FULLER moved that in sub-section (*6*) of section 45 of the Bill as amended by the Select Committee, after the word "document," in line 2, the words "expressly providing for the transfer of the right to occupy *sír*-land as a proprietor, and" be inserted. He said:—"My Lord, the object of this amendment is simply to make it clear that, in cases to which the provisions of the Bill in regard to transfers of *sír*-land do not apply, the existing rights of proprietors will remain unaffected. Under the present law, a proprietor who is ousted from his *sír*-land by order of Court has a right to remain in possession of it as a tenant, unless he has expressly agreed to relinquish possession. Sub-section (*6*) of section 45 limits to future transactions the new provisions regarding the transfer of *sír*-land by excepting *all* documents executed before the Bill passes into law, and may be construed to imply that a proprietor might be ousted from possession of his *sír*-land in pursuance of such a document even although it contain no express agreement for the relinquishment of possession. The proposed addition will show that the only documents which are saved, and under which *sír*-rights can be transferred as at present, are, as under the present law, documents in which the proprietor has expressly agreed to relinquish *sír*-rights."

The Hon'ble MR. CHITNAVIS said:—"My Lord, as it has been rightly decided that the Bill should not have retrospective effect against the interests of creditors, I think it is but just and fair that it should deal in the same way with the interests of the debtors. The intention underlying the amendment is thus a very reasonable one. I therefore beg to support this amendment."

The Hon'ble MR. RIVAZ remarked that the amendment was a necessary one.

The motion was put and agreed to.

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The Hon'ble MR. CHITNAVIS said:—"As the reasons which have led me to move my first and fourth amendments are the same, I would with Your Excellency's permission move the two amendments together. The first motion is that to sub-section (*2*) of section 46 of the Bill, as amended by the Select Committee, the following words be added, namely:—

"except when the decree or order is for advances found by a Court or Revenue-officer to have been made by a landlord or on his security for the necessary expenses of cultivation."

"With regard to this amendment the question of seed-grain and other advances made for purposes of cultivation has been so fully considered by the Select Committee when considering sections 36, 46 and 71 that it would not be right for me to detain the Council by offering further remarks on it. I admit that my amendment goes beyond the scope of the old law. But my point is, that the malguzar had hitherto a right to veto all transfers made without his consent, and had thus a hold upon such tenantry to whom he had, either from his own stock or on his security, advanced money or grain for cultivation. As a tenant who has been thus helped can evade payment if he so cares by the present law, there ought to be some security that the advances made by the malguzar for securing Government revenue are not lost to him. There must, I think, be some difference between a malguzar who is responsible for revenue and an ordinary creditor who has no stake or interest in the cultivation of holdings. I may observe in passing that in all European countries and in America greater facilities are afforded to the landlord for the realization of his dues than to a mere capitalist. What I crave is that there ought to be a recognition of the same principle in the present law. I feel sure that the absence of some such recognition will in many villages cause lands to lie fallow, to the detriment of the entire agricultural community of the Province.

"My Lord, the malguzar in many places in my Province pays in the shape of revenue and cesses something over 70 per cent. to Government—an assessment much higher than that in any other Province. Again, there are cases, when, rather than allow the land to remain fallow through tenants' negligence or want of credit, the malguzar stands security for the tenant and procures him the seed-grain, etc., necessary for purposes of cultivation. The great assistance the malguzar has so rendered in times of famine is fresh in our memory. But it is not in famine only that such help is extended. The famine only brought to light the ordinary behaviour of thousands of malguzars towards their tenants. Under these circumstances, I think it is but fair that adequate provision should be made

in the law to secure to the landlord the advances that may have been made by him or on his security for necessary purposes of cultivation. Is it right, I ask, that the malguzar should suffer for helping the tenant when the latter sorely needs capital for cultivation and for payment of rent—a large or considerable portion of which goes as Government revenue?"

The Hon'ble MR. RIVAZ said:—"The proposed amendments would introduce into the existing law a modification of much importance which, if not out of accord with the guiding principles of the Bill, has, at all events, lain outside the considerations which have led to its framing. As the law now stands, an occupancy-tenure is not liable to sale in execution of a money-decree. It was proposed in the Bill as introduced to authorize sale in execution if the decree was for arrears of rent. But this change has been abandoned in the interests of the landlords, who consider that the power of ejecting a defaulter is more to their advantage than that his holding should be brought to public sale. The Bill, however, allows of sale for the recovery of advances made by Government under either of the Agricultural Loans Acts, and the proposed amendment would have the effect of extending this means of recovery to private creditors. But it is hardly necessary to point out that the conditions on which Government lends differ very greatly from those imposed by private bankers and justify a material difference in the means legalized for recovery. The rate of interest ordinarily charged on advances of seed-grain is, I am told, about three times as high as that demanded by Government. Enquiries made during the current resettlement of the Central Provinces have shown that in some localities landlords have so worked their banking business with their tenants as to practically nullify the effects of a moderate rental, and it would obviously be impossible to increase the stringency of the procedure for recovering loans without imposing some limitation on the rate of interest. The issues raised by the proposed amendment are akin to those connected with the large question of Agricultural Banks—a question which requires separate consideration and treatment and cannot be advantageously dealt with by the insertion of a provision in the Tenancy law of a Province. For these reasons I must oppose the amendment."

The motion for the amendment of section 46 was put and negatived.

The Hon'ble MR. CHITNAVIS moved that section 61 of the Bill as amended by the Select Committee be omitted. He said:—"My Lord, section 61 as it comes to us is the work of the Select Committee, there being no such provision in the first draft of the Bill. This shows that the

necessity of such a provision was not impressed upon the legislature when the Bill was under preparation. Even now it has been said that if any evil exists it exists in one district, while the cordial relations existing between various classes of tenants and landlords in all other parts have been repeatedly affirmed by successive Chief Commissioners. Much as I desire to see the sub-tenant protected I do not see my way to accept the section in the form it has been placed before us. I object to it—

"First, because it practically wipes off the existing tenant. It is not quite clear to me what rights he will retain. If he retains any, he comes to be a mere middleman—an institution which the legislature discourages.

"Secondly, because the word 'habitually' is vague and would lead to much litigation and discussion in future.

"Thirdly, because the section will operate against the sub-tenants themselves for whose benefit it is intended. For, rather than sub-let the holding and run the risks of the law, the tenant will not sub-let, and poor agriculturists who have no lands of their own and who live as sub-tenants will have to give up agriculture and have recourse to other means of subsistence. The result of this will be discouragement of agriculture. That the provision will thus produce effects the very reverse of what is anticipated is obvious.

"Fourthly, because it deprives people of slender means of a form of investment which is very popular, interferes too much with the freedom of private contract and infuses an element of uncertainty in all private transactions—an insecurity which will work injuriously on the very people whom Government desires to protect.

"Fifthly, because the section presumes that all contracts between tenants and sub-tenants must necessarily have been contracts between strong tenants on the one side and weak and imbecile sub-tenants on the other—to my mind, a most unwarrantable presumption.

"Sixthly, because the section will snap asunder that tie of sympathy which now binds the tenants and sub-tenants in the Province. It will demolish all credit and render the relations between tenants and sub-tenants quite mechanical and impersonal.

"And, lastly, I object to the section because it will give rise to many complications of tenure, as there will be nothing to prevent the sub-tenant on his part, when he finds he has substantial rights in the land, from sub-letting it to another

sub-tenant who may be called sub-tenant of sub-tenant, and to whom ere long legislation will have to extend protection.

"There are cases, my Lord, where lands once waste have been brought under cultivation by occupancy-tenants at considerable expense to themselves, and this money will be entirely lost to them should their sub-tenants acquire the rights of ordinary tenants. Instances might be quoted where the provision made in this section would amount almost to spoliation. Let us suppose that we have invested our savings in a bank. We, of course, have done so on the understanding that whenever we require our capital we shall be allowed to withdraw it. If Government were to turn round and say to us: 'But no, you must not touch the capital. You are only entitled to the interest thereon,' it is needless for me to mention that we should feel greatly aggrieved and consider our investments useless for our immediate purposes. Similarly, great will be the disappointment of persons who have invested money in the purchases of houses if they were told that they would be entitled to claim rents from occupiers but those in possession could never be disturbed. In the above illustrations the interest and the rent are secure, but in the case under consideration the sub-letting tenant loses the field and on the sub-tenant acquiring the status of occupancy-tenant and getting fair rent settled under section 73 of the Bill, as he is soon likely to do, his portion of the rent also, the whole or major portion of which must then go to the landlord, leaving no or very little margin for the sub-letting tenant. I will leave it to the Council to consider if this would be fair. When occupancy-rights were purchased, it was done on the understanding, made clear by the old law, that the tenants will be allowed to sub-let their holdings, and that the sub-tenants would not be allowed to acquire the higher status of ordinary tenants and in a sense usurp the rights of the owners of the soil. But, when the legislature proposes to confer the rights of ordinary tenants upon these sub-tenants, there will, I fear, be a great upheaval of feeling in my Province. During all these years we have allowed occupancy-tenants to buy tenures in the belief, fully justified by our action, that no interference would take place; it is certainly not fair to these persons suddenly to uproot the condition on the faith of which they have invested their money. My Lord, there is another point of view from which this question may be looked at. Tenants who have not the means of cultivating their lands had, until now, the right to transfer or sell them with the consent of the landlords, but, as that right is taken away, we by introducing this section prevent the tenants from realizing the capital they might have spent on their holdings and investing it more profitably in some other concerns and compel them to run the risks of this provision.

"It may be said that capitalists had no business to invest money in land; but, if Government intends that no such investments should take place, let those who may make such investments, after the intentions of Government on the point are clear, suffer; let us not however slaughter the innocent with the guilty. My Lord, the misery the section will entail on those who on the faith of the old law have already made such investments can be more imagined than described. Let us suppose for instance that a petty merchant has invested his money in the purchase of occupancy-rights. We shall also suppose that, having already made these investments, he has left no other property for his wife and children. The Council may well imagine the sufferings of these poor creatures if suddenly the supporter of the family were to die and his investments subjected to the operation of this section. My Lord, many have made such investments, and much of the money thus invested has been the result of years of thrift and self-denial. If this hard-earned money be lost, the confidence of the people in the stability of the law would be shaken; for what guarantee have they that the policy of 1898 will not be reversed in 1899? It will spread a sense of insecurity amongst people and frighten capital away. These capitalists, be it remembered, have been most loyal and useful both to Government and the public in many ways, and surely they deserve some consideration at our hands. That the provision will deal a heavy blow to accumulation of capital and remove a great incentive to thrift and providence—the higher qualities which such accumulation requires—needs no elaboration at my hands.

"It may further be pointed out that this immense favour which the legislature proposes to confer on sub-tenants would be conferred in a way somewhat unjust and indiscriminate. It has been proposed that the sub-tenants in places notified by the Chief Commissioner and at the discretion of the Revenue-officer and Settlement-officer, though these sub-tenants may be only of a year's standing, are to have the higher status of ordinary tenants. But it may be reasonably asked, what is the particular merit of these sub-tenants that this exceptional favour should be granted to them? They may not have paid for their rights; they may not have invested any capital; they may have been occupiers of the soil only for two or three years. And yet, simply because they are sub-tenants at the time the Revenue-officer institutes an inquiry, they must lord over the soil which really belongs to another. Then, again, some of these sub-tenants may be indifferent farmers, some excellent ones; some may have improved their holdings, some may have deteriorated them; some may have capital, others may be bankrupt. Yet this scheme of very wild justice favours all actual sub-tenants alike at the cost of all moral bindings and to the permanent injury of

the purchasers or owners of the soil. Should the section be retained in its present form, the legislature would be simply making a gift to those who for no merits of their own but by sheer accident happen to be sub-tenants at the time it pleases the Revenue-officer to interfere, though, as I have already pointed out, they may have been in possession of the holdings only for a year. It is needless to observe that such a course would inflict great hardship on the tenants who may have helped the sub-tenants in ten thousand different ways to successfully carry on cultivation, and whose kindness and indulgence alone, in many instances, might have secured the sub-tenants a long and undisturbed possession of their holdings. It may be said, my Lord, that the Chief Commissioner will be careful in making rules as to cases in which the section may apply ; but I may say—and I may be pardoned for saying so—that it is a dangerous policy to leave matters where such large interests are concerned to the discretion of executive officers and the rules they make—rules which they change, and which they must change, according to the urgency of the report made by Revenue-officers. It will not be denied that there will be officers who will report on imperfect information, to punish a few cases which they think ought to be punished. When there is a section in the law, there will be an eagerness to make use of it; but I leave it to Your Excellency's Council to consider whether we should create suspicion and uncertainty, in the *whole* Province, by allowing such a provision to remain when it is admitted that the evil is not a general one. With regard to these rules again, the probability is that, in an eager desire to protect sub-tenants, the interests of persons who have invested money in land on the faith of the old law may be lost sight of. The Chief Commissioner when passing rules in his executive capacity is under no compulsion to consult parties interested. As those who make the shoe do not generally feel it pinch, it is impossible to expect that the rules made by the Local Government will cover in this instance all cases or classes of cases which require consideration for the just working of the provision. The people, I make bold to say, have the greatest apprehension about this provision, fearing that in a generality of cases the Revenue-officers who take their initiation from the policy of the day in these matters will rather favour the casual occupier than the legal possessor.

"My Lord, it is well known to all who are brought into contact with the people that many who are employed in Government service or in mercantile pursuits like to invest a portion of their savings on small holdings. Their object is to return to an agricultural life at the end of their days, for this life is peculiarly congenial to the people of this country. Such persons will be deprived of this means of investing their money, for they will not be able either

to purchase or even to retain a small holding unless they are actually able to cultivate. This provision therefore will not only affect them injuriously but also deprive the land of a well-to-do and enterprising class of cultivators.

"My Lord, the new assessments in many places leave very little margin for the sub-letting tenant. But the sense of ownership makes up for this loss. If this also were taken away, it is needless for me to point out that great will be the uneasiness felt by this class of people in my Province. The section enacts that no declaration will be made within one year after the commencement of the Act. But what will be the state of things during this year? Good tenants who have all these years been on the best of terms with their sub-tenants will simply for the sake of self-preservation disturb their sub-tenants who may have held lands for twenty or thirty years together in perfect security. What I mean is that there will be a general desire on the part of the sub-letting tenants to displace their sub-tenants, and the existing cordial relations between them will thus receive a rude shaking. And all this for the sake of a little protection the law intends to give to a few sub-tenants in *one* district! If the evil becomes a general one, the legislature is strong enough to put such a section or even a stricter one at any time it chooses. But why put strife and discord where nothing but peace and amity exist?

"It is on these grounds I beg to submit that my amendment is a reasonable one, and feel no doubt that on little reflection it will commend itself to the approval of Your Lordship and of the other Members of the Council."

The Hon'ble MR. RIVAZ said:—"I must oppose any amendment which would have the effect of restricting the effect of section 61, which was adopted in its present form after most careful consideration in Select Committee. It promises to be the most effective of the checks imposed by the Bill on the transfer of tenants' holdings, which it is the policy of the Government to prevent, inasmuch as, by enabling the Government to deny to a purchaser the right to manage by rackrenting, it will deprive investments in land of the principal attraction which they offer to the non-cultivating classes. It will, on the other hand, offer no impediment to the transfer of land from one cultivating hand to another,—to the replacement of a bad tenant by a good tenant,—and is thus free from the objection which applies to more general restrictions on transfer. There is no intention of proceeding generally against tenants who for one reason or another may sub-let their holdings. The section will only apply in tracts where circumstances call for it; and the safeguards which are specified in the proviso to sub-section (*i*) of the section, together with the provisions for appeals which are

contained in section 96, obviate the danger that the interests of *bonâ fide* agriculturists may suffer from hasty action on the part of particular officers. The section has been so worded as to make it clear that interference will not be warranted in cases where a tenant sub-lets to meet special or merely temporary emergencies, and that the conditions which it is intended to prevent are those in which a person who has obtained the status of tenant makes use of it simply as a means of gaining interest on his purchase-money by extorting a rackrent from the actual cultivator. The object of the section being to discourage the purchase of tenancies by non-cultivators and not to protect any particular class of sub-tenants, we have not regarded the period during which the land may have been held by the individual sub-tenant who may be in possession at the time proceedings are taken. To limit action to cases in which the sub-tenant may have held for a certain number of years would render it easily possible to circumvent the law by frequent changes in sub-leasing. I consider that the section is the most valuable of those provisions of the Bill which have for their object the prevention of the exploitation of the cultivating by the commercial classes, and I trust that the Council will accept it as it stands."

The Hon'ble MR. FULLER said:—"My Lord, one of the difficulties which the Hon'ble Mr. Chitnavis sees in section 61 of the Bill is that if the rent of the protected sub-tenant is so reduced as not to exceed the primary rent of the holding,—the rent, that is to say, which is payable to the proprietor,—nothing will remain for the middleman, who will thus obtain no profit of any kind from the land recorded in his name. This objection finds no place in the recent memorial from the Malguzari Sabha of Nagpur, nor, so far as I am aware, has it been raised in any of the discussions of the past twelve months. There is, I venture to think, no reason for such an apprehension. No attempt has been made in the Central Provinces to define precisely the limits of a fair rent,—as, for instance, in terms of a share of the produce,—and rents are determined with reference to the particular facts of each case and the circumstances of the tenant, one of the most important of which is the rent actually paid by him at the time. Rents which are evidently paid without hardship are not reduced merely because they happen to be somewhat in excess of an average. Nor are rents raised mechanically to the full limit allowed by the settlement rates, if this would entail a very large enhancement. Briefly, the object of the Government has been that rents should be fair in themselves, not that they should be equal amongst themselves, and very considerable differences between the rents paid by different tenants in a village are not only compatible with the system, but a recognized consequence of it. Moreover, it may be stated with confidence that there is

generally a very substantial margin between the rents fixed by the Settlement-officer and the rental value at competition rates, and that a rent may considerably exceed the general run of those fixed at settlement without being inequitable or oppressive.

"An officer dealing with the rental assessment of land held by a sub-tenant who has been protected under section 61 will thus have ample latitude for allowing the middleman to receive from the sub-tenant a fair excess over the rent which is due to the proprietor, and I do not think that it need be apprehended that the middleman will fail to secure it. The object of the section, as has been explained by the Hon'ble Member in charge of the Bill, is to discourage the purchase of tenancies by non-agriculturists by limiting the profits to be made by sub-letting. It is no part of the measure that the middleman should make no profits whatever. It may be argued that if such is the intention of the Government it should be evidenced by providing in the law that the rents payable by the sub-tenant should be sufficiently high to yield a certain definite surplus. But the ratio of this surplus to the primary rent of the holding may reasonably vary in different cases, depending on the circumstances under which the tenure was acquired and the relative position of the parties. And under the system of rent fixation followed in the Central Provinces it is hardly possible to give the force of law to the directions which guide assessing officers in their work, resting, as they do, on the consideration of a number of circumstances peculiar to the village and to the tenant. Those directions have in the past worked well though not having the force of law, and there seems no reason to doubt that they will meet with equity the circumstances of the particular case we are considering.

"Passing now to another of my Hon'ble friend's arguments, I can see no objection to the purchase of the occupancy-status by a tenant who has been protected under section 61, if he has money to spend in this way. The policy of Government has been to assimilate the ordinary to the occupancy tenure, and, under the law as now amended, there will be little to choose between the two. The claims of the sub-letting tenant to receive a rent will not be affected by the change of tenure. The Bill nowhere defines or limits the rent assessable on an occupancy-holding, and it has not been held that the privileges of the occupancy-status include the right to pay a lower rent than is fair under the circumstances of the case. It might, indeed, so happen that both the sub-letting and the cultivating tenants held occupancy-rights when there would be two occupancy-rents payable, one exceeding the other in amount. But, even so, the

case would be paralleled by many which exist at present, where, owing to special circumstances, two occupancy-tenants pay at different rates for similar land in the same village. I should add that the question is one of theory rather than of practice. During the sixteen years which have elapsed since ordinary tenants were given the right to acquire the occupancy-status by purchase, very few of them have availed themselves of the privilege, and it is probable that the changes now made in the law will render such purchases of still rarer occurrence.

"My Hon'ble friend has drawn a gloomy picture of the disappointment of the official and professional classes barred by this provision from turning to the pursuit of agriculture as a solace in declining years. But there is nothing in the section which will prevent persons of those classes from taking to farming; it is only when they purchase tenancies for the purpose of rackrenting that they will find the law in their way. Stress has also been laid on the expediency of closing an avenue now open for the investment of savings. But I venture to think, my Lord, that, if this change in the law should divert to industrial undertakings money which is now invested in buying out cultivators, it will incidentally produce an effect which in the true interests of the country is not at all undesirable.

"There is one other observation which I should like to offer in defence of the section, in addition to those made by the Hon'ble Mr. Rivaz. The principle which it embodies is that an intermediary rent-receiver should not be permitted to attract to himself, and bar from the actual cultivator, the privileges which tenancy legislation has conferred on the agricultural classes. This principle has received practical and most important recognition in the status of the 'tenure-holder' of Bengal, and it was at first contemplated to meet the circumstances which have led to the passing of section 61 by the introduction of a similar status into the Central Provinces. But it seemed inadvisable to materially complicate the land-tenures of the Provinces in order to counteract abuses which might be met more directly, and section 61 was adopted as a simpler remedy. It would, then, be a mistake to think that the section introduces an entirely new principle to Indian Tenancy law. Nor would it be correct to infer from the Hon'ble Mr. Chitnavis' remarks that the section has been sprung into the Bill in its course through Select Committee. It found a place, in substantially similar form, in the Bill as introduced, but was there restricted to land held by absolute occupancy-tenants and plot-proprietors. It has now been given more general extension, as the privileges which will be enjoyed by tenants generally will render all classes of holdings a tempting investment for moneylenders, and as the desirability of protecting the sub-tenant of a

rack-renting middleman is not affected by the right in which the middleman may hold."

The Hon'ble PANDIT SURAJ KAUL said:—"My Lord, I beg to support the amendment for the omission of section 61, as now proposed by the Hon'ble Mr. Chitnavis, on the grounds so clearly laid before Your Excellency's Council by him."

The Hon'ble MR. CHITNAVIS said:—"I am not so much against fair rent being assessed, but what I would submit is that small capitalists and others will lose their holdings if this section be allowed to remain as now worded. What I most fear is that there is a great deal of feeling against this provision in the Central Provinces. Of course, I have laid before Your Excellency my humble views in the best way I could, and I shall not be able to do more justice to the subject by saying anything more at present, though I ought to add that the practical working of the section in cases of surrender, etc., would be attended with many difficulties."

The Council divided:—

Ayes.	*Noes.*
The Hon'ble Gangadhar Rao Madhav Chitnavis.	The Hon'ble J. B. Fuller.
The Hon'ble Pandit Suraj Kaul.	The Hon'ble C. M. Rivaz.
	The Hon'ble Sir Arthur Trevor.
	The Hon'ble Major-General Sir Edwin Collen.
	The Hon'ble M. D. Chalmers.
	His Excellency the President.

So the motion was negatived.

The Hon'ble MR. CHITNAVIS said:—"My Lord, I regret that the motion for the omission of section 61 has not found favour with the Council. My next amendment is that, if the legislature must needs strengthen the position of these squatters, let the section be worded something like this:—

"61. A sub-tenant who after the commencement of this Act may be in possession of a holding belonging to a tenant, other than a málik-mákbuzá tenant, for seven successive years, shall not be ejected from the holding unless he is served with a notice six months before the commencement of the next agricultural year. The said sub-tenant, on receipt of such notice, on an application made by him to the Revenue-officer, shall have a right to claim such compensation for disturbance as the Revenue-officer may direct not exceeding one year's rental of the holding:

Ejectment of sub-tenants.

"Provided that this section shall not apply to lands which are used for horticultural or garden purposes and in the case of sub-tenants holding land under a lease registered before the commencement of this Act."

"This will compel the tenant to give the sub-tenant some compensation for disturbance and thus safeguard his interests. But let us not despoil the tenant of his land; let the holding by all means remain with him to whom it belongs, or who might have spent capital on it. We ought not by one stroke of the pen to make coolies of tenants and tenants of coolies.

"As for the second part of my amendment, I think, to avoid all misunderstanding in future, there ought to be a distinct proviso that horticultural lands should be exempt from the operation of a section which is obviously meant to apply to lands subject to agricultural cultivation. It is in garden lands that many costly improvements are made, and it would obviously be unfair to place these lands in the same category with those meant for agricultural purposes. That a tenant will be much inconvenienced if he finds that a portion of the garden land round his homestead has to lapse to another who may have been in possession of it for some reason or other needs no elaborate argument at my hands. With these words, I commend my amendment to the consideration of the Council."

The Hon'ble MR. RIVAZ said:—"For the reasons which I have just given in speaking on my Hon'ble friend's previous amendment I must oppose this amendment also."

The Hon'ble MR. FULLER said:—"With Your Excellency's permission I should like to take this opportunity of saying a word which I left unsaid before—that in this discussion hardly sufficient prominence has perhaps been given to the fact that this section is not of general applicability; that it is only to apply to certain particular tracts, and that we have in the present Tenancy Act a section which is so far on exactly similar lines,—the provision which enables the Executive Government to declare a man who cultivates nominally in partnership to be a tenant. In one of the districts of the Central Provinces it was found that the proprietors were commonly evading the Tenancy Act by substituting agreements of partnership for leases. To meet these circumstances a special section was added to the law only to apply to such areas as in the opinion of the Local Administration called for it. Section 61 is so far exactly comparable, and the objections based on the apprehension that it will be made the occasion for overriding tenancies generally in the Province are, I think, entirely unfounded."

1898.] [*Pandit Suraj Kaul.*]

The Hon'ble PANDIT SURAJ KAUL said:—"My Lord, in seconding the amendment just laid before Your Excellency's Council by my Hon'ble friend Mr. Chitnavis, I beg to say that the reasons stated by him seem to me to carry conviction with them. In objecting to this section, as it now stands before us, he has dealt with the question from its different points of view so elaborately that it hardly wants any further demonstration from me. I may, however, be allowed to say, my Lord, that the wording of this section, even though the kindest rules were made by the Chief Commissioner, will work great injury in cases where through several unavoidable causes the tenant may be required to sub-let his holding for a certain period. In protecting a sub-tenant let us not be prejudicial to the interests of the tenant. I can realize the hardship which this section is sure to cause; and it is impossible to think of or enumerate the various classes of cases which will require favourable consideration from the Revenue-officers or Settlement-Collectors; and various and conflicting decisions affecting personal considerations are sure to create a sort of dissatisfaction among classes concerned.

"Much capital has, I understand, been invested in this way, and small capitalists, who will be unable to cultivate lands themselves, but on which, supplemented, as it may be, by their other income, their livelihood depends, are sure to suffer heavily. Instances have been presented before Your Excellency's Council by my Hon'ble friend in which people have on the faith of the old law honestly spent the savings of, in many cases, a whole life's earning in these investments in order to derive help and subsistence from them during their retirement. The proposed legislation, my Lord, affords no protection to the interests of such persons, but, on the other hand, the radical change which the operation of this provision is bound to effect is very likely to prove simply destructive in such cases, or to produce, at any rate, considerable uneasiness and distrust. The sub-letting tenants will, in order to avoid running the risks of the law, naturally have a general desire to displace their sub-tenants. The provision will thus, in addition to creating a sense of discord and disaffection among the classes of tenants concerned, produce effects quite the reverse of what is expected; the class which the legislature means to favour and protect will, on the contrary, suffer; and it is apprehended that the consequences will be anything but wholesome.

"As regards the proposed proviso to this section, I beg to remark that it is only fair and reasonable that lands for horticultural and garden purposes be exempted from the application of this section.

"With these few words, my Lord, I beg to support the amendment."

The Hon'ble MR. CHITNAVIS said:—"It has been admitted by my Hon'ble friend Mr. Fuller, who knows the Province so well and for whose abilities as a Revenue-officer I have the highest respect, that the evil exists in only one district. I would like to submit that in that district only the section should be applied by the legislature."

The Hon'ble MR. FULLER said:—"I am not conscious that I said that the evil existed in one district only. What I remember saying is that another evil existed in a particular district, but I never intended to imply that the evil which section 61 is to meet was limited to any one district of the Provinces, and, if such an impression has been conveyed by my remarks, I beg that it may be corrected.

The Hon'ble MR. CHITNAVIS said:—"I admit I might have misunderstood the Hon'ble Mr. Fuller. But I have other high authorities to bear me out when I say that the evil, if any, exists in only one district. I therefore think that the power to apply the law in such cases should remain with the legislature only, and it should be applied to the district where it may be found that the evil is rampant. But, as I have already said, it would be prejudicial to the interests of the public if the section be allowed to remain in the Statute-book with the uncertainty as to where and when it will be applied."

His Excellency THE PRESIDENT said:—"I think the Hon'ble Member seems to be under some misapprehension. I understood the Hon'ble Mr. Fuller to mention the existence of an evil in one particular district in the case of another measure which he noticed as an illustration to this one. On the subject of this particular section it seems to me that the only way in which you can introduce a provision which is required in certain parts of the country and make it possible that its extension should be carried out where necessary in other parts, but not where it is not necessary, is to leave a certain discretion in the hands of the Local Government. That is what the section now proposes to do, and I think my Hon'ble friend Mr. Chitnavis, from his experience of the Local Government in the Central Provinces, ought to have sufficient confidence in their discretion to acquiesce on this particular point."

The Hon'ble MR. CHITNAVIS said:—"I respectfully accept what Your Excellency has explained, and under the circumstances feel no doubt that the section will be cautiously and judiciously applied and worked by the Local Government. I would not therefore press my amendment to the consideration of the Council."

The motion was accordingly withdrawn.

1898.] [*Mr. Chitnavis; Mr. Rivaz; Mr. Fuller.*]

The Hon'ble MR. CHITNAVIS' motion relating to the fourth amendment referred to in the motion for the amendment of section 46, *viz.*, the addition to sub-section (*2*) of section 70 of the Bill of the words "except when the decree or order is for advances found by a Court or Revenue-officer to have been made by a landlord or on his security for the necessary expenses of cultivation," was then put and negatived.

The Hon'ble MR. RIVAZ moved that the Bill as amended be passed. He said:—"The enactment which we have been considering is the outcome of long consideration and discussion, and I trust and confidently hope that it will prove an equitable settlement of the relations between landlord and tenant in the Central Provinces and one which will work satisfactorily for many years without need of alteration."

The Hon'ble MR. FULLER said:—"My Lord, in supporting his proposed amendment to section 46, my Hon'ble friend Mr. Chitnavis has referred somewhat complainingly to the Central Provinces land-revenue settlements, and it hardly seems convenient that his remark should pass unnoticed, though it has no direct connection with the tenancy questions now before the Council. My Hon'ble friend refers, I understand, to the land-revenue assessments of the Nagpur district, with which he is closely connected in interest, and it is a fact that the share of the landlords' rental income, taken as land-revenue in the Nagpur division, is higher than that taken in the northern districts of the Province, which were formerly collectively known as the Saugor-Narbada territories. There is a simple explanation of this. Nearly three generations have passed since the latter districts came under British rule, whereas the Nagpur country only escheated in 1854. The relatively high land-revenue assessment of that tract is an inheritance from the revenue-system of the Maratha Government, which my Hon'ble friend, in his speech in Council of last March, very justly described as characterized by 'constant revision of the revenue-assessments with the view of maintaining them at the highest possible level and thus preventing the growth of middlemen with rights and interests intermediate between the Government and the cultivators.' The first regular settlement of the Nagpur district and of the closely connected district of Wardha was taken in hand shortly after the introduction of British rule. The assessing officers found that the existing land-revenue was equivalent to 83 per cent. of the rental income of the proprietors. No enhancement was made; nor, on the other hand, was any considerable reduction granted, as it was found that the people had accustomed themselves to their liabilities and that there was no evidence

of actual hardship. The second regular settlement of those districts has only recently been completed. The final reports have not yet been issued, and I am unable to state the results with absolute precision. The great progress made by the country during the twenty-five years following the opening up of railway communication with Bombay has been held to justify a moderate enhancement of revenue—approaching, I believe, 20 per cent. But a great portion of the increment is covered by rent-enhancements effected at settlement, and the landlords have suffered in pocket less than this figure would indicate. Cases are indeed not uncommon where the rent enhancement effected by the Settlement-officer left the landlord actually better off than before. Moreover, the proportion of revenue to the rental income of the proprietors, which (as already stated) in 1863 exceeded 80 per cent., has under the new settlement fallen to a trifle over 60 per cent. That is to say, in making the second settlement the Government has reduced its share by as much as a quarter. Even so, the land-revenue assessment of the Nagpur country is heavier than that of the northern districts, where the share of the rental assets taken as revenue more nearly approaches a half, and, indeed, in some cases falls short of a half. One can understand that the landlords of Nagpur should be somewhat exercised in spirit at finding that they render to the Government a larger share of their rental than is rendered by landlords elsewhere, and (speaking on my own part) I have no intention of implying that the present proportion of revenue to assets in the Nagpur country should be accepted as a fixed standard for future settlements. But the most that can be said against the Government is that its policy has been to abandon the position of its Maratha predecessor step by step instead of at a bound,—to reduce its share of the produce gradually, with the growth of the wants of the people, rather than to sacrifice revenue in the interests of uniformity.

" There is, I may add, a special explanation for the particular assessments which my Hon'ble friend apparently has in mind. The proprietary rights conferred on the lessees of villages by the British Government at the first regular settlement did not in all cases cover the whole of the village-areas, certain of the older established raiyats being not uncommonly made proprietors of their holdings. These men pay revenue, not rent, and the landlord does not enjoy the share of their payments which would fall to him were their status merely that of tenant. But the act of grace which benefitted them is the foundation of his own proprietorship, and the two titles must stand or fall together. Here again, my Lord (if I may be permitted the expression), it is a gift horse which is being looked in the mouth. "

1898.] [*The President.*]

His Excellency THE PRESIDENT said:—"I only want to say one word before I put this question in amplification of the reasons given by my Hon'ble Colleague for passing the Bill on the present occasion. I think it would be rather difficult to find a better example than this of a legislative enactment which has followed a course which has been careful—I may even call it slow and judicial. When I came to India I found that proposals for the amendment of this law in the Central Provinces had been submitted to the Government of India by the Local Government in the previous year, that is, 1893. But in the ordinary course of business as it is transacted between the Government of India and the Local Governments I think it was not till 1895 that I was able to give some sort of hope to my Hon'ble friend Mr. Chitnavis that the amendment of the law which I think he then was urging upon us might be expected within a reasonable time. However, circumstances made my expectation in some degree premature, and it was not for more than two years afterwards that it was possible to lay a Bill before this Council, but one of the circumstances which during that interval caused delay was the famine which affected work in the Government of India, and especially in the Central Provinces. The time, however, was not wasted, because it was employed in various communications between the Government of India and the Central Provinces Government, and with the Secretary of State and his Council; and so great were the opportunities of consultation that I think it is now the case that no less than four Chief Commissioners of the Central Provinces have considered and expressed their opinions on this Bill, and have had an opportunity of consulting local opinion. The Hon'ble Member, Mr. Chitnavis, will bear me out in saying that consultation with local opinion on the part of the Chief Commissioner of the Central Provinces is one which is not confined to his subordinate officers, but it has always been the practice to collect, so far as the Chief Commissioner can, the opinions of Native gentlemen like himself who can give valuable advice in a matter of this kind; and that, I know he will agree, has taken place in connection with this measure. Well, we then come to the point at which the Bill was introduced last year—in 1897. It was introduced by an Hon'ble Colleague of mine, who had been Chief Commissioner himself in the Central Provinces before he came into this Council, and whose sympathetic attitude towards the people, I know, is recognized throughout India. It was fully intended last year that this Bill should be taken up and disposed of during the Calcutta session; but circumstances again intervened: the legislative session proved a very heavy one, and it was not possible to give this important Bill the time which we all admitted was necessary for its careful consideration in Committee. Accordingly, I think with the full

concurrence of the Hon'ble Member, Mr. Chitnavis, it was arranged that the Committee should sit in Simla. That Committee was, as my Hon'ble Colleague has pointed out, a very strong Committee, because it was reinforced, not only by the Hon'ble Member, Mr. Chitnavis, who was a Member of this Council, but the Hon'ble Mr. Fuller, who came up from the Central Provinces for the purpose, and whose knowledge of the country is second to none. Well, then, we are in this position. The Bill is largely concerned with technical and local details. It has been considered carefully by the Committee, who have not spared either time or trouble in its investigation, and it is now submitted to this Council as a Bill which, as the Hon'ble Member himself has said, is one which is generally approved. There are of course differences of opinion—it would indeed be impossible to arrive at a decision in regard to the details of a Bill of this kind in which there would not be some differences of opinion—but I cannot see that any advantage would be gained by continuing the discussion on these specific points at a future meeting of the Council in Calcutta, which would be attended by Members, to the majority of whom the subject would be entirely new. Under these circumstances I think that the Government is only acting in the interests of the Central Provinces themselves in asking the Council to pass the Bill at this sitting. I hold very strongly the principle that the Government in India is a continuing Government, and that it is absurd, I might say impracticable, to draw a line where one Viceroy—a Viceroy or anyone else—demits his office, and to say that the matter in question ought to be concluded at a certain specific point. At the same time it will be a personal satisfaction to me to affix my signature to a Bill which, on the authority of my Hon'ble Colleague and the Hon'ble Mr. Chitnavis also, is one which will prove a measure of relief to so large a number of persons in the Central Provinces,—a Province which has suffered severely during my term of office,—and I can only hope they will accept it as an omen of the happy future which I trust is in store for them."

The motion was put and agreed to.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. RIVAZ moved that the Report of the Select Committee on the Bill to further amend the Central Provinces Land-revenue Act, 1881, be taken into consideration. He said:—"My remarks on this Bill need be very brief. The Select Committee have only made two alterations of any importance in the Bill as introduced. First, they have made changes in the drafting of the definition of *sir*-land, which is rather an intricate matter, but which at all

events will give it a clearer and more easily intelligible form; and, secondly, on the suggestion of the Central Provinces Administration, we have added a new section to the provisions regarding partition, which will enable a partitioning officer, in dealing with an estate of two or more mahals, to partition by distribution of whole mahals instead of by division of each one of them.

"This enables an obviously convenient method of procedure to be adopted in cases where it is necessary."

The motion was put and agreed to.

The Hon'ble MR. FULLER moved that to the new section proposed to be substituted for section 69 of Act XVIII of 1881 by section 4 of the Bill as amended by the Select Committee, the following *explanation* be added, namely:—

"*Explanation.*—For the purposes of this section the word 'proprietor' shall be deemed to include an assignee of proprietary rights, but not a málik-mákbuzá."

He said:—"My Lord, this is purely a formal amendment. The *explanation* which it is proposed to add to section 69 is one of those attached to the definition of *sír*-land contained in section 4A of the Bill, and its repetition in section 69 will place beyond doubt the fact that a Settlement-officer in recording land as *sír*-land, in the course of his settlement-operations, is to follow the same conditions as those which affect the automatic accrual of *sír*-rights in districts which have not as yet been resettled. As a matter of fact this has all along been the case, although section 69 in the present Act includes no such *explanation* as that which it is now proposed to add to it. But the addition of the *explanation* will prevent the possibility of mistakes in this matter."

The Hon'ble MR. RIVAZ said:—"The amendment is a desirable one for the reasons given by the Hon'ble Mr. Fuller."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill as amended be passed.

The motion was put and agreed to.

INDIAN EVIDENCE BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to further amend the Indian Evidence Act, 1872. He said:—"The Bill consists of three operative clauses. One of these clauses contains a substantial amendment of the law; the other two contain merely formal amendments which are sufficiently explained in the Statement of Objects and Reasons. The substantial amendment of the law is this. As Hon'ble Members are aware, in recent years a new system

of identification has sprung up, namely, the identification of people by means of what are called finger-mark impressions. I believe it is a fact that the so-called finger-mark impressions are really thumb impressions, but the technical name by which these impressions are known is finger-mark impressions. It has long been recognised that these finger-mark impressions are perhaps as trustworthy as—if not more trustworthy than—any means of identification which now exist; but a great difficulty arose as to the method of classifying finger-mark impressions. You had to record them, and to get access to them, and to discover whose finger-marks they were. Mr. Henry, the Inspector General of Police in Bengal, has devised a system of classification and has brought the method of identification to a very high degree of accuracy. That being the case, we think it is now time that this system should receive legal recognition. It has been held by one of the High Courts—and the Law Officers of the Government of India have advised that the Court has rightly held—that, as the Evidence Act stands at present, expert evidence is not admissible to identify either a person, or what you may call a signature, by means of these finger-mark impressions. It therefore becomes expedient to alter the law, and to enable expert evidence to be given to identify these impressions, and we propose to amend section 45 of the Evidence Act by inserting after the word 'handwriting' in each case the words 'or finger impressions.' When this amendment is made, the section will read as follows:—

'When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger-impressions, are relevant facts.

'Such persons are called experts.'

The motion was put and agreed to.

The Hon'ble MR. CHALMERS introduced the Bill.

The Hon'ble MR. CHALMERS moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

The Council adjourned to Friday, the 4th November, 1898.

SIMLA;
The 21st October, 1898.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No. 427 L. D.—31-10-98.—328.