Friday,
27th February, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

Jan.-Dec., 1885

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1885

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

The Council met at Government House on Friday, the 27th February, 1885.

PRESENT:

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

LAND ACQUISITION (MINES) BILL, 1885.

THE Hon'ble MR. HOPE introduced the Bill to provide for cases in which mines and minerals are situate under lands which it is desired to acquire under the Land Acquisition Act, 1870, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, Sir Steuart Bayley and the mover.

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He said:—"Considering the other important business which is before us on the present occasion, I think my colleagues will probably consider it sufficient if I refer them to the Statement of Objects and Reasons for a detailed explanation of the provisions which the Bill contains, without detaining the Council for the purpose of going into the various points in detail."

The motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published 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.

INDIAN SECURITIES BILL, 1885.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the law relating to Government securities. He said:—"The main object of the Bill is to legalise and conform the law to the practice obtaining in England, and actually existing in the Indian Public Debt Offices, both before and after the passing of the Indian Contract Act, which recognises the right to sue, in cases where our securities are held jointly, by one or more survivors in the event of the decease of one or other of the original holders. Doubts have been raised as to whether this practice was in conformity with the provisions of section 45 of the Indian Contract Act. To remove those doubts this measure is about to be brought forward. Advantage will be taken of the occasion to introduce provisions enabling Government officers holding Government securities for public purposes to endorse as such, and not as individuals, the securities they may hold, and to have securities similarly endorsed to them; and, finally, advantage will be taken of this opportunity to conform the provisions of the law to the existing practice as to the issue of fresh securities in place of those which, from being overladen with endorsements, can no longer be conveniently endorsed; and also as to the renewal of lost or destroyed securities, provision being made for the protection of the Government against claims preferred to the securities in place of which renewed securities have been issued."

The motion was put and agreed to.

BENGAL TENANCY BILL.

The Hon'ble SIR STUART BAYLEY moved that the Reports of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administra-

tion of the Lieutenant-Governor of Bengal be taken into consideration. He said:—

OBJECT OF SPEECH.

"In moving that the Report of the Select Committee be taken into consideration, I do not propose to go behind what passed at the second reading of the Bill. Such questions as whether legislation was necessary at all, and whether legislation was barred by the terms of the Permanent Settlement, I consider to have been then decided, after sufficiently exhaustive discussion, and I, at least, shall not re-open them. What I propose to do is to review the work of the Select Committee; to show the nature and the reasons of the principal alterations they have made, and how far the Bill, as altered, is likely to succeed in securing those results which, in imposing on us our laborious and absorbing task, the Legislative Council had in view.

To review the work of Select Committee.

"Before doing this, however, I may be permitted to say a few words as to the constitution and labours of the Committee. It was particularly strong in numbers, consisting of more than one-half of all the members of the Council. It comprised the selected representative of the Bengal zamíndárs, and though the death of our lamented colleague Rai Kristodas Pal Bahadur in the middle of our discussions was a grievous loss to them, and indeed to all of us, yet their interests could hardly have found a better representative than in his successor, who with inflexible constancy and even a more perfect knowledge of detail than his predecessor, contested every inch of ground, and displayed a temper and ability which showed how wisely the British Indian Association had made their selection. The zemindars of Behar were specially represented, so also were the planters. Several of our members are of the legal profession, and in the course of that profession had acquired an intimate knowledge of the problems with which we had to deal. As will be seen from the published minutes attached to the Report, the cause of the raiyats had the advantage of the most powerful and most sympathetic advocacy. Nor were we deficient in the light that comes from a knowledge of the working of cognate systems in other provinces, and we had a further advantage in the assistance which a long experience in the task of comparing and tabulating the statistics of all the provinces of this vast empire enabled one of our members to extend to us.

Constitution of the Committee.

"The Committee sat 35 times last session, and 28 this session, each meeting lasting generally 3½ hours. The correspondence they had to study fills a shelf some 3½ feet in length, and, whatever charge may be brought against them, that of want of industry is certainly not sustainable. I make these remarks not merely that I may take this opportunity of expressing the thanks

Work of the Committee.

of the Government of India to the Committee for their unwearying labours and the great assistance they have given, but also in order to show to the Council that in a Committee so constituted the decisions of the majority may be accepted as at least *primâ facie* likely to be sound, and as certainly the result of an impartial and most earnest desire to do justice in the clash of conflicting interests.

Its prima facie value.

Order of subjects.

"In what I have now to say I shall follow, as far as may be, the order of subjects as they come in the Final Report of the Select Committee, though I must take you back by reference occasionally both to the Intermediate Report and to the Statement of Objects and Reasons which explained the original provisions of the Bill. And in this order the first point I have to notice is in regard to the definition of "estate" and "proprietor". It will be observed that the main alteration we have made is to add to the definition of "estate" words expressly including Government *khas mehals*, and unregistered *lakhiraj* lands, and we have omitted a proviso that appeared in Bill No. II. The insertion of the unregistered revenue-free lands is intended to meet a real omission in the first draft of the Bill. The insertion of Government estates is intended to clear up a singular misapprehension as to its being the intention of Government to exclude its own estates from the operation of the Bill—a misapprehension which, though entirely erroneous, has given rise to a good deal of criticism on our good faith.

Definition of "proprietor".

Insertion of Government of khas mehals.

Original definition applied to all lands entered in Government registers.

"The original definition made the Bill apply to all land entered in any of the general registers of Government, and if any one will turn to section II, clause V (Vol. 1, page 137) of the Bengal Board's Rules they will see that all *khas mehals* and raiyatwari tracts, all lands even temporarily occupied by Government for public purposes, and all waste and other lands not assessed to revenue have to be entered in these registers. It is difficult to understand how any one should suppose in these circumstances that it was the intention of Government to exempt their own estates. I can only suppose that the proviso which appeared in Bill No. II, referring to certain Government taluks, was not fully understood. That proviso had reference to some *noabad* taluks in the Chittagong district, which, though for revenue purposes treated as tenures were for convenience sake entered in the register of estates, and it was in order to prevent a wrong deduction as to the nature of these tenures being founded on the fact that they were entered in the estate register that a late member of the Bengal Board of Revenue asked for the insertion of the proviso. For the purposes of this Bill it was not wanted, and it has accordingly been struck out,

And therefore to all Government estates.

Explanation of proviso.

Since omitted.

but I repeat emphatically that it was never the intention of Government to exempt its own estates from the substantive provisions of this Bill, and out of abounding caution we have inserted words which can leave no doubt on this point.

Classes of tenants described, not defined.

"Coming now to the chapter headed Classes of Tenants, we have, as stated in the Intermediate Report of the Committee, attempted to describe rather than to define the various classes. It was urged upon us very strongly by Mr. Dampier, that the most serious practical difficulty arose from the impossibility of deciding whether a man was a tenure-holder or a raiyat, and that it was necessary to give the Courts and Settlement Officers some assistance in coming to a decision, even drawing, if necessary, an arbitrary line founded on the extent of the holding, and we have accordingly provided that where local custom was not sufficiently clear upon the point the Courts should look to whether the land was originally taken for the purpose of direct cultivation by the holder or for the purpose of indirect cultivation by settling raiyats on it, and that, further to assist the Courts in coming to a decision, there should always be a presumption that a tenancy of 100 bighas was a tenure and not a raiyati holding. The presumption of course is based on the fact that nowhere in Bengal does a man take such a large holding as 100 bighas with the object of cultivating more than a small portion of it himself, and the general opinion of the officers consulted is that the standard selected is a perfectly safe one.

Original object of the tenancy to be the test.

Presumption from 100 bighas.

Condition as to subletting a portion omitted.

"In Bill No. II, the presumption was made conditional on the person having actually sublet a portion of his holding, but it seemed to the majority of the Committee that, if the presumption arising out of the size of the holding has any validity at all with reference to the object of the initial taking, the question of whether an acre or two is subsequently at a particular time sublet, is quite irrelevant. Of course if a large portion or the whole of it is sublet, this fact affords an indication of the original object of the holder which the Court would take into consideration, but it seemed wiser not to clog the presumption, by making it depend on the sublease of an arbitrarily fixed proportion of the holding—a proportion which would, in practice, be very difficult to prove, and we have therefore left it to depend entirely on the size of the holding.

Tenure-holders. Substantive position unchanged.

"In the chapter on tenure-holders we have left the substantive position of the tenure-holder as regards his liability to enhancement unchanged. We have however somewhat modified the provisions of the original Bill relating to limitations on enhancement, and to registration on transfer. Under the original Bill the Courts, if granting enhancement against a tenure holder, were

bound to leave him not less than 10 per cent. and not more than 30 per cent. of his net rental. The minimum was subject to some alteration in the case of improvements made by the tenure-holder. The enhanced rent was also not to be more than double the previous rent, and was not to be again enhanceable for a period of ten years.

Limitations on enhancement omitted.

"We have thought it expedient to retain the provision which says that the tenure-holder shall not be left with less than 10 per cent. of his net profits. But we have omitted the restriction which limited him to 30 per cent. of those profits, and on the other hand we no longer confine the enhanced rent to a sum equal to double the old rent.

"It seemed to us expedient to leave to the Courts a wider scope for discretion in both directions. In laying down a maximum, there is a danger of what is intended as a final limit being adopted as an equitable standard laid down by the legislature, and thus becoming the general rule, and we were unwilling to offer to the Courts any inducement to take a royal road to a decision instead of giving the fullest consideration to what would be fair and equitable under the circumstances. We have now directed them to have regard not only to the improvements of the tenure-holder, but to the circumstances surrounding the original lease, such as whether it was a reclamation lease, whether it was given in consideration of a bonus, and the like, and then to settle a fair and equitable rent, and we have extended the term for which the enhanced rent is to be fixed, both in the case of tenure-holders and for occupancy raiyats from 10 to 15 years.

What the Courts are to look to.

Registration of transfers.

"In regard to registration on transfer of tenures, this is what the Select Committee report :—

'We have, in sections 12 to 16 of the Bill, so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

'The Bill, in its previous stages, provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office, and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realise their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

'A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of

our Bill now under consideration, has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

'We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista, would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

'The provisions we have inserted in the Bill in order to give effect to these views are as follows:—

'First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of assurances. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.'

"We have made similar provisions for securing notice being given to the landlord in cases of sale for an ordinary decree and of succession. In case of sale for arrears of rent there is no necessity for such notice.

Occupancy-raiyats.

"I come now to what I look upon as the most important part of the Bill—Chapter V, which deals with occupancy rights, and on this subject I fear I shall have to ask your attention at some length. The main points are (1) Who is to have the occupancy-right? (2) What are to be the incidents of that right? (3) What rules shall regulate enhancement of the occupancy-raiyat's rent?

Acquisition of the right.

"A very full discussion of the first question will be found at pages 5 and 6 of the Statement of Objects and Reasons, the gist of which is summed up in the statement that the Bill as introduced in Council makes 'the acquisition of the status of the khudkasht, or as he is termed in the Bill the settled, raiyat, depend not on the holding of one and the same plot of land for 12 years, but on the holding of any raiyati land (whether the same or not does not matter) in the same village or estate for a period of 12 years

whether before or after the passing of this Act.' That is to say, the Bill originally proposed to continue all occupancy rights already acquired; to define as above the status of a settled raiyat, and to provide that the settled raiyat of a village or estate as thus defined should have occupancy rights in all lands which he might legally occupy in that village or estate. Bill No. II went a step further. The discussion in Council two years ago brought out the fact that whatever might have been the effect of Act X of 1859 as to the legal acquisition of occupancy rights, it was, in practice, exceedingly difficult to prove those rights. The proportion of persons having acquired occupancy rights was estimated at from 90 to 70 per cent. of all the raiyats in the country, but unfortunately, as was said in the course of the discussion, those rights were 'moral' rights, and it was a matter of extreme difficulty for the individual raiyat to enforce in his own case by legal proof the rights which were generally admitted to have accrued to the raiyat in the abstract. Acting on this view, the Select Committee introduced into Bill No. II the presumption which will now be found at section 20 (7) of the Bill before the Council. The presumption runs as follows: 'When it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for 12 years continuously held that land or some part of it as a raiyat.' The Committee justified it as warranted by the existing state of things in the Lower Provinces, and because, while the presumption tends to simplify litigation, it is one which the landlord can have no difficulty in rebutting where it does not hold good. This presumption the Committee desire to maintain, and the only change they have introduced during their late session in this part of the Bill is the elimination of the words 'or estate,' thus limiting the right to the village in which the raiyat cultivates. As this decision of the Committee has been very forcibly attacked by His Honour the Lieutenant-Governor and some other members of the Committee, it is right that I should explain to the Council the reasons which led me, as representing the Government of India, to vote with the majority on this occasion.

Presumption of status.

Elimination of the words "or estate."

"The inconveniences attending the retention of 'the estate' in the definition of settled raiyat was touched on in the Select Committee's Preliminary Report of last year, and the point was one of those referred by the Bengal Government for the opinion of its officers. The great majority of those officers were against the retention of the words. This fact will be found in the 23rd paragraph of the Bengal Government's letter of the 15th September last,

Point noticed by the Select Committee.

where also are given the reasons which led His Honour the Lieutenant-Governor to dissent from the opinion of that majority, and to insist on the extension of the status of settled raiyat to the estate as well as to the village.

"I have no doubt that in the course of the debate His Honour will do full justice to the arguments which are there so ably stated; but, put very briefly, they are these:—

Reasons urged by the Bengal Government for retention of the words.

"The expediency, he urges, of giving stability to the raiyat's position is admitted on all hands. Now 95 per cent. of the raiyats are so poor that they cannot possibly cultivate land at any distance from their homes, or, in other words, hold land away from their own village. On the other hand, if a man can get his landlord to give him a holding in another village (and it is only with his landlord's consent that he can obtain it), then it may be presumed that the landlord knows his man, and there is no sort of reason why he should not have the same stability of position in regard to his new land as he had in his old land.

"Now, if this were all that the definition involves, it would be difficult to contest the Lieutenant-Governor's position, and I for one would very willingly accept it; but the word 'estate' really involves quite a different set of considerations from these. An 'estate' is, so far as this argument is concerned, an administrative fiction.

Objections to retention of "estate".

"It is simply the area registered in our books under one number, and liable to be sold as a single unit in case of arrears of revenue being unpaid. For rent purposes it has no meaning. It is not all the area owned by a landlord, for a landlord may have many estates. It is not the possession of a single landlord, for it may be divided among numerous shareholders. It may be part of a village, or it may be 100 villages. It may be the property of one man, or the property of 100 men. It may be managed direct by the landlord or indirectly by a number of agents, or it may, as in the case of the Burdwan Rájá's estates, be let out into innumerable *patni* or permanent tenures (these tenure-holders subdividing it again), and in these circumstances what is one estate in the Collector's books becomes, for rent purposes, several hundred different estates, the immediate owners or managers of which have no concern with one another, can see nothing of each other's books, and know nothing of each other's raiyats. The Burdwan estate is of course an exceptional instance from its size, but to a smaller extent the same thing happens all over the country, and it is on this point that the objection is most difficult to meet. The effect

would be to say that a man having once acquired occupancy-rights in any part of an estate should retain those rights with respect to any land which he may in any way acquire in any other part of the estate. Now, an estate, as I have shown, may be, and frequently is, subdivided among numerous tenure-holders or numerous managers. Any of these men may perhaps be able to say if any particular person has settled rights in his own particular tenure, but he cannot possibly know this in regard to the other tenures of the estate. He may let a man into his village as a non-occupancy raiyat, and the latter can immediately turn round and say that having acquired occupancy-rights in a village twenty miles away belonging to another tenure-holder, he claims to have them also in his new land. Clearly the Lieutenant-Governor's argument, deduced from the landlord's ability to know the character of his own raiyats, does not apply to cases of this class, and from this point of view his position is not an easy one to defend. The only reason for retaining the word 'estate' in the definition is to prevent a landlord from shifting his raiyat's holding from one village to another within his estate and so breaking down the occupancy-right. Now to this argument the Lieutenant-Governor himself supplies the answer: He urges that 95 per cent. of the raiyats are so poor that they cannot hold land away from their own residence. This, if it shows that the danger to the landlord would not be great from retaining the word 'estate', also shows that the possibility of shifting raiyats, except within reach of their residence, is equally limited. The advantage to the raiyats of carrying with them the occupancy-right from one village to another within the same estate is very small, for it is shown that 95 per cent. of them are not in a position to take advantage of it, and the only raiyats who could take advantage of it, are those who have abandoned their own village, and its application in their case would be a misuse of the power and contrary to the proposed intention of the Bill.

Danger of shifting examined.

"It is possible, no doubt, that shifting may occur in exceptional instances, where a landlord has several villages in his own direct management within reach of the cultivator's residence, and where he is powerful enough. But in the case of a very powerful landlord, strong enough to do this and determined to break down the occupancy-right, I am afraid he will always find some door open, and it must be remembered that not only is the number of landlords who are in a position to do this very small, but also the number of tenants to whom the process can be applied is small also.

"I suppose that, when the Bill becomes law, nine-tenths of the tenants will have secure occupancy-rights in the land they cultivate, and of the re-

maining tenth it is but an infinitesimal portion that can be exposed to the danger above explained.

"On the other hand, as long as we confine the accrual of occupancy-rights to the village, we have an absolutely unassailable position. The *khudkasht* raiyat's rights in the village are independent of those of the rent-receiver, and it matters not among how many estates the village may be divided. The raiyat is a *khudkasht* raiyat of *that village*, and has by custom, as well as by old law, a right of occupancy in any land he may cultivate in that village without reference to whom he pays his rent; but when once with the object of stopping gaps we take up more ground and apply the same rule to the estate, our position is no longer defensible. Not only is the theory new and unsupported by prescription or sentiment, it is open to a variety of practical objections, and by taking extreme instances it can be made to appear hopelessly ridiculous. Looking, as I do, upon the danger involved to the raiyats on the one hand, by omitting 'estate,' and to the zamíndárs on the other, by including it as for the most part of exceedingly small importance, I greatly prefer, for the above reasons, to omit it. I do not think any intermediate device, such as that of limiting the 'estate' to so much of it as is comprised in one pargana, or in one permanent tenure, or by extending the village to an artificial area within a fixed radius, would be found to work satisfactorily, and none of these suggestions wholly commended themselves to the Committee. I can only repeat my conviction that, though the danger of raiyats being shifted from one village to another within an estate is not wholly imaginary, it is not a serious danger, and that the provisions in the Bill, supplemented as they are by a working presumption, will sufficiently secure nine-tenths of the raiyats in their just right.

Advantage of confining the khudkasht rights the village.

Intermediate devic

"Turning now to the incidents attached to the right of occupancy, it will be seen that we have made a most important change in regard to one of these incidents—transferability. Instead of legalising it and regulating it by law, we have left it everywhere to custom. This change was too important to be made at the direct instance of the Select Committee. It has the approval and sanction of His Excellency the Viceroy in Council. I am at liberty to state that I personally adhere to the opinion I expressed in the first debate, to the effect that both in Bengal and Behar the custom has taken such deep root that it is desirable to legalise and regulate it, and that in both provinces this course would, in the long run if not in the immediate future, be attended by beneficial results both to the cultivators, and to the productiveness of the

Incidents of the occupancy-right.

Transferability.

My own adherence to it.

country, and so far I sincerely regret the decision arrived at. But I am bound to admit, apart from the arguments directed against the principle of transferability,—arguments founded on injury to the landlord, expropriation of the raiyat, and rack-renting of the actual cultivator,—I am bound to admit that the Committee found immense difficulty in devising any practical scheme of pre-emption, any satisfactory safeguard against the dreaded money-lender, any equitable method of securing to the landlord the fee which he now gets in some parts of the country, without injuring the raiyats of other parts where they habitually transfer without payment of a fee, and that in view of these difficulties there is something to be said for leaving the custom to strengthen itself, and crystallise into a shape which may hereafter render its regulation less difficult than it is at present. We have, moreover, made it clear that where the custom of transfer without the landlord's consent has grown up, it is not the intention of the legislature in any way to interfere with it. In all other respects we leave transfer alone, and the Council will not have to consider the schemes of pre-emption, registration, and landlord's fees, which occupied so much of the time and attention of the Committee.

Difficulties in the way of giving effect to it.

Custom not interfered with.

Sub-letting.

"While we have dealt thus with transfer, we have not felt it possible to interfere with the long-established right of sub-letting.

"The existence of this right is admitted in section 6 of Act X of 1859, and the authorities consulted have almost unanimously declared that it is impossible now to interfere with it. Moreover, if the tendency to alienate, by way of transfer, is not allowed free play, it must, following the line of least resistance, force an outlet in sub-letting.

Scheme for restricting.

"To check this tendency, or at least to nullify its evil effects, was the intention of the provisions inserted as section 37 of our Intermediate Bill No. II. The scheme is explained fully in paragraph 27 of our Preliminary Report of last year. The main point of it was that an occupancy raiyat, who sub-lets more than half his holding, should be deemed to be a tenure-holder, and thus his sub-raiyats should be in a position to acquire rights of occupancy. But it was felt that this would envelope all rent-litigation in such clouds of uncertainty that it could only be permitted to take effect on the tenure being registered, and on this difficulty the whole scheme was wrecked. It was the very general opinion of the officers consulted, that in such cases registration would never be spontaneously sought for, and could not be enforced, and in view of the general objection taken to it on this score it was withdrawn. All that we have felt

Withdrawn.

ourselves able to do in this direction is to provide in a subsequent portion of the Bill (section 85), that a sub-lease, given without the landlord's consent, shall not be valid against him unless registered, and that no sub-lease for a term of more than nine years shall be registered. To such sub-leases we have given some protection which I shall refer to hereafter, but if it is really desirable to check sub-letting, about which I am personally very doubtful, it will certainly not be done by leaving the sub-lessee defenceless against his lessor.

Protection now given.

To attempt by legislation

"The next branch of this subject is as to the rules that should regulate enhancement of an occupancy-raiyat's rent, and in this we have made some important alterations. Dealing, first, with enhancement by private contract, it will be observed that section 39 of the original Bill provided that such contracts should only be valid after being approved and registered by a revenue-officer, and the revenue-officer was not to accept any such contracts if the enhanced rent was more than 6 annas in the rupee above the old rent (these figures were put in tentatively), or more than one-fifth of the gross produce.

Enhancement of an occupancy-raiyat's rent.

By private contract.

As first proposed

"It was at an early stage obvious to the Committee that, even if the gross-produce limit was accepted as applicable to enhancements made by a Court, it was inapplicable as a test precedent to the registration of a contract.

Gross-produce limit

"It would have meant that in every case before a contract could be registered, an exceedingly complex judicial enquiry should take place—an enquiry, too, in which the Revenue-officer would be practically powerless, as the only evidence available would be that of the two parties, who were *ex hypothesi* in agreement as to the terms. The approval of the Revenue-officer, though, if confined to the form of the contract, strictly in accordance with the conditions of the Permanent Settlement, was felt, when extended so as to cover the question of the fairness of the conditions, to leave too wide a discretion to the Revenue-officer—a discretion, moreover, which, for the reasons above given, he would in practice be powerless to exercise.

Inapplicable to contracts.

"The registering officer will now, under the amended section, merely have to see that the agreement is not contrary to the express stipulations of the contract sections of the Bill, and that the raiyat understands it and is willing to enter in to it.

Approval of the registering officer no longer required.

"The Committee have, however, it will be seen, reduced the fractional limit within which enhancements can be made by contract to two annas in the rupee. About this clause there was great difference of opinion in the Committee.

Fractional limits considered.

"On the one hand the objectors urge that it is useless putting in any such limitations at all, as if the raiyat agrees to pay the enhanced rent he will not care what the deed recites as to the amount of the previous rent, and while it will cause very serious embarrassment to scrupulous landlords, it will in no way serve as a check on the unscrupulous among them. It is also urged that any such check will force a landlord who wishes to enhance to take his raiyat in each case into Court, and then to demand more than he would otherwise be willing to accept—a process which is admittedly full of injury to the raiyat; that whereas if the landlord gets a decree for a sum more than two annas in the rupee on a test-case, instead of being able, as now, to make contracts on the same terms with his other raiyats, he will hereafter have to bring them one and all individually by separate suit into Court to confess judgment, and will thus obtain the same result only by a process far more expensive and far more demoralising to the raiyat. Another objection is that it altogether fails to meet the case of raiyats who are allowed to cultivate at specially low rents on condition of growing indigo or other special crop—a condition frequently used both by Government and by indigo-planters. When this condition comes to an end, there is no means of voluntarily adjusting the rent to the altered circumstances. The force of these arguments cannot be denied. On the other hand it is urged that 12½ per cent. (a fraction which allows of the rent being enhanced by 25 per cent. every 30 years, by 100 per cent. in less than 90 years), is as much as a moderate landlord would ever be likely to ask as an addition to the rent; that it is quite reasonable, if the landlord wants a larger enhancement than this, to send him to the Courts for it, where he can prove its reasonableness; that the scheme encourages moderate enhancements, and discourages any large enhancements; that in some parts of the country, and precisely in those parts where the raiyats are least able to protect themselves, and most likely to agree, under pressure, to any terms which their landlords may impose, the rents are already so high that no sufficient margin for subsistence is left to the raiyat, and a single bad season suffices to break him down; and consequently that, in the absence of the checks which the Committee have removed from enhancement by the Courts, it is imperatively necessary for the very existence of the raiyat that enhancement by contract should be restricted within comparatively narrow limits. It is for the Council to say which of these views should prevail: for myself, I feel very strongly the necessity of some such check as the Bengal Government urge in regard to the over-rented parts of Behar, and whatever doubts there may be as to the efficiency in practice of this particular check, no competent observer can doubt the reality of the danger at which it is aimed.

"We have inserted a section exempting from these conditions enhancements made *bonâ fide* on the ground of landlords' improvements, because we look upon such enhancements in the light of interest on the capital expended, and we desire to encourage improvements.

Exception in the case of landlords' improvements.

"One point remains under this head. We have, in order to lessen the harassment caused by frequent enhancements, provided that the enhanced rent, whether under contract or under decree of Court, should run for 15 years. This is an extension of the term (10 years) originally proposed by the Rent Committee, but it is only half of that (30 years) recommended by the Famine Committee. It is a very substantial boon to the raiyat, but is, we consider, perfectly just and necessary.

Period during which fresh enhancement barred extended to 15 years.

"Coming now to enhancements by decree of Court, we have to consider the grounds on which enhancement can be demanded, and the considerations by which the Court should be guided in granting it.

Enhancement in Court.

"Under the Bill as first introduced, the great regulator of enhancements was intended to be the table-of-rates. This scheme, as I shall hereafter have to explain, has been eliminated from the Bill. Where a table-of-rates was not in force, the Bill provided for enhancement on the following grounds :—

Three grounds.

(1) the prevailing rate;

(2) increase of productive powers of the land;

(3) increase in average prices of produce.

"Of these, the prevailing rate remains in a slightly altered form. Increase in the productive powers has been subdivided into the two efficient causes which alone can bring it about so as to justify in our opinion the enhancement of rent. All other cases seem to resolve themselves into cases, such as railways or canals, in which the landlord will get his enhancement by improvement of prices, or else into improvements effected by Government or by the raiyat. In these cases we do not see any just ground for enhancement. The two elements remaining are fluvial action and landlords' improvements, and these two are maintained as grounds on which a landlord can demand an enhancement. The third of the old grounds—'increase of prices'—has been retained and rendered, in my opinion, an exceedingly valuable instrument in the landlord's hands for obtaining an equitable increase of rent.

"To avoid misapprehension, I may mention here that increase of area is treated separately, as we do not consider that increased rent demanded on this ground is, properly speaking, an 'enhancement'.

Prevailing rate.

"Going back, then, to the first of these grounds of enhancement, it will be seen from the dissents that we have been vehemently urged to get rid of the prevailing rate altogether as a ground of enhancement. This was first moved by the Bengal Government in Committee last year and was not accepted. It was then referred for the opinion of the local officers, and the outcome of that reference was to show a very even balance between those who were in favour of abandoning it and those who were in favour of retaining it in such a form as to safeguard it from abuse. The reasons which led the Lieutenant-Governor to desire its abandonment are very forcibly explained in paragraph 40 (pages 25 to 28) of his letter of the 15th September. Very briefly summarised they are as follows. By the Permanent Settlement a raiyat's rent might, as a rule, be brought up to the pargana rate. The theory of the pargana rate was that it was a fixed and ascertainable entity, and this was in many parts of the country no doubt the fact. Where there was such a rate authoritatively established, it was fair, and was part of the old right of the State landlord, that the raiyat, when not protected by patta, should pay according to that rate. But the established pargana rate disappeared, and there is now no prevailing rate.

Reasons suggested for abandoning the prevailing rate.

"The landlords have been accustomed to take what they can get; rents are as often as not fixed in a lump sum on the holding and not differentiated according to the various qualities of the soil.

"In the absence of a real prevailing rate, the Courts have to take the average of the most prevalent rates in the vicinity. This means that A's rent is to be enhanced because B and C, being in debt, or otherwise at their landlords' mercy, have agreed, or pretended to agree, to pay enhanced rates. There is ample evidence that, apart from the natural effect of such competition-rents as have replaced customary-rents, bogus-rents are fabricated and kept on the jamabandis with a direct view to bring up the standard of the prevailing rate. Proposals have been made to exclude from consideration in determining the prevailing rate the effect of recent initial or competitive rents, but in the long run this would be impossible, and any way it does not cover the whole ground. These considerations led the Lieutenant-Governor to propose the absolute abandonment of the section, except where a prevailing rate is *established* by a Settlement-officer under Chapter X. The question was very fully discussed in

Committee, and the result is given in paragraph 20 of our Report, which runs as follows:—

'20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent", we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.'

Reasons which prevailed with the Committee for retaining it.

"I may have more to say on this subject when specific amendments are proposed, but for the present I will only observe that I believe in the amended section we have accurately retained the existing substantive law as interpreted by the Courts, and have only introduced the necessary safeguards above explained; we have, however, added a qualifying clause which would enable the raiyat to plead any sufficient reason there may be for his being allowed to hold on at a lower rate, have limited enhancement to those cases where the difference between the raiyat's rate and the prevailing rate is substantial so as to prevent the section being used for purposes of harassment, and have indicated that where a local enquiry is necessary to ascertain the prevailing rate it should be conducted by a properly qualified Revenue-officer.

Modifications in form.

"The next ground in the order of our Bill on which enhancement may be demanded is increase of prices. We have made some alterations under this heading, but I would first explain the scope of the section. The prices referred to are those of the staple food-crops, and are entirely independent of the particular crop which may happen at any particular time to be grown by the raiyat. We take the prices of staple food-crops as our standard both on grounds of principle and on grounds of convenience. Starting from the principle that existing rents, even if not corresponding strictly to soil-capacity, are yet to be considered fair and equitable, we hold it to be entirely unjust and contrary to good policy that they should be made to vary according to whether the raiyat at any particular time grows a special crop which may be fetching a high or a low price. We would not make the landlord's rents depend on whether the raiyat is shrewd or the reverse, nor should they in any way in the existing condition of agriculture fluctuate with the fluctuations of foreign markets for such crops as jute, safflower, oilseeds, cotton, &c. What we do mean is, that

Increase of prices.

the landlord should not unduly suffer nor the raiyat unduly prosper from a permanent or long continued alteration in the value of money, and the only practical standard which can be applied to test this point is that of the price of staple food-crops.

"We have made other alterations. Formerly, it was necessary for the landlord to prove to the Court when the rent was last fixed, in order to be able to enter into any comparison at all. The Court may under this Bill take any period during the currency of the rent that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods. In order to facilitate the comparison, the Local Government will have to draw up, from the materials which are available to a certain extent for the last 20 years, statements of past prices, and in future to record prices accurately, publish them for criticism, and finally, after revision, publish statements of annual average prices which the Courts will receive as presumptive evidence.

Alteration in law to facilitate proof.

"*We have, I think, by this scheme redeemed the pledge that Government* would put the power of enhancement 'on such a footing that it will readily be enforceable in practice.' Before leaving this part of the subject, I must refer you to paragraph 18 of our Report, which deals with the deduction to be made to cover the effect of increased prices on the cost of cultivation. We are of opinion that the tendency in this country is for the cost of cultivation to increase in a higher ratio than prices. So far as the labour is done by the cultivator's family or by labourers paid in grain (as is mostly the case in India), no benefit under this item can accrue to the cultivator from increase in prices. On the other hand, as population and prices have increased, pasturage has diminished; cattle are dearer to buy, dearer to keep, and less remunerative; manure is dearer, and so is fuel; and all these elements have to be taken into account. The Local Government proposed to deduct one-half for the increase of prices to cover the increased cost of cultivation; we recognised the impossibility of asking the Courts to solve the hopeless problem of increased cost in each case, and found it necessary to draw an arbitrary line. We have drawn it at one-third.

Deduction to cover increased cost of production.

"In regard to the two remaining grounds of enhancement, namely, increase in productive powers caused by landlords' improvements and by fluvial action, I would only mention here that we have provided facilities for at any time registering and recording landlords' improvements, and we have decided that

Remaining grounds of enhancement.

under the head of fluvial action the Courts shall not take into account any increase which is merely temporary or casual.

"Before leaving this subject of enhancements I must explain the alterations we have made on the limitation to be placed on enhancement. Limitations on enhancement.

"The Bill, as originally introduced, provided that rents should never be enhanced so as to exceed one-fifth of the value of the gross produce, estimated in staple crops, nor should enhanced rent ever exceed double the old rent. In the Intermediate Bill (No. II) the gross produce limit had been rejected, and on the other hand the fractional limitations had been raised in one case to eight annas in the rupee, in others to four annas in the rupee. In the present Bill we have with the consent of the Bengal Government abandoned these fractional limitations without being able, as the Bengal Government wished, to restore the gross-produce limit.

"I hope to be pardoned for touching on this point at some length.

"The gross-produce limit was suggested by the Behar Committee in 1878, who would have fixed it at one-sixth; it found a place in the scheme of the Rent Commission and of Sir Ashley Eden's Bill at the tentative figure of one-fourth; it was one of our proposals to the Secretary of State, and was incorporated in the Bill as introduced into the Legislative Council, having then been changed at the instance of the Bengal Government to one-fifth. I may also say that, in respect to its principle, it had at that time on the whole been not unfavourably received by the zamíndárs. It was not therefore lightly excluded from the Bill by the Select Committee which sat last year, though grave doubts had been expressed in the debate in this Council, among others by His Honour the Lieutenant-Governor, as to the possibility of adopting any universal standard. The line of argument which led to its abandonment was somewhat as follows. In all the previous stages of the discussion the machinery on which reliance had been placed for fixing a fair rent had been what is called the 'table-of-rates.' This meant that a Revenue-officer should after due enquiry, classify soils over a given area, and, judging mainly by existing rent-rates fix a fair rate of rent for each class of soil. This enquiry would have involved by a minute process of investigation and experiment the ascertaining of what was for each class of soil the average gross outturn in staple crops. Thus ascertained, the figures would remain on record, and in suits for enhancement, &c., the Courts would only have to refer to them, and would thus be able, by applying the maximum test, to check any obviously unfair and unreasonable enhancement. Gross-produce limit. Reasons for abandoning it. Failure of scheme for table-of-rates.

"Before, however, the Committee had begun its labours, the Lieutenant-Governor had, at the instance of the Government of India, deputed selected officers to four or five experimental areas to ascertain if, as a matter of fact, rents had any such fixed and stable relation to classes of soil and produce as would enable the Revenue-officer to fix any table-of-rates based on existing facts. The result of the enquiry was disastrous to the scheme of a table-of-rates. It was found in almost each area subjected to enquiry not only that the multiplicity of rent-rates was almost inexhaustible, but that little relation could be traced between the existing rates and the quality of the soil. Consequently the table-of-rates as an adequate general machinery for regulating rents had to be abandoned, and the matter relegated to a great extent to the discretion of the Courts; and with the table-of-rates went the process of ascertaining and recording in an accessible form the average gross produce of each class of soil.

"This rendered it necessary for us to reconsider the expediency of retaining the gross-produce test as a maximum, and finally we decided, after some discussion, to abandon it both as unworkable and unfair. It is obviously unworkable in regard to private contracts, because it involves an enquiry which no registering officer can make before a contract is registered.

Impracticable in regard to contract.

Impracticable in regard to suits.

"We held it to be unworkable by the Courts, because no Court has at its disposal the machinery for ascertaining the facts. The Lieutenant-Governor has traversed this argument by asserting that we do not want scientific accuracy; and such an estimate as we do require can be obtained by the assistance of a panchâyat of raiyats who are presumably experts, and he points to the estimate made for grain-rents as an illustration. But the estimate in grain-rents is an estimate of the actual crop on the ground before their eyes—an estimate which is obtained by reaping and measuring samples. What the panchâyat in the other case would have to ascertain is very different. They would have to say what a field which may be growing tobacco or sugarcane or opium would grow, not in any particular year, but over an average of years, if it was sown with staple crops. They or the Courts would then have to ascertain what would have been the price which the raiyat might have received for this produce over an average of 5 or 10 years. There is ample evidence to show that we have hitherto failed to ascertain with anything like accuracy what a bigha of land *does* produce over an average of years of the crop actually grown upon it: to ascertain what it might produce if some other crop were grown is an infinitely more difficult problem. Then the panchâyat must be paid, which adds to expense,

and there is always the danger of their opinion being in accordance with the longest purse.

"The unfairness of the test is of not less importance. The produce on two fields being the same, the maximum rent as limited by this test is the same; but on one of these fields it may cost twice as much to raise the crop as on the other: the margin left to the raiyat will in one case be sufficient; in the other it will not preserve him from starvation. Unfairness of the test. In relation to cost of cultivation and to area of holding.

"The relative size of the holding will similarly interfere with the applicability of the test. The same margin of produce per bigha left to the raiyat may be quite adequate where he holds 20 bighas, and may mean absolute starvation where he holds 1 only.

"Another very serious objection to the scheme is this: as population advances the average area of each man's holding must diminish, and consequently the raiyat will require a larger proportion of the gross produce of his holding for the mere support of himself and his family. A less proportion will therefore remain as rent for his landlord. This is a necessary tendency while population increases at its present rate, and is, moreover, wholly confined to unscientific agriculture for subsistence. At the beginning of this century we have, in the Regulation I of 1804* for invalid jaghirs, a clear proof that Government then thought a cash rent equal to two-fifths of the gross produce a fair standard. To-day the Government of Bengal think one-fifth the maximum consistent with safety. If the Government of that day had been called on to fix a general standard they would have fixed it probably at two-fifths. It would be as dangerous for us to lay down now a permanent standard of one-fifth up to which, by the inevitable law which makes water find its level, rents would surely rise, as it would then have been for Government to lay down the standard at two-fifths. Until you can limit the amount of population to be fed you cannot with any safety say what proportion of the gross produce shall go to the landlord and raiyat respectively. Dangerous effect of fixing a permanent standard in face of increasing population.

"The Committee therefore, after full consideration condemned the principle of the gross-produce limit, because it left out of consideration other elements of equal or more importance in determining a fair rent. It took no thought of Committee objected to its principle and doubted its efficiency in practice.

* Section IX (6):—

"The proprietor of the land shall be entitled to rent in the proportion of two-fifths of the annual produce, whether it be in kind or in money, as may be agreed on between the parties concerned in the adjustment. This rent shall not be liable to any variation and shall be paid to the zamindár or other proprietor."

the cost of cultivation or of the size of the holding, or of the relative productiveness of it. They also objected to it in practice, because they thought the problem was one which the Courts could not solve, and because the attempt to solve it must add overwhelmingly to the cost of rent-suits—a burthen, which, as the *onus probandi* is on the raiyat, must inevitably fall on him in a large number of cases. So far we had not discussed the special fraction which it was proposed to introduce. Last autumn the Bengal Government again urged in the strongest terms the imperative necessity of retaining the gross produce limit as the only ultimate check on enhancements which might otherwise, under the prevailing-rate scheme, become destructive to the raiyat, and which certainly could not with safety be borne in Behar.

Consideration of test with reference to specific limit of one-fifth.

"The matter was again carefully considered, there being a decided readiness to accept the necessity of establishing a final check if one could be found, and this time the question was considered with reference to the special fraction proposed. The evidence as to average rates in each district is not such as can be altogether relied on, but, such as it is, it satisfied the Committee that the contention that a raiyat *can* not pay more than one-fifth of the estimated value of the staple crop is one which it is impossible to maintain. So far as it goes, and so far as the enquiries made by selected Revenue-officers last year bear upon the point, the evidence shows that in many districts which are not supposed to suffer from rack-renting, and in Court of Wards' estates as well, the raiyats *do* pay more than this proportion. But the evidence shows more than this: it shows that the relation of rent to gross produce varies so enormously (the Board give the result of their experiments as showing a variation from 67 per cent. to 7 per cent.), that it would be impossible to apply any one standard to all parts of the country, and that no sufficient remedy could be found in the direction of altering the limit to one-fourth or any other uniform fraction. It occurred to me that the test might perhaps be safely applied after a special enquiry in each district or smaller local area such as the table-of-rates contemplated, but this idea was not favourably received, and the Government of Bengal no longer press the scheme. Its loss however is made a ground of objection to the Bill as it stands; but fully as I recognise the real deficiency in the Bill of any adequate check on rack-renting in certain parts of the country, where enhancement is incompatible with the welfare, almost with the existence, of the raiyat, I must yet say that I consider the Committee were amply justified in refusing to accept a remedy which, in the shape proposed, was indefensible in theory, and would probably prove useless in practice.

Possibility of applying it after special enquiry.

Finally abandoned.

"The alternative fractional limits which had been inserted last year by the Committee, meanwhile, had been condemned by the Government of Bengal. Fractional limits condemned.

"As I have said in regard to tenures, there was a danger in establishing a maximum which would inevitably tend to become a standard of enhancement. They involved also the erroneous principle of adding most to the highest rent and least to the lowest; and we thought that, looking to the limitations which the grounds of enhancement carry within themselves, namely, in one case the rate prevailing in the village, and in that of prices the actual increase, minus one-third, it would be safer to trust to the discretion of Courts and to leave them within those limits to be guided by what is fair and equitable.

"We have therefore discarded the fractional limits on enhancement in Court, but I must repeat that it was the abandonment of these successive checks which led the Bengal Government to urge on us so strongly the necessity of strictly limiting enhancement by contract, and I trust this fact will be remembered when dealing with the limit of two annas in the rupee to which such contracts are subjected. And abandoned on condition of limitation of enhancements by contract.

"The only other point remaining in this chapter which I need notice, is the alteration which we introduced into the provisions for produce-rents in our preliminary Bill of last year. For the reasons given in paragraph 43 of the Intermediate Report, we eliminated the maximum that had been imposed on produce-rents, and we gave discretion to a Revenue-officer to refuse an application for commutation if opposed. We also added rules for his guidance in deciding what the equivalent money-rent should be. I need not take up your time at present by examining these rules. Produce-rents.

"Having dealt with the occupancy-raiyat, we must now turn to the non-occupancy-raiyat, who was called in the original Bill the ordinary raiyat. This name we have changed for reasons given by Mr. Reynolds and the Government of Bengal, to the effect that the non-occupancy-raiyat is not an ordinary raiyat, the ordinary or customary raiyat being the khudkasht. Non-occupancy raiyats.

"Around this raiyat, whatever he be called, a severe conflict has arisen. Some of the minutes of dissent declare that a great deal too much has been done for his protection, others say that he is entirely unprotected. Mr. Reynolds says the Bill 'affords him no protection as regards his rent, and that it does nothing to facilitate his acquisition of the right of occupancy.' Babu Peári Mohan Mukerji says: 'The rights given by the Bill to a non-occupancy-raiyat Differences o opinion.

will, to all intents and purposes, convert him into an occupancy-raiyat.' The Mahárájá of Durbhunga agrees with the latter, Mr. Amír Alí with the former. His Honour the Lieutenant-Governor also says the Bill 'leaves the non-occupancy-raiyat practically unprotected, and that on this point the Committee have departed from the intentions of the legislature and the conclusions of authoritative opinion.'

The Lieutenant-Governor's view.

"If this view were correct, I could only reply that among the conclusions of authoritative opinion which we have not departed from is one no less authoritative than that of His Honour the Lieutenant-Governor himself. In his speech on the second reading of the Bill in this Council, the Lieutenant-Governor, after urging that the Regulations of 1793 attempted only to protect the *khudkasht* raiyat, and that only so long as we dealt with his representative was our position unassailable, went on to say that 'it would be unreasonable and inequitable to extend the right of occupancy to every raiyat in the country,' and that he most cordially concurred in the maintenance by the Secretary of State 'of the distinction deeply rooted in the feelings and customs of the people, not only in Bengal but in most parts of India, between the resident or permanent, and the non-resident or temporary, cultivator.' 'It was to the resident raiyat and him alone', he says further on, 'that any ancient privileges and rights appertained' and accordingly when he came to deal with the details of the Bill, he said 'I am unable to accept the provisions of Chapter VIII (the ordinary raiyat) which deal with compensation for improvement and disturbance. I think too, though I myself have suggested a 20 per cent. (gross produce) limitation, that it may be impossible to enforce a uniform limitation of that kind in all parts of the province.'

Nature of protection afforded by the Bill.

"If then it were the case that we have given the non-occupancy-raiyat little or no protection, I might at least plead high authority for such a course; but I deny that it is the case, and I do not rest our defence on such authority. The line of action we have endeavoured to follow has been to keep, as directed by the Secretary of State, a marked distinction between the occupancy and non-occupancy raiyat, but to facilitate the acquisition by the latter of occupancy-rights, to give him some protection against undue enhancement, without barring the zamindar absolutely from all voice in the selection of his tenants or in the determination of their rents. One party of the dissentients would leave the non-occupancy-raiyat absolutely at the mercy of the zamindar without protection of any kind; the other party, in its endeavour to stop up every gap by which a zamindar could possibly find a means to injure his tenant,

would force the zamindar to retain for ever, subject to a heavy fine, any paikasht raiyat he had once admitted on the land, and would make the acquisition of occupancy-rights inevitable.

"The latter course would be contrary to the orders and intention of the Secretary of State, the former would be destructive to the stability of the cultivator and against the interests of public policy. I think that the attacks of the dissentients from two such opposite standpoints may fairly lead the Council to conclude that we have adopted a just and moderate view, and have taken the line which is fairest to the two contending interests.

Protection under the existing law.

"Under the existing law the non-occupancy-raiyat can get a patta at the rates agreed upon with his landlord. He can be ejected at the expiry of his lease, or; if without a lease, at any time after notice to quit. His rent can be enhanced as often as the landlord likes after service of notice of enhancement.

Protection under the Bill.

"We have provided that, after the expiry of an initial lease, he should still be liable to be ejected, but only after his first lease, not if he is permitted to hold on; and unless the suit for ejectment is brought within six months after the lease expires, the right to eject on that ground lapses. He will always be liable to ejectment by *suit* for non-payment of arrears. He will be liable to enhancement in two ways, either by registered agreement, or by suit in Court, but enhancement by suit carries with it, if the raiyat accept it, a lease for five years at the rate fixed by the Court, after which, unless he has meanwhile acquired rights of occupancy, he can be ejected.

Alteration made by the Committee.

"The Bill, as originally introduced, was silent as to ejectment after the initial lease, and the check it proposed on undue enhancement was (1) a gross produce limit, and (2) that the zamíndár should pay compensation for disturbance graduated according to the ratio of enhancement demanded. It is on these points that the Government of Bengal objected to the conclusions of the majority, and asked us to go back to the original Bill. In regard to compensation for disturbance, I may say that at the original discussion in Council it was more objected to than any provision in the Bill, and it was condemned, not only, as I have already mentioned, by the Lieutenant-Governor but also in stronger terms by Mr. Reynolds. He said: 'the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. .We have not the least experience to show how this provision would work in India, and the principle of it seems to me objectionable.' We found that Mr. Reynolds' condemnation was endorsed by others whose opinions we

Abandonment of compensation for disturbance.

could not disregard, and we abandoned it. As a substitute the judicial lease for five years was proposed and accepted, and so far the difference between the safeguard provided in the original Bill and that now given is that whereas, under the old Bill, the non-occupancy-raiyat objecting to pay the enhanced rent demanded of him could be ejected at the landlord's discretion subject to the payment of a fixed sum of money, he can now have the rent fixed by the Court; if he refuses to pay this rent he must go; if he accepts he is secure in his holding for another five years.

Substitution of judicial rent with a five years lease.

Effect of this protection.

"The security from ejectment and from undue enhancement which this provision affords, and the additional security given by the rule that all agreements for enhanced rent must be registered, do unquestionably facilitate the acquisition of the occupancy-right, though they are of course a long way short of the security which that right confers; and I am bound to say that, on this point, the two sets of criticism which I have read out to you seem to me equally exaggerated and unreal.

Initial lease.

"There remains the question of the initial lease. I have explained to you that, under the existing law, the landlord has a right to eject a non-occupancy-raiyat at the end of his initial lease.

Objection of the Government of Bengal.

"The Government of Bengal urged that this provision should not be maintained, and that, after having once been admitted to cultivate, no tenant should be ejected except upon receipt of compensation up to one-fourth of the rent which he has paid. I have explained to you that the considerations which led the Committee to reject this proposal were, *first*, that it was only fair that a zamíndár should be able to give a new tenant a period of trial to ascertain if he was likely to be a satisfactory tenant before establishing him permanently, and, *secondly*, that the proposal led directly to the effacement of the distinction between the two classes of raiyat which the Secretary of State had insisted on our maintaining. I do not, however, deny that the provision is one which can be taken advantage of to prevent new tenants hereafter from acquiring occupancy-rights. It will not hurt existing tenants to any great extent; it can only touch in the future the restricted class who are not settled raiyats of the village, and these it can only injure where a regular lease is given, and where the zamíndár is careful to sue within six months of the expiry of the lease.

Reasons for retaining the rule.

Dangers inherent in it.

View of Babu P. M. Mukerji.

"Thus restricted I should not have supposed that the right could do serious harm, but the contention of Mr. Reynolds has received valuable support from the quarter whence he can least have expected it, and the representative of the

zamíndárs corroborates his prediction that they will use this provision to the utmost of their power to prevent the accrual of the occupancy-right. He says, and he ought to know, that 'having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short-term leases, with a view to protect his interests, and thus reduce non-occupancy-raiyats to mere tenants-at-will.' It is true they have the power at present, and to some extent, perhaps, make use of it, but I had not expected such authoritative testimony to the fact that the zamíndárs prefer a set of serfs to stable and improving tenants; and I confess that if anything could make me doubt the wisdom of the decision arrived at by the Committee, it would be the gratuitous testimony of the Bábú to the evil use which will be made of it.

Gross-produce limit.

"The application of the gross-produce limit to the non-occupancy-raiyat's rent must, I fear, stand or fall with its application to that of the occupancy-raiyat. If it were deemed applicable to the latter I should be glad to see not only the system but the identical standard applied to the former, but if it is condemned as impracticable in the one case, it will be difficult to maintain the propriety of applying it to the other.

Under-raiyats.

"The next chapter deals with the under-raiyat. This class we have left as in the Intermediate Bill No. II, with only the nominal protection of a fractional limit above the head rent beyond which the lessor cannot recover in Court. This is to my mind the most unsatisfactory part of the Bill, but the Committee were unable to afford to under-raiyats any real protection without subverting the customs and traditions attaching to the status. So long as they are liable to arbitrary ejectment, there can be no protection against arbitrary enhancement, and the protection afforded by the Bill can in practice only refer to arrears of rent. With the right to eject, the lessor will always prefer this method of attaining his object to that of a suit in Court, so that the protection is, as I said, nominal. In fact the only practicable method of protecting them would be by giving to under-raiyats sub-occupancy rights against the lessor, of the same nature, though not necessarily in the same degree, as the occupancy-raiyat has against the tenure-holder above him. No such plan would, at the present time, be favourably received, as it is contrary to existing custom and is in that sense justly condemned as revolutionary. Moreover, the question is not at present of serious importance, though as population increases it is likely to become so; but I wish to say that in regard to the under-raiyat I do not think the Bill can be considered to be in any way a final settlement of the difficulty, and the next generation will probably have to reconsider his position.

Protection visionary.

Problem remains to be solved.

Chapter VIII.

"I come now to Chapter VIII, which is headed General Provisions as to Rent. The chapter opens with the sections which contain the well-known presumption that a tenure-holder or raiyat, who has held for 20 years at an unchanged rate of rent, shall be presumed to have held at that rent from the time of the Permanent Settlement and shall therefore not be liable to enhancement.

The 20 years' presumption.

Not to apply to produce-rents.

"The first alteration to be noticed is that we have omitted the provision making this presumption applicable to produce-rents. It seemed clear to us that where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self-acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room therefore for the presumption. We have, moreover, exempted from this presumption tenures in any area to which the registration of tenures under the Bengal Bill is applied, and both tenures and holdings in any area in which a record of rights is made. In those cases the rights having been once registered there is no ground for continuing a presumption the object of which is to facilitate the proof of existing rights rather than to create new rights.

Not to recorded and registered holdings.

Question of period for calculating the presumption.

"A more important change, however, was strongly urged upon us, which the majority of the Committee did not see its way to accept. Ever since the presumption was created in 1859, the period to be taken into consideration has been the 20 years immediately before the institution of the suit.

"It was argued, and the argument is repeated in some of the dissents, that year by year as the Permanent Settlement fades into the remote past, the presumption ceases more and more to correspond with the facts and probabilities of the day, and therefore that the presumption should run, if not from the 20 years before the passing of Act X of 1859, at least from 20 years before the passing of this Act. In other words, unless a person could show hereafter that his rent had been unchanged since 1864 he should not get the benefit of the presumption.

"This would have left the presumption operative in any case in which it could now be pleaded, but would not have allowed it to grow up by lapse of time in those cases in which it has not yet come to maturity.

"The majority of the Committee held that the presumption arising from the fact of a man holding for 20 years at an unchanged rent is in itself a wise provision of law without any reference to its dependence on the existence of

the tenure or holding at the time of the Permanent Settlement, that it was in most cases easier for a zamíndár who may be expected to keep regular books to prove if rent had been changed, than for a raiyat who does not keep books to prove that it has not been changed, and that as the law had been in its present shape on the statute-book for a quarter of a century, it was inexpedient to alter it. I myself voted with the minority on that occasion, but I am not anxious to see the decision of the Committee disturbed.

Decision of Committee to maintain the existing law.

"We have made some alterations in section 52, the first of which, as it only assimilates suits for diminution with suits for increase of rent on the ground of alteration of area, I need not notice; but in sub-section (2) we have inserted some provisions to guide the Courts in deciding whether an increase of area is really a ground for increase of rent or not. They will have to consider whether the apparent increase is the result of encroachment on the part of the raiyat, or of erroneous entries in the books of the landlord; whether, in short, the entire area has really been previously considered in the rent or not. The provision regarding instalments (53) is new. It has been strongly represented to us that the custom of making the rent payable in twelve monthly instalments was frequently a source of great oppression to the raiyat, as it enables his landlord to harass him with an equal number of suits for arrears. On consideration we have deemed it inexpedient to interfere with custom in regard to instalments, but where no custom or contract exists we have provided for the payment being in four equal quarterly instalments; and have, in every case, directed (section 147) that suits for arrears shall not be brought more frequently than at intervals of three months.

Increase of area.

Instalments.

"In paragraph 79 of the Statement of Objects and Reasons will be found an explanation of the provisions which the original Bill contained in regard to receipts and accounts.

Receipts and accounts.

"The main alterations introduced by the Committee are the annexure as a schedule to the Bill of forms of receipts and accounts which the Local Government will be bound to keep on sale, but which landlords may use or not at their pleasure. The Local Government will have power to vary these forms from time to time.

"If landlords prefer to use another form, we only require that it shall contain substantially the information which the receipts in the approved form provide for, and the penalty attached to non-conformity is that such a receipt shall be *presumed*, till the contrary is proved, to be an acquittance in full. By the original Bill it was *deemed* to be so.

"We did not think any more arbitrary clauses required. The greater confidence which the Courts will naturally repose in receipts kept according to the standard plan will probably be a sufficient inducement to secure their gradual adoption.

Receipt by registered proprietor.

"Section 60 is new, and its object is to give an advantage to the landlord whose title is registered against a claimant who is not registered in the Collector's books.

Deposits.

"The sections on deposits, though very carefully considered, have received but slight alteration at the hands of the Committee, and that only in matters of detail. Substantially the sub-chapter is the same as the provisions in the original Bill, explained in paragraphs 80 and 81 of the Statement of Objects and Reasons; but we have somewhat limited the discretion of the raiyat who deposits on the ground that he believes that his rent will not be received, by making this discretion dependent on the fact of the rent having been refused or a receipt withheld on a previous occasion.

Produce-rents.

"In the sections dealing with the division or appraisement of the crop, where rent is paid in kind, we have made some alterations.

"The original scheme is set forth in paragraphs 82 and 83 of the Statement of Objects and Reasons, as follows:—

Alterations made by Committee.

'82. The provisions contained in sections 112 to 116, for the division or appraisement of a crop by a public officer in cases where the rent is paid in kind or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Behar by the Behar Committee and the Rent Law Commission; but they are made generally applicable, and their details are taken, for the most part, from enactments in force in Upper India, where rent is very commonly paid in kind or in appraisement of the crops. They enact that, if either party neglects to attend at the proper time for making the division or appraisement, or if there is a dispute regarding the division or appraisement, the Collector may, on application made to him, issue a commission to such person as he thinks fit, directing him to divide or appraise the crop, and may further direct him to associate with himself any other persons as assessors for this purpose. If, in a division made in this way, either party receives less than his proper share, he may, within three months from the date of the division, sue the other party to recover the value of the additional portion of the crop due to him, and, if he does not so sue, the division will be deemed to have been rightly made. When the case is one of appraisement, the commissioner is required to submit his appraisement in writing to the Collector, who shall, after such hearing and enquiry as he thinks necessary, pass an order either confirming or varying it, and that order will be final.'

"The principal alterations are these. We allow the Collector to interfere on the application of a magisterial officer, should his interference be deemed necessary to prevent a breach of the peace.

"We have allowed the Collector to decide the question before him and carry out his order, only leaving it discretionary with him to refer questions to the Civil Court. We have added a section defining the tenant's rights as to the possession of the crop, its cutting, threshing and storing. The double claim to possession has given rise to much doubt and to much oppression, and it is most desirable that the right should be clearly defined.

Chapter IX.—Miscellaneous Provisions as to Landlord and Tenant.

"In Chapter IX we have made some alterations in the portion relating to improvements.

"We have given the Collector power (section 78) to decide disputes as to whether the landlord or tenant should have a right to make an improvement, and whether a particular work is or is not an improvement.

Improvements.

"We have given the non-occupancy-raiyat the absolute right to make a well which in some parts of the country is essential to his cultivation. This right carries with it a right to receive compensation for it on ejectment.

"We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (81), based on the law in force in the Central Provinces, providing that a landlord or tenant desiring to have any evidence recorded regarding an improvement which has been made may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also introduced a section (80) providing for the registration of improvements made by landlords. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, at a price to be fixed by the Court, any land on their estate required by them for the good of the estate, for building purposes, or for religious, educational or charitable objects. The Collector will have to certify to the sufficiency of the reason before the Court puts the section into operation.

Surrender.

"We have retained the old substantive law in regard to the raiyat's right to surrender, but we have added clauses to assist the Court in deciding under what circumstances he shall be liable for the rent of the following year in case a formal notice was not served three months before the surrender.

Abandonment.

"The object of section 87 (abandonment) is to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it is permanently abandoned or not. On the one hand, there is danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant; on the other hand, there is the danger of

temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat.

"To meet these two dangers we provide that if a raiyat abandons his residence without notice and without arranging for his cultivation and payment of rent, the presumption is that he has abandoned his holding. The landlord can then, after filing a notice in the Collector's office, enter on the holding and let it to another tenant. We give, however, a term of two years in which the raiyat can sue for re-admission, and the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession, on such terms as to payment of compensation and arrears of rent as he thinks fit.

Protection of third parties.

"We have also added sections directed against collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided that the surrender of a holding which is subject to a registered encumbrance shall not be valid without the consent of the encumbrancer and the landlord, and in case of abandonment we have provided (section 87 (4)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord, or without risking the conversion of these sub-leases into permanent transfers.

Merger.

"The only other point in the chapter to which I need draw attention is that we have omitted section 141 of the original Bill, which dealt with the merger of the tenant's interests generally in those of the landlord. The section as it stood was, we thought, open to objection, inasmuch as it allowed of the occupancy-right being retained in the hands of the landlord, his tenants being thus reduced to the position of under-raiyats; but we objected to it also from a more general point of view, as enabling individuals to introduce serious complications into the tenure of property without sufficient reason. All that remains on the subject will now be found at section 22, the effect of which, stated in general terms, is that when the occupancy-right in a holding falls into the landlord's hands it ceases to exist.

" Chapter X deals with the procedure for the record of rights and settlement of rents. As the Bill originally stood these two processes were separate and were provided for in separate chapters. The Revenue-officer undertaking a record of rights had no power to settle rents nor to decide disputes. He had only to record what he found to be the existing facts of each holding, and the entries in such a record were to be presumed to be correct till the contrary was proved. This process, however, was to be supplemented by another called the settlement of rents, and the object of the Government in providing for this latter process cannot be better shown than by an extract from the Statement of Objects and Reasons. It was said in paragraph 99 of that Statement:

Chapter X.—Record of Rights and Settlement of Rents.

Provisions in the original Bill.

'It has been stated, in the remarks above made on Chapter VI, that it is apprehended that, in many parts of the country, the framing of a table of rates will be impossible. It should be added that, in many instances, the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and it is with a view to providing such a remedy that Chapter XI has been framed.

'There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter, such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error in regard to the quality of the soil, the estimated amount of the produce, or some other such matter with which the Revenue-authorities, conducting their inquiries on a great scale, are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words an important portion of the work, after being done by those authorities who are most competent to perform it is liable to be pulled to pieces by another set of authorities, who are far less competent to perform it. The enormous amount of unnecessary expense, trouble, and vexation, which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that out of 2,391 decisions in suits brought to contest the Settlement-officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in Chapter XI of the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

'The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

'(a) when a large proportion of the tenants or of the landlords desires that it should be applied, and

'(b) when a resort to it is likely to settle or avert a serious dispute, existing or likely to arise, between landlords and tenants generally.

'It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

'When the rents to be settled are rents which are subject to alteration by order of a Court, they will be *fixed* according to the principles embodied in the Bill, and so that they shall not exceed the maximum prescribed by the Bill in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are under Regulation VII of 1822.

'The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has been fixed or ascertained and the amount of the rent fixed or ascertained. This jamabandi will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for 10 years.

'While it remains in force it will be conclusive (except as will be presently explained) as to the rents payable by those tenants whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

'It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions (as, *e.g.*, that of the status of a tenant) which more properly appertain to the jurisdiction of the Civil Courts and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and, under section 155, refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

'It only remains to add that, by section 163, the Local Government is empowered to charge the expenses of all proceedings, other than Government settlements, under this chapter to the landlords and tenants concerned, in such shares as it thinks fit.'

"Under the scheme, therefore, as sketched out in the original Bill, it will be observed (1) that the Revenue-officer, in recording rights, could not decide any disputes which might arise, and consequently his record could be of very little value; (2) that the Settlement-officer, though he could decide whatever disputes come before him, could only deal in a preliminary sort of way with a large class of disputes, which might afterwards be tried out by a regular suit in a Civil Court; (3) that though no settlement can in the nature of things be undertaken without the previous preparation of a record of rights, the two processes were unconnected in the Bill, and were treated as essentially separate and distinct.

"I need not take you through the successive steps by which the procedure was altered, first in the Bill No. II of last year, a description of which will be found in paragraphs 71 to 77 of our Preliminary Report, and then in the Bill of this year as explained in paragraph 42 of our Final Report. It will be sufficient if I explain to you the final result of our discussions as embodied in the Bill now before you. First, then, we have amalgamated the two processes. It was obvious that on a Revenue-officer beginning to record rights he would find himself face to face with numerous cases in which, on one side or the other, the status of the raiyat, the area of the holding, the amount of the rent payable, were the subject of dispute. Unless he could deal with these disputes his record would be of little value, and it was obviously absurd to empower one officer to settle questions of status and area and then to send in another to settle questions of rent.

Alterations made by Select Committee.

Two processes amalgamated.

Reasons for the change.

"It seemed equally unreasonable to empower a Revenue-officer, with all the parties and witnesses before him, to decide disputes and then to allow the whole matter to be re-opened *de novo* and fought out from the very beginning in a Civil Court. At the same time we wished in no way to diminish the security which parties now have in the decision of their cases by the most competent Courts and in the right of appeal to the highest Court in the country.

"What we have done then has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

Powers of Revenue-officer.

Special Judges and High Court to hear appeals.

"The decision of the Revenue-officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years.

Landlords empowered to apply for settlement.

"In section 103 we have given a special power to landlords to have this procedure applied, on depositing the expenses, to individual estates, and we apprehend that in the cases of auction-purchasers who are met by a combination of their tenants and are unable to get at the papers of their predecessor, this power will be found very useful.

"In sections 105 and 106 we have made ample provision for the publication of the record and for hearing objections, so as to eliminate the danger of any one being prejudiced by entries made behind his back.

Ordinary settlements.

"All this applies to ordinary settlements which may be undertaken either by direction of the Government of India, or by order of the Local Government on the application of the parties, or in the case of serious disputes, in Court of Wards or Government estates or where an estate is under settlement. In fact, this procedure is the only procedure which will now be at the disposal of Government for the purposes of a revenue settlement. But this procedure allows of no alteration of rent except on the application of the individual landlord or individual tenant, and allows of no reduction of rents, except on the two or three grounds, such as diminished area and diminished prices, which can be pleaded as grounds of reduction in a Civil Court. We have, however, provided for a special settlement to meet special circumstances. Under the special settlement (section 112), the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable, and all such rents as he settles will hold good for the same term of years as if fixed under a judicial decree. But this procedure, which gives unusual powers of interference, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, requires some strict safeguard. We have therefore provided that it shall only be applied after the previous sanction of the Governor General in Council has been obtained. It is an extreme power intended to take the place of Sir R. Temple's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period.

Special settlements.

To be undertaken only with the previous sanction of the Government of India.

"I have dealt with this chapter at some length, because I think it is one of the most important in the Bill. The zamíndárs naturally object to it, because its operation tends, by the process of registering the rights of the raiyat, to lessen their own power of dealing with him at their pleasure, while the Bengal Government seem to look upon it as the one oasis which stands out, in the sterile wilderness of the Bill, rich with potentialities of rest and refreshment to the weary raiyat. Divergent views as to the Settlement Chapter.

"I am not sure myself that the raiyats will welcome the light of day in regard to their holdings more than the zamíndárs will welcome it in regard to their rents, but I am sure that the operation of this chapter, if wisely and discreetly carried out, will ultimately tend to give greater stability to all rights in the land, to reduce litigation hereafter, to give the Government the benefit of that real knowledge of facts in regard to the relation of landlord and tenant which they now have to pick up piecemeal through the records of the Courts and the registration officers, and the deficiency of which they so much lament, and that it will prove, as we are informed the similar record has proved in the permanently-settled districts of the North-Western Provinces, 'the saving of the raiyat'. My own opinion.

"The next subject with which I ought to deal is that of the table of rates; but in our present Bill this chapter is like the more famous one on the snakes in Iceland. There is no longer a chapter on the table of rates. I have explained to you how special experiments have shown that only in very exceptional tracts were rates to be found so uniform as to offer any hope of the procedure being satisfactorily worked; and as a more effectual method of arriving at the same end has been provided in the settlement chapter, we have decided, with the consent of the Local Government, to apply the happy despatch to this portion of the Bill. Tables of rates. Abandoned.

"We have made some alterations in the provisions regarding *khamar* or *zirát* land. Khamar or private land.

"A reference to paragraphs 18 and 19 of the Statement of Objects and Reasons will show the intentions of Government in respect to surveying and recording *khamar* land. It must be explained that the word *khamar*, and the other words used in the Bill, have a great variety of significations, but in this Bill, as in Act X of 1859, the only distinction we wish to draw, or are in any way concerned with, is between that private land of the zamindars in which occupancy-rights do not accrue, and land which is not the zamindar's private land in which they do accrue. It was to meet a very real evil, *viz.*, Meaning of the word. Object of the provisions.

the tendency to absorb into the landlord's private land large areas of land in which raiyati rights had grown up—an evil of the existence of which in Behar there is ample evidence—that Government took power in the Bill to record and mark off for the future in specified local areas all such land as is no longer open for the acquisition of occupancy-rights. The injury of the past could not be undone, but in a part of the province where the wholly agricultural population is not less than 800 to the square mile, it is obviously right to prevent any further encroachments in the future to the stock of raiyati land. We have supplemented the provisions of the original Bill by a section which allows a landlord at any time to get his private land recorded, so as to obviate the difficulty which might occur if he has to bring evidence of a past state of facts on a survey being ordered at some distant date, and we have given the tenant a conversé power.

Instructions to guide the Revenue-officer or Courts.

"We have also given specific instructions that the Revenue-officer should record as private land all land which has been cultivated as such by the landlord for 12 years previous to the passing of the Act, and all cultivated land that he finds to be recognized as such by village-custom. In regard to other land, where local custom is insufficient to guide him, he shall look to whether the land has been leased specifically as private land in past years; but otherwise the general presumption shall be that land is not the proprietor's private land.

Distraint.

"Coming now to the chapter of distraint, we have maintained the principle that distraint shall not ordinarily be left to be carried out by the zamíndár's servants without the supervision of the Courts. We have by requiring it to be made on 'application' instead of on 'suit' materially reduced the expense. We have given facilities for an early application being made, and have empowered the Courts to issue in such cases an order prohibiting the removal of the produce pending the final order.

"We have also provided that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may, by order, authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The High Court is empowered to make rules regulating this procedure.

"The alterations made in the existing procedure in rent-suits by the Bill as first introduced were explained in paragraphs 114 to 116 of the Statement of Objects and Reasons. Chapter XIII.—Judicial Procedure.

"That Statement then went on to say—

'It is hoped that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered, but, with the exception of those above referred to, none have hitherto been suggested which the Government of India would be prepared to accept. As regards the possibility of devising any effectual procedure analogous to that on negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies both in this country and elsewhere is against it. Explanation in Statement of Objects and Reasons.

'A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into court armed with documentary evidence of so reliable a character that the presumption against any defence being possible is extremely strong. In such cases the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant and to decide against him summarily and provisionally, unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit, with the further disadvantage of not being final.

'The truth would seem to be that facilities for recovering rents in Bengal should be sought for not so much in novel forms of procedure as in a reliable record of tenancies and their incidents and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits.'

"The Select Committee gave their most earnest consideration to the question of further simplifying the procedure, but without much success.

"In our intermediate report we explained what we had been able to do, which was as follows:— Changes made by Select Committee in their Intermediate Report.

'We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

'We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Courts Act, empowering the High Court, with

the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

'For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

'We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

'We have further added a section (165) providing that when a defendant in a rent-suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

'We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

'Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.'

"In addition we referred two questions specially to the High Court—

'What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent-suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.

'Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a Judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from

appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.'

"These questions were considered and answered by the Hon'ble Judges of the Court in their collective capacity. Their answers were to the effect that the modifications already introduced were unobjectionable, but that no modifications other than those 'could be made in the ordinary law applicable to civil suits, without opening the door to evils which would outweigh the advantages to be derived from increased expedition.' Reply of the Judges.

'The suggestion,' they said, 'made in the Report of the Select Committee that suits for arrears of rent should be brought by means of a single plaint against a number of raiyats holding independently of each other would, the Judges believe, be impracticable and lead to delay, worse, in all probability, than those now experienced. The Judges have carefully considered the question whether, leaving the law unaltered, any changes could be made in the executive orders issued to subordinate judicial officers with a view to expedite the decision of rent-suits. The orders at present in force seem to provide almost all that is necessary to secure the postponement of other suits to rent-suits and the prompt decision of all rent-suits which are not contested. The Court proposes, however, to direct that in future undefended rent-suits shall have priority over short suits, though both alike shall, as far as possible, be taken up on the date fixed.

'It would, the Judges believe, be extremely dangerous to enact any such provision as that proposed in clause (*b*) of paragraph (2), to restrict the right to claim a re-trial where a decree has been given *ex parte*, and on this point they agree entirely with the Select Committee. It is true, as has been represented to the Committee, that landlords are frequently involved in unnecessary expense and delay by the tactics of their raiyats who deny service of summons, but it seems absolutely essential, in order to prevent fraud by dishonest agents of landlords in collusion with the process-servers, that raiyats against whom decrees are passed *ex parte* should have an opportunity for applying for a re-hearing.

'The third suggestion is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him [except on depositing the amount of the decree. This proposal, which might, no doubt, serve to obviate some of the inconvenience, expense and delay now caused to zamindars by recalcitrant raiyats, would, however, it is believed, in many cases involve the defendants in very serious] hardship. The Court is not, therefore, disposed to recommend its adoption. It may be observed further that it is always open to a zamindar to execute his decree notwithstanding that it is under appeal, in which case, if execution is stayed, the law provides that security shall be given for the due performance of the order that may ultimately be passed.

'The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would therefore have been a matter of satisfaction to them had they been able to accept any of the suggestions put forward for

the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zemindars. It is, however, scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.'

Remedies proposed by the Judges.

"The Judges go on to point out that the only remedies for expense and delay are to be found in the lowering of fees and in the multiplication of Courts. On these points I am not in a position to say anything here, save that, while I have no doubt that the latter question will be fully considered by His Honour the Lieutenant-Governor, the former, in connection with the scale of court-fees generally, is now under the consideration of the Government of India. Further proposals made by Babu Mohini Mohun Roy with the object of shortening the procedure have since been considered by us. They were referred to a number of experienced judicial officers, but were not favourably received. It seems quite clear that no remedy is to be found either by summary procedure, by making returns of service conclusive evidence of actual service of process, by restrictions on the right of re-trial, or by any similar method. Rent-suits are tedious and expensive, because the issues to be tried are often intricate, and because facts are hard to be got at. With rights and rents recorded, with receipts and accounts properly kept, and above all with trustworthy agents, the zamíndárs would find many of these difficulties vanish. But if there is a real dispute a summary trial will not help. It only means that the real trial of the question at issue is postponed and there are two processes instead of one. I am afraid the Judges touched the heart of the matter when they said: 'It is scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.' I have dealt at some length on this subject and been careful to give the opinion of the High Court, because it is made a ground of reproach to us that we have not given any more summary method of recovering rents. I regret that we have not been able to go further. We have rejected no suggestion having any element of success in it without first obtaining the concurrence of the most competent judicial officers, and we have in addition to those abbreviations already mentioned added some more in the chapter about sales for arrears which I hope will prove useful.

Suggestions by Babu Mohini Mohun Roy.

Sales for arrears.

"The general scheme of the Sale chapter was very fully explained in paragraphs 124-132 of the Statement of Objects and Reasons, and as we have not departed from the general scheme I will not go over the whole ground again, but merely explain the slight modifications of detail which we have

ventured to introduce. We have included among 'protected' interests, that is to say those which cannot be voided by the purchaser, the right of a non-occupancy-raiyat to hold for five years at the rent fixed by a Court.

"We have removed the limitation which restricted the decree-holder's right to get arrear-rents out of the purchase-money to such rent only as might be due for six months after the date of decree. It is not in the interest of either party to penalise the landlord's forbearance in abstaining from executing his decree.

"We have, in order to shorten proceedings, inserted in section 163 a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

New section for repurchase of holding on payment of arrears and interest.

"We have, at the suggestion of our hon'ble colleague, Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. on the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold; and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

Patni sales.

"Having decided that no alteration should be made by this Bill in the existing law relating to the incidents of the patni tenure, we have consequently excluded those sections which dealt with the sale procedure applicable to those and similar tenures. It will be for the Government of Bengal to deal with the question of making this procedure applicable to the summary sale of other tenures which may be registered under the Bill now before the Lieutenant-Governor's Council.

Contract sections.

"I have a few remarks to make on Chapter XV, which brings together in one focus all the provisions we think it necessary to make in limitation of contract. The necessity of interfering with freedom of contract was fully discussed at the second reading of the Bill, and was then affirmed by the

Council. I shall not therefore further discuss this question. I shall only deal with our alterations, and, first, I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limtiations into three classes, the first one referring to all contracts whether past or future, the second to quite recent contracts, the third to future contracts only.

Division into three classes.

First class.

In the first class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy-rights, to destroy occupancy-rights already in existence, to allow ejectment without process of law, to prohibit improvements.

Second class.

The second class deals with contracts, purporting to bar the accrual of occupancy-rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to.

Third class.

In the third class, which only restricts future contracts, we have simply put in legal form the general statement that neither the accrual of the occupancy-right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease.

Reclamation leases.

"We have left reclamation leases wholly to contract, save that we do not allow them to operate so as to destroy an occupancy-right which has grown up during the lease.

Chur and utbundi.

"We have put *chur* lands and *utbundi* lands on a special footing, which is practically the same as that of the ordinary raiyat under Act X of 1859. No occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever amount may be agreed upon between him and his landlord.

Bastu

We have omitted the chapter in the original Bill relating to *bastu* or homestead lands, and have brought all our legislation on this point into one brief section, to the effect that homestead land when not held as part of the holding shall be dealt with according to local usage; and when local usage cannot be ascertained, then it shall be treated as if it were ordinary raiyati land. The varieties of local usage were so many and of such importance that any regulations which could have been framed must have done harm and have been found inapplicable in many places.

Supplemental Chapter.

"There are two alterations only in the Supplemental chapter which need be noticed. One is that when a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the

estate or tenure to do any act which involves a violation of that rule or condition.

"The other provides that 'this Act shall be read subject to any Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.' In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

Bill finished. Further remarks.

"I have now gone through all the more important changes which have been made in the Bill since it came into the hands of the Select Committee, and have endeavoured to put you in full possession of the considerations by which we have been influenced. In performing this task I am well aware of the intolerable tediousness I must have inflicted on you, but I must still ask your patience for a little time while I offer some remarks as to the value which should be attached to the two opposing lines on which the minutes of dissenting members proceed, and the real amount of protection given to the raiyat by the labours of the Select Committee.

Three classes of dissents.

"Turning now to the dissents, we find that they may be broadly divided into three classes: (1) those which object only to a few specific provisions of the Bill; (2) those which, accepting the Bill as a whole, express dissatisfaction at the insufficiency of the protection given to the raiyat; (3) those which object to the whole scope of the Bill as injurious to the interests of the zamindar.

Specific proposals.

"It is not my purpose here to deal with objections to specific clauses of the Bill. The more important have been noticed already; the less important can best be reserved till the specific amendments on them are brought before the Council.

Insufficient protection to raiyat

"I wish, however, to say, a few words on those objections which are directed against the general scope of the Bill. It was not to be expected that a Bill of such importance and complexity as this—a Bill which has to deal with absolutely conflicting interests, which purports to set a limit on the power of one class to absorb the fruits of the industry of another class, and which has to regulate their relations in regard to the two leading interests of property and power—it was not to be expected that such a Bill could meet with universal acceptance or could fail to give cause of offence to those who on either side take extreme views. There are some who, if their views were carefully analysed, would see

in the raiyat nothing but a serf, who look upon his rights as only interests carved out of the landlord's absolute property in the soil, and as being therefore entirely dependant on the landlord's will and pleasure. There are others who look upon the raiyat as having the true property in the soil, and the landlord only as the tax-collector for the State, as one therefore who should have no more part in settling what that tax is to be or from whom it should be taken than a collector of any other State assessment. Between these two extreme points there are many halting-places, and the dissents show that, while some of our members would have guided us some way towards the latter point, others would have had us adopt the high landlord view of the position and look mainly if not solely to his interests. The dissents are naturally coloured by the dominant idea in the mind of either party, and will, I think, to some extent have the effect of neutralising each other in the public mind. What I would ask the Council to consider is, whether it is true that in the words of one party we have 'signally failed to afford the occupancy-raiyat reasonable protection,' and as regards the non-occupancy-raiyat 'have neither given protection as regards his rent nor facilitated his acquisition of the right of occupancy'—whether it is true, in the words of the other party, that the 'measure is opposed to the just rights of the proprietors of the land and detrimental to the best interests of the country.'

Position of the occupancy-raiyat,

"Let us compare briefly the position of the raiyat under the old law and under the Bill as it stands.

Under the existing law,

"Under the existing law the position of the occupancy-raiyat may be thus described. In the first place, he has a great difficulty in making good his title to occupancy-rights. He must prove that he has held every particular field of his holding for 12 consecutive years, and in the absence of trustworthy village-records the proof is often impossible. He and his forefathers may have resided in the village for generations, but evidence of this is entirely immaterial to the issue. He may be able to show that he has held *some* land in the village in every year of the last 12, but if the fields have been changed his claim to the occupancy-right cannot be maintained. *Secondly*, the law, not content with making the proof of occupancy-rights very difficult to the raiyat, allows him to contract himself out of them, and these engagements, entered into without understanding and forced on the raiyat without adequate consideration, are rapidly becoming a common form. *Thirdly*, the law gives the occupancy-raiyat no protection from incessant enhancement. It enumerates, it is true, the grounds on which enhancements may be sought, but it does not prescribe the term for which a rent after enhancement is to hold good, and it does

not prevent a landlord from instituting annual enhancement-suits, or from annually serving the raiyat with a demand for an enhanced rent. *Fourthly*, the law does not define the raiyat's right to make improvements, even of the most ordinary and necessary character, nor does it determine his rights in them in the event of his being ejected. *Fifthly*, the law makes every instalment an arrear of rent that is not paid on the exact date fixed in the raiyat's engagement or by custom, and allows a landlord to institute a separate suit for each instalment in arrear. As the custom of monthly instalments is common, the harassment which a landlord may thus inflict on his raiyat is intolerable. *Sixthly*, the law makes the raiyat liable to be ejected in execution of a decree for an arrear of rent, even though the sale of his occupancy-right by auction would more than satisfy the debt. Thus he loses, and the landlord acquires, not only the value of his interest in the land, but also of any improvements he may have made, and of any crops which may be still on the ground. *Seventhly*, the law of distraint is such that under cover of it landlords are able, if so disposed, to exercise a ruinous interference with the raiyat's disposition of his crops and reduce him to beggary.

and under the Bill.

"To turn to the corresponding provisions of the Bill. *First*, the Bill, by returning to the old principle of the khudkhast raiyat, gives him his occupancy right not only in the actual lands held for 12 years, but in any land held by him in the village, and it meets the great blot of the old law by facilitating his proof of these rights. He has merely to show that he has held *some* land continuously within the village boundaries for 12 years, and he becomes a settled raiyat of his village. It is presumed in his favour, in any proceeding between himself and his landlord, that in the absence of proof to the contrary he is an occupancy-raiyat of the land which he is found to be holding. This presumption, which cannot operate unjustly to the zamindar, is very rightly thought to be of immense value to the raiyat.

"*Secondly*, the Bill prevents the occupancy-raiyat from contracting himself out of his status.

"*Thirdly*, the Bill puts an effectual check on incessant enhancements. Whether the raiyat's rent be determined by a Court or by private agreement, in either case the Bill says that it shall not be again enhanced for fifteen years. The Bill also puts a strict limit to the amount of enhancement by agreement, and that this protection is considered of real value by the dissentients is shown by the importance they have attached to it. The changes made in the grounds of enhancement in Court have already been discussed.

The only change that is in any way likely to prove prejudicial to the raiyat is the enhancement on the ground of a rise in prices, and that not because it is unfair, but because it is workable, while the old law was admittedly impracticable. Even this concession the landlords profess to regard as 'visionary'.

"*Fourthly*, the Bill secures to the occupancy-raiyat power to make improvements and enables him to recover his outlay in case of eviction.

"*Fifthly*, in the matter of rent instalments, the Bill, while leaving the number and dates of instalments to agreement or local usage, provides that an interval of at least three months shall intervene between the institution of successive suits for arrears of rent.

"*Sixthly*, the Bill abolishes ejectment in execution of a decree for an arrear of rent against an occupancy-raiyat, and requires the decree-holder to bring the tenancy to sale.

"*Seventhly*, the Bill has effectually weakened the power of the landlord to use the process of distraint for purposes of simple oppression, though it remains a valuable instrument for the recovery of arrears.

"I say confidently that on all these points the Bill is an improvement on the old law, and, without any injustice to the landlord, fulfils the object of the Government, which was 'to give reasonable security to the tenant in the occupation and enjoyment of his land.'

"To pass now to the non-occupancy-raiyat. I have already, with reference to Chapter VI, gone so fully into a comparison of his position under the Bill with that under the old law, that I need not take you over the ground again; but admitting that a certain amount of peril lies in the power of a landlord to eject him at the expiry of his initial lease when he is first admitted under a registered lease, and when the landlord sues within six months of its expiry, I would ask you to look at the effect of our provisions as a whole. The raiyat can, under the above circumstances, be ejected, but otherwise he cannot be. If the landlord wishes to enhance his rent, he can only do so by a registered agreement or by suit in Court. The raiyat is not to be ejected for refusing an enhancement, but the Court will fix a fair rent and he can hold on at this rent for five years. He cannot contract himself out of the right to acquire occupancy-rights. The Bill allows the period during which he holds under a lease and the period during which he holds at a judicially fixed rent to count towards the accrual of occupancy-rights; and yet we are told that all these

things are vain. Neither in the necessity of registering initial agreements and agreements of enhancement, nor in the right to sit on unless ejected by suit within six months of the expiry of the initial lease, nor in the right to a judicially fixed rent with its period of five years, neither in any of these things nor in all of them put together is any protection afforded to the non-occupancy-raiyat nor is anything done to facilitate his acquisition of the right of occupancy. I leave it to you, gentlemen, to decide what weight should be attributed to accusations such as these.

Landlords' objections

"Coming now to the objections taken by the landlords, it is more difficult to formulate these, for they deal apparently with more than half the sections of the Bill and must be considered with reference rather to specific clauses than with the general scope of the Bill. The general accusation which I have quoted would seem to have been intended to refer to a Bill which still enforced the transferability of occupancy-rights, the extension of that right to the estate as well as to the village, the gross produce limit, the limitations on initial rents, the fractional limitations on enhancement in Court, the avoidance of all past contracts not in accordance with the Bill. I find no allusion made anywhere to the fact of these provisions having been struck out. I find no allusion to the simplification of the method of enhancement on the ground of rise in prices except that what Mr. Reynolds speaks of as a provision that 'puts enormous powers of enhancement into the hands of the landlord' is sneered at by Bábú Peári Mohan Mukerji as more visionary than real. I can only say that we have endeavoured, and I think have succeeded in our endeavour, to give great facilities for moderate enhancement, and have striven, as far as was possible without injuring the rights of others, 'to give reasonable facilities to the landlord for the settlement and recovery of his rent.' The Council will, I think, easily understand from the general scope of my remarks and from the resistance we have offered to many proposals supported by all the ability and all the authority of the Bengal Government, that we have not lost sight of the just interests of the landlord, and I hope to be able to prove this with regard to the long series of amendments which it is proposed to move on specific sections. There is one complaint made by the representatives of the zamindars, and in a modified form by Mr. Hunter, on which I should like to say a few words. The complaint is that the Committee did not examine witnesses personally. Mr. Hunter sees very clearly that it was not possible for the Select Committee to do this, but regrets that the Rent Commission did not adopt the method—a method which, in enquiries of quite another scope, and, indeed, recently under the hon'ble gentleman's own auspices, has worked most successfully. Well! I am not ac-

Personal examination of witnesses.

quainted with the reasons which induced the Rent Committee to forego this method. My own connexion with the Bill, and my official knowledge of the discussion, indeed, date from a much later time, only from the receipt of the Secretary of State's despatch sanctioning legislation; but I can quite understand that the Rent Commission did not act without good reason. Those who can recollect the agitation caused by the Indigo Commission of a quarter of a century ago may well have thought it dangerous to start an agitation on the infinitely more important question of rent by a peripatetic Commission of Enquiry. They may well have thought that more light would be thrown upon the problem by the opinions and knowledge of the judicial and executive officers, whose business it is to enquire daily into the relations of individual landlords and tenants, than by collecting evidence which, on the side of the rich and powerful, would be forthcoming in abundance, and would be put before them with all possible skill and ability, while on the part of the poorer and humbler side it would be no one's business to collect it, nor could it, in the shape of personal knowledge, be got at save with infinite trouble and at some peril to the witness.

Probable reasons of the Rent Commission for foregoing this method.

"These and other similar considerations may have led them to prefer the method they adopted to that of a Commission going about to take evidence. I am not concerned to discuss the question whether they were right or wrong, for there is very much to be said on the other side; it is sufficient to point out that, when the legislature had once decided the general lines on which we were to proceed, it was no longer open to the Select Committee to adopt this method. Such a course is neither usual nor desirable. In fact the whole constitution of Select Committees of this Council renders it impracticable for them to go about the country collecting evidence. In what we did, however, we adopted, I think, an equally efficacious method. We have, during the past two years, submitted every section of the Bill twice over to the most thorough sifting at the hands not only of persons interested, but of experienced and impartial officers, judicial and executive, and to Committees which could test the experience and opinions of one officer by confronting them with the experience and opinions of another officer; and if the result has been a great variety of opinions, it is not merely because human nature is so constituted that opinions must differ on questions involving most important and antagonistic interests—questions in which the everlasting debate between old and new, between those who have and those who have not, must come to the front, but also because the facts themselves differ so widely; the facts of one estate are not the facts of another estate; the facts of one part of the country are not the facts of another part of the country. It is one of the misfortunes of legislation that in this

Such a course not open to the Select Committee.

Method adopted by the Committee.

Reason of great variety of opinions.

country as well as in others, but more in this country perhaps than elsewhere, we have to make our laws applicable to a number of heterogeneous units of area and population, united together only by one common Government. We have to legislate in the interest of the average, and to neglect what is local and exceptional. This leads no doubt to difficulties. We have to insert some provisions which, in parts of the country, are not wanted; we have to omit other provisions which, in some parts of the country, are certainly desirable. Accepting this as the necessity of our position, not only have we endeavoured to get the fullest measure of light and knowledge to bear on our deliberations, we have also endeavoured to guide ourselves by that light and knowledge. We have given time—ample, abundant and overflowing—for the elaboration of criticisms, and for the collection of opinions, and the criticisms and opinions so collected and elaborated have been carefully and laboriously digested. The amount of literature that has gathered round this subject is such that no one except under the sternest sense of duty could possibly read, much less assimilate, it, and it really leaves nothing new to be said on any point in this wilderness of controversy.

Difficulty of legislating for the whole of Bengal.

"The Bill was before the public in one shape or another for three years before it was introduced into this Council, and during the two years it has been before the Select Committee every section has been discussed and re-discussed from every possible point of view. I can safely say that never has a Bill been introduced into this Council which has had so much thought and consideration expended upon it by the outside public. There is really a ghastly irony in the accusation that we are now giving no time for consideration and are asking you to pass the Bill with undue and indecent haste; I am unwilling to look upon such an accusation as made in a malicious spirit, but it is really difficult to suppose that any one can attach serious credence to it. I can understand the advocates of the zamindars wishing to drop the Bill altogether. I can understand, though I cannot sympathise with, those advocates of the raiyats who would see this Bill abandoned in the hope that this may necessitate a more drastic measure being passed hereafter; but what I do not understand is, how any one, who regards public and not personal interests, can wish that a growing agitation should be inflamed, and that dangerous passions should be further exaggerated, by a renewed and useless discussion of matters which further discussion cannot possibly further illumine. Yet this is, I understand, the recommendation made by the representatives of the zamindars. In fact, what I am now saying is really addressed to what is practically the first disputed question for the Council to decide. You have to consider whether this Bill should be re-published with a

view to a fresh collection of opinions, involving a fresh consideration by the Select Committee, and the hanging up of the whole subject for another year, when precisely the same tactics would be repeated. I would answer that there must be some point of finality in all this discussion. The whole scope of the work of the Select Committee, since the Bill was last re-published, has been to prune excrescences and to cut away novelties. Our alterations during this session have not been such as to insert any novel provisions of serious importance into the Bill, nor such as to offer material for discussion outside the well-worn lines. We have ample evidence from various parts of the country—from Mymensingh in the east to Behar in the west, from Rungpore in the north to Orissa in the south—that the agitation on this subject cannot safely be prolonged, and that whatever is done in regard to the Bill should be done finally and at once. I believe I shall have the support of His Honour the Lieutenant-Governor in saying that it would, in his opinion, be seriously injurious to the interests of the province if legislation is now postponed, and I have no hesitation therefore in asking you to reject the amendment that the Bill should be re-published, and to decide on proceeding at once with the consideration of our Report and of those amendments of which notice has been given."

The Hon'ble MR. QUINTON said:—"The impressive words with which my hon'ble friend Sir Steuart Bayley has just concluded his speech may, I think, notwithstanding the plea for delay put forward by my hon'ble friend Bábú Peári Mohan Mukerji in the first amendment standing in his name, justify us in congratulating ourselves on at last approaching the end of this long controversy, and on reaching the final stages of the Bill, which has been under the consideration of the Select Committee for the past two years.

"My hon'ble friend Sir Steuart Bayley has, on the part of the Government of India, acknowledged our services in generous terms, and whatever may prove to be the value of those services I am sure that not one of us failed to appreciate the gravity of the work on which we were engaged, and the momentous results that must follow on our recommendations; for the task which this Council has undertaken, and on which we were required to advise it, namely, the revision and amendment of the Statute-law respecting the rights and interests of landlords and tenants in Bengal, is certainly second in importance to no measure which has come before it during the present generation. That law affects vitally the interests, the well-being, even the very means of subsistence, of a population of 60 millions of people, for the bulk of whom agriculture furnishes the sole means of support. With such a law, when it works well on the whole

no wise Government would interfere; but when it has been found mischievous in its operation, when it has been left behind by the progress of the agricultural classes, or has ceased to be applicable owing to altered economic conditions, then it is the duty of the Government to step in, and to bring the law into accordance with the requirements of the time. In fulfilment of this duty the Bill was introduced, and referred to the Select Committee, whose report, now on the table, we are, I hope, about to take into consideration. That report expresses the opinion of only a majority of the Committee on the points with which it deals. It was not to be expected that unanimity should prevail respecting a measure purporting to regulate questions so numerous, so delicate and so important, among members holding such antagonistic views as those entertained by extreme partisans on the side of the landlords and of the tenants. It was hopeless to think that those who considered that the tenantry throughout Bengal and Behar were living in such a state of contentment and prosperity that any attempt to amend their condition by law was altogether uncalled for could be brought to agree on provisions for that purpose with others who believed that a diametrically opposite state of things existed, that the condition of the peasantry in many parts of the provinces was deplorable, and that the defects and abuses of the law by which this has been allowed and encouraged called for a speedy and drastic remedy.

"The reports and opinions elicited by the publication of the Bill, as introduced in 1883, and as revised in 1884, furnished the Select Committee with very valuable materials, in addition to those already accumulated, for deciding on the various contested questions, and the result has been a report with which neither party is fully satisfied. This dissatisfaction has been forcibly expressed in the recorded dissents, some of which blame us for what we have done, while others find fault with us for what we have left undone. Some censure us for needlessly and recklessly interfering with the existing state of things, others for having stopped far short of what was necessary to correct its evils. These contradictory animadversions raise a strong presumption that the majority of the Committee has avoided extreme measures on either side, and has turned a deaf ear to the songs of the sirens that, often with more vociferation than melody, attempted to lure us from what will, I hope, be found to be the course of prudence and of safety.

"Nor can this moderation be justly condemned so long as it effects the essential objects of the Bill. If there is one point more than another with which we have been impressed in the course of our deliberations, it is that the

Government of Bengal is far behind other Governments and Administrations in the possession of accurate information respecting the condition and relations of the agricultural community. The existence of the Permanent Settlement relieved that Government from the necessity in its own pecuniary interest of making a record of rights in land—a measure the importance of which was realised at an early period in those provinces where settlements of land-revenue recurred at periodical intervals; and the mode of collecting the revenue by the single process of selling the defaulting estate at head-quarters deprived it of an agency in the interior of the districts, charged with the duty of making itself and its principals thoroughly acquainted with the landed classes, and all facts bearing on their condition. This being so, we felt that we were travelling along a somewhat dark road, and that a safe arrival at our destination was not likely to be achieved by rapid driving. The revised Bill undoubtedly does not go as far in the direction of tenant-right in its broadest sense as the Bill originally introduced, but it provides, I believe, adequate remedies for evils the existence of which is undoubted. It strengthens the defences of the raiyat at points which have proved to be weak; it does not provide him, at the expense of the landlord and possibly to his own destruction, with torpedoes to ward off attacks which there are no good grounds for anticipating.

"My hon'ble friend Sir Steuart Bayley has explained clearly and at length the changes we have made in the Bill as introduced, and the reasons which led us to make them. I shall not, therefore, weary the Council or prolong what is likely to be a protracted debate by following him step by step over the same ground. The importance of the provisions respecting the occupancy-right will however justify my dwelling on them for a short time even at the risk of repeating in feebler language what has been said about them by my hon'ble friend; and in what I shall say I have in mind the objections of those who think we have done too little for the raiyat rather than of those who consider that we have done too much. My hon'ble friend the Mahárájá, who is to speak after me, will, no doubt, put this last class of objections as strongly as they can be urged, and I have equally little doubt that most of the speakers who have to follow him will fully answer his objections on this score.

"The land of Bengal is divided into 110,456 estates, owned by about 130,000 proprietors; subordinate to these proprietors come a body of middlemen whose numbers can be only guessed at; they are probably about a million. Lastly, there are 10 millions of raiyats. Of these last, occupancy-raiyats form by far the most numerous and important class. About their numbers also there is much uncertainty; the lowest estimate I have seen puts them at 60 and the highest at 90 per cent. of the whole number of raiyats, and, being the

permanent agency by which the cultivation of the soil is carried on, they are the backbone of the agricultural organism of the country. It is clear from this that the provisions respecting them will have effects far more wide-reaching than those relating to the other classes of the agricultural population, and that if we have failed in adequately protecting the rights essential to their welfare, we have failed in the most important portion of the duty laid upon us. To show that we cannot justly be reproached with such failure I shall, following the example set by my hon'ble friend, ask you again to consider how the Bill found the occupancy-raiyat and how it has left him.

"The constituent elements of a tenant-right theoretically perfect are fixity of tenure, fair rent and free sale—the three F's. I need not enter upon an economical dissertation on the relative importance and value of these three principles. My hon'ble colleagues are probably much better able to instruct me than I them on the subject. We had, however, to consider in Select Committee to what extent these principles should be given effect to in our provisions respecting occupancy-raiyats.

"After long discussions and some fluctuations of opinion we came by different roads to the conclusion that in respect of free sale—or the power of transfer—the law with one exception, to which I shall allude more fully when dealing with fixity of tenure, should be left as it is. We were fully conscious of the stimulus to enterprise and improvement of the land which the power of raising money on the mortgage of his holding might give to a frugal and industrious tenant, but when we came to apply the principle generally, we found the risks attendant on suddenly enlarging in this way the credit of a weak and impoverished tenantry like that of Behar so great, and the difficulties in other localities of conceding to the landlords a veto upon the practice without strangling a healthy and rapidly-growing custom which is, we believe, of great public benefit to be so insuperable, that we determined to follow the cautious advice of the Famine Commissioners, and allow the right to be governed as at present by local custom.

"Those gentlemen write as follows on the subject of transfer in Bengal:—

'Though on the whole we regard the general concession of the power of sale of those* rights to be expedient and ultimately almost unavoidable, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognised by law, and where it has not it may be questioned whether the law should move in advance of the feelings and wishes of the people.'

* *i. e.*, occupancy.

"Article 41 of Mr. Justice Field's Digest states that under the existing law the holding of an occupancy-tenant is transferable by custom, and that in such cases no registration in the landlord's sherista is necessary. We, by section 183 of the Bill, expressly save customs, usages or customary rights not inconsistent with the Act, and by an illustration to that section call attention to its effect on the usage of transferring occupancy-holdings without the landlord's consent. My hon'ble friend Mr. Amír Alí has I observe, an amendment on the paper proposing that we should go much further in this direction than we have done. The discussion on this will give an opportunity for a fuller statement of the reasons which actuated us than I need now trouble Council with. So far as regards free sale we have left the position of the occupancy-raiyat unchanged.

"Under Acts L of 1839 and VIII of 1869, a raiyat who claimed occupancy-right in any land was obliged to prove that he had held that land for 12 consecutive years immediately before the dispute arose. The unexpected effect of this provision was to make the acquisition of the status depend upon the will of the landlord, who had merely to shift the tenant about from one field to another; or, simpler still, to have the patwárí's papers, which were the chief evidence the Courts had to go upon, manipulated so as to show a change in the tenant of the holding or of some of its constituent fields. By either of these measures he might prevent the accrual of the occupancy-right, or defeat it when it had accrued. The Bill renders these methods of getting round the intention of the law, if not impossible, at least a matter of great difficulty. Occupancy-right will henceforward depend, not on the holding of any particular land for 12 years, but on holding as a raiyat for that period any land in the village in which the right is claimed. To prevent the accrual of the right the landlord must turn the raiyat out of the village altogether—a much stronger measure and probably more unprofitable than shifting him about from field to field within the village; while, on the other hand, the raiyat will find it much easier to prove that he has held some land in the village for 12 years than that he held the same land for that period. The same reasoning applies to the falsification of the patwari's papers. Such falsification will now be made more difficult to effect and more easy to detect. All raiyats are practically declared to be possessed of the occupancy-right in their holdings whose tenure of any land in the village as a raiyat has lasted for 12 years from the 2nd of March, 1871, or any subsequent date; so that no amount of shifting within the village will now avail to extinguish the raiyat's occupancy-right in land held by him, and no tampering with village-papers short of omitting the raiyat's name altogether will be effective for the same object.

"Besides this we provide further that all raiyats holding land shall in case of dispute be presumed until the contrary is proved to have held all or part of it for 12 years—a presumption of which the raiyat has not hitherto had the benefit, though it is, in our opinion, based upon existing facts.

"Again, under the present law, occupancy-rights could not be acquired in land known in different parts of the country as sír, zírát and khámár. We have reason to believe that in many localities this reserved area has been unjustly and illegally extended to the injury of the raiyats. We have laid down strict rules for the guidance of the Courts in determining what is khámár or zírát, and have stopped the growth, after the passing of the Act, of the area in which raiyats are debarred from acquiring rights of occupancy.

"These provisions constitute a great advance upon Act X of 1859, and facilitate the acquisition of the occupancy-right far beyond the present law. I shall not anticipate the discussion on the amendment of my hon'ble friend Mr. Reynolds, by alluding to the still greater facilities which the addition of the words 'estate' to sections 20 and 21 would afford. I hope I have shown that even if that amendment be not accepted the gain to the tenant from the provisions of the sections as they stand is very great.

"Act X of 1859 left it open to a landlord and tenant to defeat the accrual of the occupancy-right or to extinguish it when it had accrued by written contracts. The mischievous effects of this have been so fully explained to Council both to-day and on previous occasions when the Bill was under debate, that I need not now dilate upon them. Suffice it to say that we have in express terms declared to be null and void contracts of this nature, whether made in the past or in the future. The law will no longer give effect to contracts whereby a helpless tenant signs away his legal rights at the dictation of a powerful and unscrupulous landlord.

"The existing law allowed of the ejectment of an occupancy-raiyat from his holding if the amount of a decree against him for arrears of rent was not paid within 15 days. This provision furnished landlords with a ready weapon for destroying the occupancy-right. It gave them a direct interest in dealing oppressively with their tenantry, and it has not been everywhere allowed to remain a dead-letter. The Bill puts an end to all this. It recognises the principle that the occupancy-raiyat has a valuable interest in his holding which the landlord cannot be allowed to confiscate, by enacting that an occu-

pancy-raiyat shall not be liable to ejectment for arrears of rent, but that his holding shall be liable to sale in execution of a decree for such arrears, and that the rent shall be a first charge on the holding. The interest of the tenant will thus be saved from forfeiture when he is unable, from calamities of season or other misfortune, to meet his landlord's demands, and he will obtain so much of the market-value of it as remains after the claim for rent has been fully satisfied.

"Here also we considered that the tenant should be debarred from contracting himself out of his rights, and we have provided that no contract, whether before or after the passing of the Act, shall entitle a landlord to eject a raiyat otherwise than in accordance with the provisions of the Act.

"In close connexion with the point on which I have been dwelling is the legal power conferred upon the tenant in Bengal for the first time by this Bill of making improvements on his holding and of being recouped for such improvements when ejected by the landlord in the shape of compensation, or when his holding is sold in execution of decree or otherwise, by the enhanced price paid for the value added to the holding. This principle of compensation for tenants' improvements was adopted in Oudh in 1868, in the North-Western Provinces in 1873, and the extension of it to Bengal by the present Bill adds a strong bulwark to fixity of tenure for the occupancy-raiyat in that province. Taken with the other provisions respecting this element of tenant-right, to which I have been calling the attention of Council, it will place the Bengal occupancy-raiyat in a better position as regards fixity of tenure than that held by the corresponding class of cultivators in any other province of British India.

"I now turn to the question of enhancement, which is of no less importance. Fixity of tenure alone is of little use so long as the rent at which the tenant holds can be frequently and capriciously enhanced; on the other hand, nothing affords a stronger screw for squeezing successive enhancements out of a tenant than the arbitrary power of ejectment. An occupancy-tenant will under the threat of ejectment from his holding—generally the sole means of support for himself and his family—agree to enhancements which, at first small, gradually raise the rent to an amount which leaves him the minimum sufficient to subsist on. The two rights hang together and re-act on each other.

"By giving greater fixity of tenure we have restricted the landlord's power to exact capricious enhancements, and our next duty was to regulate the powers of enhancement directly conferred on him by law. These were twofold—enhancement by contract and enhancement by suit. The present law places no restric-

tion on enhancement by contract. This was a point on which the Local Government laid very great stress, and at their instance we have provided that all contracts for the enhancement of rent must be registered, that the enhancement is not to exceed the previous rent by more than two annas in the rupee, or 12½ per cent., and that the rent is to be fixed for the same term as is fixed in case of enhancements by suit.

"The provisions of Act X of 1859 relating to enhancement by suit, according to the admissions of the tenant's friends and the complaints of his enemies, have proved for the most part unworkable—a state of things which my hon'ble friend Mr. Reynolds has described as a public scandal. If the law recognises the landlord's right to enhance, it should certainly not attach to that right conditions which render the exercise of it impossible. My hon'ble friend Sir Steuart Bayley has explained fully the alterations we have made with the object of removing this defect in the present law, and I shall confine myself to showing how far we have endeavoured to provide that the increased facilities for enhancement afforded by the Bill shall not operate unfairly or oppressively as regards the raiyat.

"At starting I may observe generally that, the easier enhancement by due process of law is made for the landlord, the less inducement he will have to resort to irregular and oppressive methods for securing the same end—a result of no small gain to the tenant when we find in some localities rents doubled by irregular enhancements in 16 years, and raised 500 per cent. by the same means in some estates within a comparatively recent period.

"The first of the grounds on which enhancement is authorized by the present law is 'the prevailing rate'. This ground I should gladly have seen omitted from the Bill. It appeared to me that, looking to the impossibility of now discovering a parganá rate in most parts of the two provinces, and considering the abuses which have been proved to have attended the working of this ground of enhancement and the greater facilities afforded to the landlords for enhancements on other grounds, they would have had no just cause of complaint if this had been abolished. The question, however, was decided otherwise by the Select Committee, and their decision has been accepted by the Executive Government. But while so deciding they felt that some attempt should be made to prevent the possibility of the manufacture of bogus rates to be used as a lever for raising rents all round: and have laid down a rule, to be found in section 31, which will, we hope, be effective for this end. My hon'ble friend Mr. Reynolds has an amendment on the paper which he considers will

be much more effective for the same purpose. Both the section and the amendment agree in providing that there must be a substantial difference between the rent sought to be enhanced and the prevailing rate, and that the prevailing rate is to be ascertained with reference to what has been actually paid for not less than three years, and both enable the tenant to show as a bar to enhancement that there is a sufficient reason for his holding at such an exceptionally low rate. Thus, whether the amendment be accepted or not, the tenant who has been allowed to hold at a low rate for special reasons will be protected from enhancement; only rents which are substantially below the prevailing rate will be enhanced, and the prevailing rate must be not a bogus rate, but one actually paid for such a period as will be a guarantee for its *bonâ fide* character.

"The section also provides for an enquiry by a Revenue-officer as to the prevailing rate if the Court cannot otherwise ascertain it satisfactorily. I need scarcely point out to the Council that the facts are more likely to be elicited by such an enquiry than by the evidence of witnesses whom the contending parties bring forward.

"I cannot understand how these provisions can be objected to as being but feeble checks on the abuses which have hitherto attended the working of the prevailing rate as a ground of enhancement. The omission of them and the retention of the prevailing rate in its present form would, in my mind, be much more disadvantageous to the raiyat.

"The next ground of enhancement, namely, a rise in the average local prices of staple food-crops during the currency of the present rent, has been substituted for a rise in the value of the produce of the land for which enhanced rent is claimed. The reasons which led to the change have been fully explained by my hon'ble friend Sir Steuart Bayley. The landlords complained that the law in this respect had become a dead-letter from the difficulty of working the rule of proportion laid down in the great rent case, and to meet this complaint, which appeared to be well-grounded, the present scheme was devised. The Select Committee believed it to be sound in principle, and considered that they could guard against its operating to the injury of the tenant by the special provision which gave an enhancement in proportion, not to the whole rise of prices, but only to two-thirds of such rise, thus allowing a deduction of one-third to cover increased cost of cultivation, and still more by the general rule, to which I shall allude hereafter, by which enhancements on all grounds are to be qualified.

"The change has not given satisfaction to either party, and I see that my hon'ble friend Bábú Peári Mohan Mukerji has placed on the paper an amendment proposing to revert to the old ground of enhancement which formerly proved so ineffective. If the old rule in all its clumsiness be restored at the request of the landlords, the advocates of the tenants will no doubt rejoice, and the landlords must expect little sympathy with future complaints as to the rule of their choice being unworkable. If the scheme of the Bill be retained, the tenant gets the benefits of the limitations to it which I have above referred to.

"Next, enhancement is allowed by suit on the ground of landlords' improvements, the justice of which cannot be gainsaid. Under the existing law this ground of enhancement, from the difficulty of proving the making and value of the improvements, must have operated unfairly to both parties. On one hand, it threw obstacles in the way of a landlord establishing his rights to enhancement, on the other it held out inducements to the fabrication and production of false evidence in support of claims which the raiyat as the weaker of the two parties could not always resist. The provisions of the Bill respecting the registration of landlords' improvements, and as to the considerations which are to guide the Courts in determining the value of the improvement to the tenant, will prevent enhancements being made for improvements which are not *bonâ fide* and which do not add to the value of the tenant's holding. No enhancement can be successfully claimed for an improvement which is not registered, and which does not increase the productive powers of the land; and in determining the amount of the enhancement, the Court must have regard to the cost of the improvement, so as not to give the landlord an inordinate increase of rent for what cost him but little, to the cost to the cultivator required for utilizing it, to the existing rent, and to the ability of the land to bear a higher rent.

"Lastly, comes the ground of enhancement on account of increase in the productive powers of the land due to fluvial action. This is a modification of the existing law, which contains no qualification as to the cause which gives rise to the increase in productive powers. My hon'ble friend Sir S. Bayley has explained that all other causes may be expected to fall under those which bring about a rise of prices, and, if they be not so, it is clear that the modification is in favour of the raiyat. In no case is the landlord to receive more than one-half of the increased increment so brought about.

"Among the grounds of enhancement under the existing law was the circumstance that the quantity of land held by the raiyat is proved by measurement to be greater than the quantity for which rent was previously paid. This provision appears in a different place in the Bill for reasons which were given in the Statement of Objects and Reasons, but an important alteration has been made in it for the benefit of the raiyat by the restriction that the landlord is not to measure more than once in ten years. In the absence of a cadastral survey such frequent measurements are a preliminary to a demand for increased rent, and give rise to serious disputes and much bitter feeling. Further, by requiring the Court, when determining the area for which rent has been previously paid, to have regard to the origin of the tenancy, the length of time during which it has lasted without dispute, local usage and like considerations, we have endeavoured to guard against enhancements which were really a rackrent being granted on this plea.

"I have thus gone through the grounds of enhancement recognised by the Bill, and have shown that they are each qualified by special restrictions to prevent their operating so as to weigh down the raiyat. We have, it is quite true, removed the public scandal to which I have already adverted, but in so doing we have not necessarily, we believe, subjected the tenant to rackrenting.

"Besides the limitations on the working of each rule, we have laid down for all cases the broad principle that the Court shall not in any case decree an enhancement which is under the circumstances of the case unfair or inequitable. It has been objected that this rule, however broad and benevolent in intention, will prove from its vagueness of no practical value for the protection of the tenant, and that we should have defined precisely in the Act for the guidance of the Courts 'a fair and equitable rent'. To such objections I can only say, try your hand at such a definition. The many able officers who have taken part in this long controversy from its first beginning, the Government of Bengal, the Government of India, and I may add the Imperial Parliament, have all failed to produce a definition of a fair and equitable rent which could be safely acted on by the Courts; and our Committee need feel no shame at being unable to do that to which they proved unequal. The Courts must be left to deal with each case on its own merits, and to exercise a judicial discretion arrived at after a careful consideration of all the circumstances. That such a discretion will be inoperative in checking unfair and inequitable enhancements I cannot bring myself to believe.

"But although we were unable to lay down a rigid rule for determining a fair and equitable rent which would suit the varying circumstances of the six or seven millions of occupancy-raiyats throughout the two provinces, there was one matter on which we were nearly all agreed, that a rigid rule was both expedient and necessary. We recognised fully the landlord's right to enhance the rent of his tenants, and we authorized him to bring suits for the purpose on certain specified grounds, but we were satisfied that when he had thus attempted to enhance a tenant's rent, and obtained his enhancement, or failed to obtain it because there were no good grounds for it, the tenant should not for a considerable period be subjected to the worry and expense of a similar suit, or to threats of a similar suit, which would be equally effective for the landlord's object. This term was fixed in the Bill as introduced at 10 years, thereby following the precedent of the North-Western Provinces Act. In the Bill now before Council the term has been extended to 15 years—a term which, in my opinion, does not err on the side of excessive length. This provision gives the raiyat rest for 15 years. He cannot, as at present, be harassed by annual notices of enhancement which threaten to absorb the fruits of his industry and prevent his applying his full skill and labour to the cultivation of his holding. He has now the assurance that, let the karindár or thíkádár bluster as they may, so long as he pays the rent last settled, no legal pressure can be brought to bear on him; and this security and the independence engendered by it nerve him to resist all the more stoutly demands which have no legal warrant. I cannot hold this provision to be a feeble palliative; on the contrary I believe it to be a strong shield against unjust enhancements.

"We have also enabled the Courts to temper the rigour of their decrees by empowering them to direct that the enhancement shall be progressive if they think hardship would be the effect of giving full effect to it at once.

"The provisions as to the reduction of the occupancy-raiyat's rent are much the same as in the existing law, except that reduction, like enhancement, is made to depend on variation in the prices of staple food-crops. The same reasons which justified the adoption of this as a ground of enhancement warrant its retention as a ground of reduction. The arguments which tell for or against it in the one case are equally applicable to the other. If it is inequitable that a landlord should obtain an enhancement of rent on account of a general rise in prices or fall in the value of money as indicated by a rise in the price of staple food-crops, it cannot be contended that the tenant's rent should be reduced for this reason. On the other hand, those, of whom I am

one, who hold that a rise of prices is a proper ground for enhancement of rent are ready to admit that it is an equally strong ground for reduction.

"We, however, go one step further than the existing law in this matter. We not only allow reduction for suit on specified grounds, as at present, but we provide a remedy for an evil which has already proved a scandal to the administration, namely, irregular enhancements of rent carried to such an extent as to endanger the welfare of the locality or public order. Under the former class fall those enhancements up to 500 per cent. to which I have already alluded, and under the latter those which brought about the Pubna and Mymensingh riots. With such evils the ordinary course of law is an engine too cumbrous and too tedious in its operation to deal effectively. People cannot be allowed to perish, or on the other hand to spread destruction over whole parganás while cases are being tried by the ordinary tribunals and fought out in appeal to the High Courts. The remedy must be prompt and drastic. We have accordingly empowered the Local Government, when it is itself satisfied and can satisfy the Governor General in Council that such a remedy is needed, to apply it by enabling a Settlement-officer to settle all rents and to reduce rents in any specified area generally or with reference to specified cases or classes of cases, if in his opinion the maintenance of existing rents would on any ground, whether mentioned in this Act or not, be unfair or inequitable.

"The power is not one to be lightly exercised, but the knowledge that Government has in its hands such a weapon must operate as a check on the oppressive exactions of grasping landlords.

"I have, I fear to the great weariness of my hearers, enumerated in detail the provisions respecting the rent of the occupancy-tenant, because it is on this point mainly that we are accused of having done least for him, or rather of having rendered his position worse than it is at present; but the objection underlying the arguments of some at least of the assailants of the Bill on this ground is not that we have done too little for the raiyat but that we have done too much for the zamíndár. They oppose really any ground of enhancement which can be made workable. They think that the raiyat will be better off by taking his chance under the existing law, which is so difficult for the Courts to give effect to, than if subjected to rules, however guarded, which can be made a reality. They are loud in their clamours against the restrictions by which it is proposed to qualify the rules in the Bill, but they have failed altogether to suggest others of a more satisfactory nature, or to substitute grounds of enhancement which would be free from the abuses to which they

believe that these will be liable. We, on the contrary, think that no grounds of enhancement should be offered to landlords which the Courts are unable to work ; and, while recognising reasonable and workable grounds of enhancement in the Bill, we have, to the best of our ability and judgment, made such provisions as will prevent their working unfairly or inequitably. By doing so we withdraw a strong encouragement hitherto held out to irregular enhancements, and, instead of a fitful and uncertain protection arising from the difficulty of working the rules, we give to the tenant the security that the rules cannot be worked to his injury.

"As regards another class of objectors who describe the restrictions we have imposed as 'feeble palliatives impotent to restrain the evils which the working of the enhancement sections is calculated to produce,' I hope I have satisfied the Council that this description does not accurately represent such measures as the modification of the rule respecting the prevailing rate, the deduction of one-third of the increase claimable on account of rise of prices, the provisions that only *bonâ fide* improvements by landlords and the benefits flowing from them to the tenants can authorise enhancement, the precautions to guard against a tenant's rent being unfairly enhanced on re-measurement, the general rules as to all decreed rents being fair and equitable, as to rents once settled being undisturbed for fifteen years, and as to progressive enhancements, and lastly the power reserved to the Local Government to send in the Settlement-officer to reduce rents without reference to the grounds specified in the Act when the local welfare or public order require the adoption of such a course. If these be feeble palliatives it is difficult to say by what other restrictions the grounds of enhancement could have been qualified which would not amount to a declaration that those grounds might remain on the Statute-book as a reasonable concession to landlords, but that in the interests of the tenants no practical effect should be given to them.

"We have further, as explained by my hon'ble friend the mover, applied remedies to the abuses of the right of distraint, of the collection of rent by monthly instalments, of the power of bringing, or threatening to bring, frequent suits for arrears ; and we have endeavoured, by rules respecting the delivery of receipts and statements of account, to furnish all tenants with materials for resisting unjust claims for arrears of rent. Though petty in appearance, these are matters which closely affect the happiness and welfare of the raiyat.

"Finally, we have by the Record-of-rights chapter laid the foundation of a system which will in time extend to Bengal the benefits which have elsewhere been found to follow in the preparation and maintenance of an accurate record of the rights of the different classes having interests in the soil. This system cannot be brought into force over the whole country at once, and must of necessity be gradual in its operation, but as it spreads it will dispel the darkness as to agricultural facts which has so long covered these provinces, will determine the mutual rights of landlords and tenants where they are uncertain, and by furnishing both with a correct measure of those rights will increase the value of landed property, will remove causes of strife, will deprive the powerful of pretexts for enhancement, and will strengthen the weak to withstand oppression."

The Hon'ble THE MAHÁRÁJA OF DURBHUNGA said:—"I regret that I cannot support the motion of the hon'ble member that the Bill should be taken into consideration. In my opinion it is not submitted to the Council in a form in which we can reasonably be asked to consider it. It comes before us disapproved and discredited by all parties. The raiyats are as much opposed to it as the zamíndárs; and are we, who are legislating in the interests of the zamíndárs and the raiyats, altogether to disregard their wishes and their opinions? Is there a single raiyat or a single zamíndár in the country who desires that this Bill should be passed? And if it is an undoubted and an undisputed fact that neither zamíndárs nor raiyats desire this measure, will this Council be justified in forcing it upon them? Are we to suppose that zamíndárs and raiyats are alike ignorant of their true interests? Surely they may be trusted to know whether a law will injuriously affect them or not. But if we are to disregard the expressed wishes of the parties who will be affected by the proposed legislation, upon whose opinion is the Council to rely? Are we to rely on the Select Committee? The Select Committee consisted of eleven members, but out of this number only three have signed the Report without reservation. All the other members have on most important particulars dissented from the Report. The Report, therefore, and the Bill, which has been drafted in accordance with the report, is practically the Report and Bill of three members only: and two out of the three hon'ble members have no practical experience of Bengal. The Bill, therefore, comes before us discredited and disowned by the majority of the Select Committee itself. If the Select Committee had been unanimous in their recommendations, some sort of justification might have been found for proceeding further with a measure which has been so universally condemned. But with this great divergence of

opinion among the members of the Select Committee, there seems to me no other alternative but to withdraw the Bill. It cannot be expected that the members of this Council should accept the Report of the Select Committee as an authoritative document. If the members of the Select Committee are not themselves agreed as to the principles of the Bill, is it reasonable to expect that this Council should act upon their recommendations? If the Bill in its present shape is proceeded with, all the questions which engaged the attention of the Select Committee will necessarily be re-opened in this Council, and every hon'ble member will have to form his independent opinion upon them. But here an initial difficulty presents itself. There is absolutely no reliable information upon which you can proceed. The Select Committee had no evidence before them. They acted upon official opinions, which were generally conflicting and often misleading. My hon'ble friend Mr. Hunter has well described in his dissent the difficulty in which the Select Committee was placed. 'The Select Committee,' he writes, 'has been asked to deal with the entire relation of landlord and tenant in Bengal without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land right in Bengal, for in Bengal, almost alone among the provinces of India, there is no central department of statistics * * * which might in some measure have compensated for the evidence of witnesses heard in the districts. * * * The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.' Is this Bill, then, my Lord, ripe for discussion? Are we to legislate in uncertainty? Are we to pass a measure which will revolutionize and disorganize the whole rural economy of the country, without having any reliable data before us? From the very first the zamíndárs have demanded an enquiry. They deny the facts and the assumptions upon which the Government of Bengal has proceeded. I will give one or two illustrations. The justification of the occupancy clauses in the Bill was based upon the fact that the zamíndárs of Behar were in the habit of shifting their raiyats to prevent the accrual of occupancy-rights. This fact, in their memorial to the Secretary of State, the zamíndárs of Behar emphatically denied. From my own experience I can affirm this denial. I can state as a fact that such a custom is not prevalent in Behar, and that I have never even heard of its existence, and yet the

whole of the legislation with regard to those occupancy-rights has proceeded on an assumption which is absolutely baseless. Another charge made against the zamíndárs of Behar was that they rack-rented their raiyats; that rents were so excessive that the raiyats were left without a reasonable margin for subsistence. In their memorial to the Secretary of State the zamíndárs of Behár conclusively, as I think, showed that the charge was baseless, but the restrictions on enhancement have been mainly introduced into the Bill on the assumption that the charge is true. Is this fair upon the zamíndárs? Have they not a right to ask that their rights shall not be taken away on mere assumptions? Have they not a right to demand that the charges brought against them shall be sifted and examined before the legislature is invoked against them? But the Bill itself contains the best commentary on this charge. These raiyats, who are supposd to be so ground down and oppressed, are allowed to demand from their under-raiyats 50 per cent. more than they themselves pay. You are asked to restrict the demand of the zamíndár upon the raiyat, and at the same time to allow the same raiyat to demand for the same land 50 per cent. more than he pays himself. Can any inconsistency be greater? I have merely given these illustrations by way of example to show that we are legislating in the dark. The foundations of the Bill rest upon facts which are alleged and denied, and upon assumptions which are challenged as untrue. We have no ascertained facts before us upon which we can possibly proceed. There is assertion on the one side and denial on the other, and the truth has yet to be ascertained. If this is a correct description of the position in which we stand, is it possible to proceed with the Bill? How are we to decide between conflicting assertions? We may repeat in this Council the interminable discussions of the Select Committee, but in the absence of ascertained facts we shall not be able to arrive at any satisfactory conclusion. To me it seems amazing that we should be considering the matter at all. Among the many millions of people who will be affected by the Bill not a single voice has been raised in its favour. If it is passed, for whose benefit will it be passed? It surely cannot be wise to pass a Bill which will benefit no one and irritate every one. I look upon the Bill as disastrous in every point of view. It will be disastrous in a political point of view, because it will be regarded as a flagrant breach of the Permanent Settlement, and will therefore shake the confidence of the landed proprietors in the Government. It will be disastrous to the zamíndárs, because it will not only deprive them of their rights but will render zamíndári management for the future absolutely impossible. It will be disastrous to the raiyats, because it will give rise to endless disputes and lead to interminable litigation. For these reasons I am strongly of opinion

that the Bill should be withdrawn, and that any measure which may hereafter be proposed should be drawn up on the lines of the present law, instead of sweeping away existing landmarks and disorganizing the whole fabric of rural society. I shall, therefore, vote against the motion that the Bill be taken into consideration."

The Hon'ble MR. EVANS said:—"I have to apologise to the Council and to Your Excellency for not being fully prepared to speak to-day on this important measure. Knowing the strong opposition of the Mahárájá of Durbhunga to to the Bill, I not unnaturally counted upon his speech taking up the rest of this afternoon. I can only ask the indulgence of the Council in case my observations should in some respects be discursive, and in other respects insufficient, considering the importance of the measure before the Council.

"Your Excellency can well believe that it is with great reluctance that I have taken any active share in this legislation. My own heavy professional engagements and the active opposition of many of my personal friends to this measure all combined to make me desire to avoid it. Believing, however, as I did and do, that some legislation on the subject was, in consequence of the admttted imperfections of the Act of 1859, necessary for the welfare of the country, I did not feel myself at liberty to decline to give what assistance I could to the undertaking.

"In this task the Select Committee have been beset by many difficulties, of which perhaps one of the greatest is the initial mistake that was made in not having two Bills, one for Behar and one for Bengal. I have always thought this a mistake, and I believe other members of the Select Committee have thought the same.

"In Behar, as a rule, the landlord is strong, the raiyat weak. In most parts of Bengal, notably in the Eastern Districts, the raiyat is stronger than the landlord. It was, however, decided by Government that the Bill was to be a general rent law, and not two special laws to meet the wants of the two provinces. We have done our best under these circumstances. But the result is unavoidable, that those whose eyes are mainly fixed on the poorest parts of Behar say we have not done enough for the raiyat, while those who mainly regard the condition of Eastern Bengal accuse us of having done too much for the raiyat and having done too little for the landlord. There have been very strong statements before us that in Behar, or portions of Behar, the raiyats are so rack-rented that they have absolutely no sufficient margin for subsistence; they are

described as having an actual insufficiency of food. If things are as described by some of the officers of Government, and if this state of things can be remedied by legislation, it would justify legislation of a most drastic character for the special local areas where these evils prevail. If it be shown that these evils arise from rackrenting, and can be cured by stopping enhancement altogether, or even by reducing the rents, it should be done by special legislation.

"But all that we can do in laying down general rules for the regulation of the law between landlord and tenant is to provide such rules as shall prevent such a state of things arising where it does not already exist, and to arm the executive with power to interfere, if absolutely necessary for the public welfare, pending the further enquiries necessary for legislation of such an exceptional character. This I think we have done. My hon'ble friend the Mahárájá of Durbhunga denies that such a state of things exists among the raiyats in Behar, and it may be that the poorest class are sub-raiyats. It may be, again, that many of them are technically raiyats holding as such a very small portion of land, too small for the subsistence of themselves and their families, and eking out a scanty subsistence by holding land at a rackrent under substantial raiyats and by working as day-labourers. This state of things would require a different class of legislation. These considerations have led me to the belief that this question of peculiar special local areas must perforce be left to special legislation. It would be wrong to legislate for the sixty-nine millions in Bengal upon any idea that such was the case in general, or that such things prevailed to an extent which would justify us in offering a remedy by any general rules. Having said this much, I desire particularly to say that if such a state of things can be shown to exist, and to be capable of being remedied by legislative attempts, I for one am perfectly willing to adopt that special remedy which may be shown to be necessary. Before noticing the special provisions of this Bill, I desire to say a few words upon the history of the occupancy-right. The subject has been so exhaustively discussed on both sides that I can add little to what has been said, and what little I have to say arises mainly out of a fresh pamphlet recently published. I have here before me a pamphlet entitled 'Proprietory Rights of the Zamíndár,' issued by the Central Committee of the Landholders of Bengal and Behar. I am glad to see from this work that upon one point we are agreed. In page 12 I find these words:—

'Under the customary law the resident or occupancy raiyat was entitled to hold his land so long as he paid the general rates which were settled for the village or parganá in which he lived; so far both sides agree.'

"We have this much to agree with at any rate, that, on the universal customary law of India, there is a fixity of tenure, so long as a man pays his rent; and the book goes on to say that the real point in the zamíndár's opinion is the question of how he is to enhance, and it goes on further to say that the will of the zamíndár should be the sole arbitrator of the amount of enhancement, and it challenges us to show that at any time in Bengal since the time of the Permanent Settlement the ruling power has ever exercised the power of regulating the assessments upon the individual raiyats. No doubt, though by the institutes of Akbar, the relative proportions of the produce were settled between the cultivator and Government, yet, as Mr. Shore said, even when the Government professedly dealt with the raiyats, it was found impossible in practice to assess each individual cultivator, and so the distribution of the assessment was left in Bengal to the zamíndárs. But this is very different from a right to demand what they pleased. I certainly agree with the Court of Directors that it was 'a general maxim under the Moghul Government that the immediate cultivator of the soil, paying his rent, should not be dispossessed. This necessarily supposes that there are some measures and limits by which the rent could be defined, and that it was not left to the arbitrary discretion of the zamíndárs.' It is, I think, quite evident that there was a right of some sort in the cultivator which was not illusory. There was some kind of right as regards the quantity of rent. The fact that it was the zamíndár and not the Sovereign that fixed the rent can be very easily accounted for. In a huge despotism like that of the Moghuls,—a central despotism,—powers to a very large extent were delegated to the Provincial Governments, which in turn delegated many of their powers to the great princes and the great zamíndárs; and we all know that these great princes and zamíndárs exercised the authority and the functions of Government, both civil and, to a certain extent, criminal as well; and therefore it came to pass that with regard to these matters of revenue over which there was no control by any Courts in those days, nor any written law, no redress could be had save possibly by petition to the Executive Government, which would, save in rare cases, receive little attention. So far as we know, no questions of rent were allowed to be discussed in the Courts, and the consequence was that the settlement of all questions *quoad* the raiyat was in the hands of the zamíndárs not as owners of the land but as delegates of the Sovereign. It is admitted now that the zamíndár had really proprietory and hereditary rights; but how could he assert those rights? Could he go to a Court of law and ask for a decree against the Sovereign Power? He had to take what he could get from the Sovereign Power; hence it was that with a despotic Sovereign Power all rights must necessarily be uncertain in their

enjoyment. There was no tribunal to appeal to, and all proprietory rights were of a precarious nature. But we know that, however despotic a Government may be, rights of property must be recognised more or less. Subjects and rulers both recognise the existence of unwritten law and customs even under a despotism, and are generally guided by them, even though they often use their powers to trample on them. Therefore, I do not think there is anything in this objection, that the Sovereign did not directly fix the individual raiyat's assessment. If the Central Government was far away, the delegate was allowed to do what he liked. I think it comes to what Mr. Harrington says in his 'Analysis' that in the decay of the Moghul Power the ruling Power plundered the great zamíndárs, who were in turn forced to plunder the raiyats. That is, I think, the real explanation of much of the confusion which has been thrown upon this subject. When in later and more peaceful times the matter came to be examined, then the fact became clear, which is stated in the Report of the Parliamentary Committee of 1832, that—

'In the general opinion of the agricultural population, the right of the raiyat is considered as the greatest right in the country; but it is an untransferable right.'

"And they go on to say:—

'This part of the evidence before your Committee has been particularly adverted to, as it is of so much importance that the Government cannot be too active in the protection of the cultivating classes, for the vital question to the raiyat is the amount of the assessment he pays.'

"If this be so, we really find the position to be as follows:—It being conceded now that there is such a thing as a customary law giving such occupancy-rights, it follows that everybody who before the Permanent Settlement had held or reclaimed land in his own village, without exception, acquired occupancy-rights. What was the effect of the Permanent Settlement? It was a contract between the Government and the zamíndárs in which the Government gave the zamíndárs certain rights, and the Government had declared, so far as the Government could declare, that the zamíndárs, were the proprietors. But this cannot be said to make any alteration in the unwritten law, nor could it affect any persons who were not parties to the contract; and the case may be stated thus. The man who came in the next day after the making of that settlement, who claimed land or held land in his own village, was under the same old customary law as before, and by virtue of that law acquired a right of occupancy. The truth is that, at the time of the Permanent Settlement, Government settled their own disputes and quarrels with the zamíndárs. They were very numerous, and zamíndárs had just reason

to complain, and did in fact make the complaint heard in Parliament. The final settlement of all these difficulties as to the respective rights of Government and zamíndárs was come to in the Permanent Settlement. The Government, finding that the matter of the rights of the raiyats was an obscure and complicated matter, which they could not go into on account of its intricacies, left it alone, because they thought it could probably be settled by agreement between the zamíndárs and their raiyats, much in the same way as they had settled the difficulties between themselves and the zamíndárs. But what was the position? The raiyats continued as they came in to cultivate their lands and to acquire the same rights under the same old customary law, which was never abrogated save so far as it might be affected by the express provisions of any of the Regulations. The only difference was that, whereas before they acquired their rights against the Government and zamíndár, after the Permanent Settlement they acquired the same rights against the zamíndár, as representing his own and the Government title, and that the Government had left only a perpetual charge on the land with the duty solemnly reserved to protect the raiyats, and to legislate when they thought it necessary for their protection.

"But the hoped for result did not come to pass. The raiyats and zamíndárs did not settle their respective rights amicably, and so it befell that, at the end of 60 years, the legislature found it necessary to lay down some rules in regard to the enhancement of the rates of rent which were demandable from the raiyat. Now one of the main arguments of this pamphlet is that the legislation of 1859 was a breach of the Permanent Settlement; and they make it out in this way. They say that before the Permanent Settlement they had the right to demand rent according to their own arbitrary discretion. Shorn as they have been of their civil and criminal jurisdiction, and no longer representing the ruler's power, they still contend that their will is the measure of enhancement, and that the effect of the reign of law which the British Government have introduced is that the Courts ought to register their arbitrary demands as decrees, and that the resistless might of the executive should be at their call to enforce their decrees and protect their persons. It is upon this view of their rights that the pamphlet really proceeds. It is upon that ground, they say, that we departed from the Permanent Settlement in that Act of 1859. I deny that altogether. I think it was clearly competent to the Government to legislate as it then did. But it is idle to go into a question like that, because, if they once admit that the Government had the power, in 1859, to make these rules to regulate the rent, and to define the occupancy-raiyat, they cannot deny that this Council has in 1884 the right to amend the definition and the rules. If

they rest on the argument that the legislation of 1859 was improper, we can only say that that question is long ago concluded by authority, and that it is useless to discuss it save as a forensic exercise. As regards the position in 1859, it stood very much in this way. Nothing had been done for 60 years, and it was found that matters were not satisfactory. The legislature came to the conclusion to make rules. They first desired to define who had the right of occupancy, so as to enable the Courts to ascertain that fact. Then they proceeded to make what they considered to be fair and equitable rules to guide the Courts in decreeing enhancements of the rents of occupancy-raiyats, and they made an express reservation that the occupancy-right should not accrue in respect of any land as to which the raiyat had contracted expressly that he would give it up at a certain time. As regards those raiyats who had not a right of occupancy, it was decided that they must give up the land on reasonable notice; but that so long as they were allowed to remain, no more than a fair and equitable rent could be demanded from them.

"These were the main provisions, but complaints were soon heard. The zamíndárs complained that the grounds of enhancement were unworkable, and that they found moreover often insurmountable difficulties in obtaining in fact the enhancement to which they were in theory entitled; while those who had at heart the interests of the raiyat complained that the effect of the definition as construed by the Courts was to defeat the intention of the framers of the Act, and to shut out from the status of occupancy a large number of raiyats who were entitled to it. It was complained of on both sides. The raiyats, or those who spoke for them, complained that they had very great difficulty in proving the occupancy-right. They pointed out the immense difficulty of proving 12 years' continued cultivation of the same plot of land, in that there were no fences as in England. The raiyat might be holding five or six little plots in a large plain of rice-land divided into plots by temporary ridges of mud. The only documentary evidence, measurement-papers and zamíndári records of rents and holdings were all in the hands of the zamíndárs and liable to falsification by zamíndári servants. They also complained in respect of various portions of Behar that there was a practice of shifting them from one village to another. Now I understand my hon'ble friend the Mahárájá to say he has ascertained that that is not done for the purpose of preventing the accrual of the occupancy-right. That may be so, but this much is certain, that for some reason or other the raiyats in many, if not most, parts of Behar were unable to avail themselves of the protection of the occupancy clauses even to the limited extent which their brethren in Bengal could and did. On the other hand, the zamíndár complained,

and complained rightly, that he could not get the enhancement he was in theory entitled to. We all know the immense difference between what is the result in theory and fact. It was one thing to discover the motive power of steam and another to construct the locomotive engine. The data were left to the Courts to discover, and unless the Courts found the data it was impossible to work the rules at all; and in working these rules there were very many difficulties. I will not go into them in detail; they are familiar to all who are conversant with the subject. Now it is a very demoralising state of things when we dangle before a man's eyes his rights, and assure him they are his rights, and send him to our Courts to enforce them, and then provide the Courts with such rules that the odds are against his getting them. Perhaps the most workable of the rules was the 'prevailing rate' as interpreted by the Courts, but the vagueness of the expression 'places adjacent' rendered this uncertain. Besides, if the 'prevailing rates' were too low, he got no remedy under this head. It has been said that it was the outcry of the zamíndárs on this head, and on the score of difficulty in realising rents, that led to this legislation, and that we have forgotten this, and legislated in favour of the raiyat instead. But we have tried to grapple with both the evils above mentioned by altering the definition in favour of the raiyat and making the grounds of enhancement workable in favour of the zamíndár; and if we have failed to facilitate in any marked degree the realisation of rent, it is because all the summary remedies proposed failed to yield just and satisfactory results. Having failed ourselves to do any more than is here set forth, we applied to the Judges, and the Council have seen their answer.

"As to the charge of having legislated for the raiyat without sufficient reason, you will have seen what has been said about the imperfection of the Act of 1859, from its passing to the present day, and attention had been directed afresh to this matter by the recent famines, and it was felt to be unjust to redress the complaints of the one side without taking into consideration the just demands of the other side. Besides, it became apparent that our best method of carrying out the often declared policy of the Government of protecting the cultivating classes, who form the bulk of the population, lay in extending the definition of the occupancy-right in such a way and to such an extent as to secure the fruition of that right to the great mass of the raiyats, who in my judgment ought to possess and enjoy it. Believing that with an advancing education nothing but trouble can befall us if our laws do not recognise what the agricultural population firmly believe to be their old and just right, that is, the right of occupancy, I have not hesitated to accept such amendment of law

as seemed necessary to that end. I will endeavour to describe briefly what we have done on this essential point. The whole revenue map of Bengal, speaking roughly, is divided into small village areas of different sizes and shapes called mauzás. Now, a resident raiyat had by the old custom a right of occupancy in the land in his own village, but in no other land. New villages sprang up, and even within the same village area arose detached clusters of homesteads, subsidiary villages or tolas came into existence, many of them near the boundary of the next village; and as the cohesion of the old village communities with their old organisation decayed, it became more common for the inhabitant of one village to become a permanent cultivator, though not a resident, of an adjoining village. It was thought right in 1859 to make permanence of cultivation and not residence the ground of the occupancy-right. I think this was only such a modification of the old law as might fairly be made to suit the altered conditions of the times, and so the rule laid down in 1859 was that whether a raiyat was a khudkhast raiyat or pykasht raiyat, yet having shown that he cultivated the same land for twelve years he should have a right of occupancy. The mistake was in providing that he should show that he had cultivated that particular piece of land for twelve years. The amendment that we have made is by providing that it should be enough that he is a permanent cultivator either in this or that village area, and that he should thereupon be considered to be an occupancy-raiyat of those village areas in which he is a permanent cultivator. Now this makes a great difference, as we get rid of the whole difficulty of proving that he cultivated a particular plot of land for twelve years. If he is a cultivating raiyat of one mauzá or village where he has his house and in two mauzás alongside, he should be held to be a settled raiyat of the whole three mauzás and have a right of occupancy in all of them.

"It must be abundantly known that a raiyat is not a man who goes about as a nomad, but is really attached to his own village; and so it follows in reason and common sense that he cannot cultivate except near his own village where his home is. If he takes up land he generally takes it up permanently. He may take it up for a temporary purpose, but ordinarily he takes it up either in his own mauzá or in the adjoining ones, and then no power can drive these men out of their own villages. The result is that this rule goes far to secure that the ordinary class of raiyats shall be entitled to the occupancy-right. We have made a further provision. Whereas the Act of 1859 said 'you shall be an occupancy-raiyat of every piece of land which you have cultivated for twelve years,' yet it has this exception, 'provided that the landlord does not

prove a contract by which the raiyat took up the land on the condition of not being an occupancy-raiyat.' It is no doubt a strong thing to override a written contract, but it was thought that there was a tendency to insert this in every contract, and there is no doubt that it would be inserted to a very large extent; and therefore the Committee assented, though not without reluctance, to the insertion of a provision by which the raiyat is barred from contracting himself out of his occupancy-right. It was of very paramount importance to my mind that we should secure this right of occupancy to the raiyats, and not leave room for any device by which it might be defeated, bearing in mind that with illiterate and poor persons anxious to get land a provision of the kind might easily be slipped into a document. It was also apparent that both the zamíndárs and under-tenure-holders here are not people who desire the possession of land for cultivation, but they are simply rent-receivers. The only thing they desire is that the land shall be cultivated by the raiyats, and that they will pay as much rent as possible, and as regards the bulk of the zamíndars of Bengal, there is not much hardship, because you are merely attaching a customary incident to the holding, and the only result is that the landlord is bound to enhance according to certain rules and not arbitrarily. Such a man cannot very much complain if we provide that the land shall be held under such circumstances that the right to enhance shall not be arbitrary but according to fixed rules. But there is another class of proprietors in respect of whom there really appears to be considerable hardship. These are persons who acquired land for the purpose of cultivating, at an expense beyond the power of the raiyat, certain valuable crops, such as tea and indigo. They have great ground to complain of these restrictions, namely, that it prevents them letting out temporarily to residents of the village any lands which they do not for that year wish to cultivate themselves. They say, very rightly, 'we want to let out the lands, which we wish to be cultivated for a year or two.' Take an ordinary case. The indigo plant derives its nourishment very far down in the ground, and it is a very exhausting crop. Rice, on the other hand, grows right on the top of the land, and does not exhaust the land except near the surface. An indigo-planter has in his hands a large tract of land, say, of 2,000 bíghás, on which he grew indigo last year. The raiyats, on the other hand, have another tract of land in their possession, and they come under the new Bill and say, 'let us have the land, which will give us an abundant crop of rice, and do you take our land for indigo for this year. We will pay you so much for your land, and we will give you back your land next year.' Under our legislation the zamíndár is obliged to say 'I must let the land to a person from

another village, because you will acquire occupancy-rights in this land; you are not competent to contract, and therefore, though a stranger offers me only half the rent, I must either let it to him or keep the land fallow or try and grow another crop of indigo, because the legislature has determined that you shall not contract yourself out of the right of occupancy. I should have to trust to your honesty, because the law will not recognise a contract entered into by you.' There is no doubt whatever of the very considerable hardship of this provision, and the only thing which will justify the doing of it is that the class it will affect is small. It is not very clear how landlords can protect themselves against this provision. Possibly they may do so by letting the land to a stranger or by getting the raiyats to exchange the lands which they cultivate, under some form of contract not amounting to a tenancy. But this, even if possible, would not meet all cases. I still hope that my hon'ble friend Mr. Ilbert may see his way to drafting some clauses which will give relief in these cases, while providing against abuse.

"The evil to be guarded against is that, if a raiyat is allowed to contract himself out of the occupancy-right, such a condition would, I fear, in time be be found in every pattá, and thus the main object of protecting the occupancy-right would be defeated. The result of this legislation is that the bulk of the raiyats must be occupancy-raiyats, though new raiyats coming in from time to time would not become occupancy-raiyats until the expiration of twelve years.

"We have gone further and provided that when a raiyat is found cultivating as a raiyat, that is, paying rent for any piece of land, he shall in a suit by his landlord to whom he pays rent have the advantage of a presumption that he has been cultivating that piece of land for twelve years.

"The reasons for doing this are that the documentary evidence on this head is in the landlord's hands, and not in his, and that as a matter of fact most of the land is cultivated permanently, and the raiyat is often so poor and illiterate and so ill equipped to meet litigation, and so ill provided with money and reliable evidence, that it was feared that, without some provision of this kind, our efforts to secure him the enjoyment of the occupancy-right would not have the desired effect.

"This provision has been much complained of, but many of the strictures made on it are based on misconception. He does not by this clause get a general presumption that he is an occupancy-raiyat in consequence of his hold-

ing some undisclosed piece of land in the village or the estate. He gets the presumption only as against the landlord to whom he pays his rent, and who has the best evidence in his hands, and only as regards the particular land in dispute. This limitation, when duly borne in mind, disposes of many of the objections made against this presumption, though no doubt some remain in the case of the auction-purchaser, and will have to be discussed on the proposed amendments. But I think, in spite of them, it should be retained. As to the relief to the raiyat in cases when his occupancy-right is threatened to be disputed in Court, it is immense. The difference in all countries is great when the onus of proof is shifted on one side or the other. The person on whom the onus of proof lies has always to discharge a heavy burden. But if the onus of proof is so burdensome in all cases in countries where facts are more or less ascertainable, what must it be in this country, where everything brought before the Courts is too often illusory, where oral testimony evidence is so often worthless, and documentary evidence is frequently forged? I don't mean to say that the zamíndárs tamper with their documentary evidence, but it is quite certain that the gumáshtas and other inferior servants do it. This being the state of things, it makes an enormous difference on which side the burden of proof is thrown, and it may be said that it is easier for the zamíndár with his documentary evidence to prove that the particular piece of land has not been held by the raiyat for 12 years than for the raiyat to prove that it has been so held. I think that is going a long way in behalf of the raiyat, and I am astonished to find that my hon'ble friend Mr. Reynolds appears to think that we have not gone far enough, and that we ought to give him an occupancy-right in the estate, if he has held any land in any part of it for 12 years. I must point out the difference between a village and an estate, and the effect of introducing the word 'estate', which has been cut out by the majority of the Committee. The villagers are the villagers of a particular village, just as much as parishioners are parishioners of a particular parish; and the best illustration is to describe a village as a parish. Then the position is this. If a man is asked where he comes from, he at once says, 'I am so and so, the son of so and so, of a particular village'. On the other hand, an estate is an abstraction, a revenue-unit on which the Government revenue is paid, and which is liable to be sold up in default of payment of revenue. This unit is sometimes very large. It extends sometimes to 50 or 100 miles. Still the zamíndárs frequently sublet the estate in whole or in part, often in a number of perpetual tenures, generally known in Bengal as patnís. Each patnídár may again sublet in perpetuity by one or more under-patnís, and so on.

"Now, it is the lowest in gradation of the under-landholders who has to deal direct with the raiyat. He perhaps has in his tenure 10 villages out of 100 or 1,000 forming the estate, or he may have only one village. He can tell who are the raiyats of his villages. He has got power there and the means of knowledge, but with regard to the other villages in the estate he knows no more than I do. Why should the tenure-holders of other villages give him any information? Now, what is the result? When in good faith a small tenure-holder has let a little piece of land to a stranger, this stranger says 'No doubt I said I will give up the land in a year or two, but I have a brother 20 miles away in the same estate; and although I am not even on the register of the landowner there, I enjoy it jointly with my brother, and under the cover of my brother I am a settled raiyat of the whole estate, and therefore I cannot cultivate any land in this large estate without acquiring the rights of occupancy.'

"The particular landlord of this man knows nothing of the distant place, and cannot well ascertain whether the story is true or false. There is no warrant for this in the old customary law of the country, and I do not see any reason for doing that which it is so very difficult to justify. I am aware that this word 'estate' is in the Secretary of State's despatch, and in the Bill as originally framed; but it is doubtful if the Secretary of State ever considered this particular point, or used the word in this sense. But whether he did or not matters little, for neither his despatch nor the Bill as first drafted contained the presumption, and it is very evident to me that my hon'ble friend cannot have both. It is going altogether too far.

"I hope I have satisfactorily shown that we have done a great deal for these occupancy-raiyats, and that we have strong reason for doing it. I have next to consider what we have done for the zamíndárs, because the allegation is that, while we have done a little for the raiyat, we have done nothing for the zamíndár. First of all, we have provided that the rise of prices shall be a ground of enhancement. It appears to me that that is in effect to fix the present rent in the staple grain of the country, so that the zamíndárs shall get the benefit of a rise in the value of the grain, with this proviso, that they shall not get the whole of the rise but only two-thirds, one-third being reserved to cover the increased cost of production, and that the rise should be a rise in the average price of over a period of ten years. It must be evident that this will be very beneficial to the zamíndár.

First, we know that the value of money, as compared with the value of grain, has been falling; that 12 annas per maund was the price of rice at the time of the Permanent Settlement, and we see how enormously more silver it now takes to purchase a maund of rice. The result of this amendment is to establish a sort of self-acting scale by which the Courts, by performing a simple sum in arithmetic by reference to the Government price-list, would regulate the enhancement, and the zamíndár would be enormously benefited, and saved much of the present harassing and uncertain litigation. We know that in a great part of the country the rise in the price of cereals has been very great, but the provision in the Bill merely fixes the rent of the zamíndár, so far as the ground goes, at so many maunds of grain. At the present time no permanent fall of prices need be expected, as prices are steadily rising over decennial periods, though they are falling in certain years which only affect the average. No doubt the zamíndár may say,' Why do you call this a ground of enhancement at all? It is merely adjusting the rent to meet the depreciation of money as compared with grain.' But it is something which he had not before, and which will give him steady enhancement, and, this being so, no word-splitting will alter the reality of this ground of enhancement, and most zamíndárs who wish to get on without harassing litigation will hail this as a substantial relief from the present position as regards the power of enhancing occupancy-raiyats. On the other hand, it has been said that this is a very sharp weapon to place in the hands of the zamíndárs, and that this enhancement ought to be treated as a great boon, and that, this boon being granted, the prevailing rate ought to be struck out. But this is simple justice to the zamíndár if you accept the Secretary of State's clear enunciation that the rents at present existing are to be considered fair, and not to be reduced except under special cases. The real meaning of the complaint is that it is believed that certain parts of Behar are rackrented already, and that any enhancement we legalise is an unmixed evil.

"If the districts of Behar are so rackrented, nothing you can do in the way of laying down general principles will help it. You must have special legislation to meet such cases. I therefore say that what we have done in respect of enhancement on the ground of rise in prices, while it is but justice to the zamíndár, greatly betters his position, and is a substantial amendment in his favour. Then we come to the question of the prevailing rate. It has been said that that provision should be struck out. I wish to point out that enhancement on the ground of the prevailing rate has existed in one form or another from the time of the Permanent Settlement. This ground of the prevailing rate

is a ground on which enchancement was allowed, and it was put in the Act of 1859, and it has been worked ever since. We have been strongly pressed by the Government of Bengal to drop the 'prevailing rate' as a ground of enhancement. And I observe that His Honour, in his official dissent, assumes, on the strength of the opinion given by various persons, that this ground is never worked except by fictitious rates. But though there are false cases started under every law that we have made, and fictitious evidence manufactured to meet the requirements of the law, yet, so far as I can learn, the majority of the cases on the prevailing rate contain no more perjury or fabrication than seems to be incidental to the bulk of litigation in this country. At any rate, the appeal pending in the High Court, in which the Government claim on the ground of 'prevailing rate,' enhancements from 100 to 400 per cent., has a strong bearing on this and the next point.

"As to this point, it would seem to show that the legal advisers of Government share my opinion that it is possible to prove an enhancement case on the ground of the prevailing rate without having recourse to fictitious rates or any demoralising process, for it cannot be supposed that any element of that character enters into a case which is in charge of that venerable body the Board of Revenue and the officials under its orders. Of all the grounds given in Act X of 1859, the ground of the prevailing rate has, I think, proved the most workable. I cannot share the apprehension of my hon'ble friend Mr. Reynolds that we have left the occupancy-raiyat defenceless in the matter of fair rent and liable to be forced up to a rackrent.

The 'prevailing rate,' which is even more necessary under this Bill than it was before to check the effects of fraud and favouritism of gumáshtas and others, cannot bring the rent higher than the present prevailing rates as increased in money expression by the fall in value of money as compared with grain. They seem therefore fair general rules for places not already rackrented. As to those places which are rackrented (if any), I have already expressed my opinion. I have thought it necessary to give reasons for the retention of the 'prevailing rate,' although there is no amendment proposing to strike it out, because the majority of the Committee differed upon the matter with the Government of Bengal, and it appeared necessary to me to justify the position taken up by the majority.

"Section 29, clause (*a*), I consider to be absolutely indefensible. Mr. Henessy's memorial has shown that a large proportion of his raiyats have

holdings under Rs. 5, and that the cost of registering contracts is prohibitive in such cases, but he has also drawn attention to the fact that in many places it is impossible to get the raiyats to give kabuliyats or take pattás. He instances the case in which the Commissioner of Bhagulpore, Mr. Alonzo Money, entirely failed to force the raiyats to do so on a ward estate. And it appears that Mr. Reilly, managing the Chanchal Estate under the Board of Revenue, has equally failed. We all know that it was made a universal rule under the Permanent Settlement regulations that the engagement as to rent should be in writing. We all know that it has been found impossible to enforce this, and that the rent engagements in many parts of the country are still oral, and that the only trustworthy evidence of what the raiyat has agreed to pay is to ascertain what he has actually paid. It would appear that the real effect of sections 28, 29 and 30 is to provide that those raiyats who have no written engagements and who traditionally refuse to sign anything can never be enhanced legally except by suit. What the effect of this will be in cases in which they have orally agreed to enhancements and have paid at enhanced rates for a year or more it is difficult to tell. This matter should be seen to, and some provision made for it. But apart from this I regard clause (*a*) of section 29, which protected the raiyat from agreeing to an enhancement of more than two annas in the rupee or 12½ per cent. out of court as exceedingly mischievous, and likely to lead to lamentable consequences in many cases both to landlord and tenant. It is fatal to the raiyat in many cases.

"Take the Government case against a large body of raiyats in Malanagor, to which I have just referred. There the Government had a very heavy claim, from 100 to 400 per cent., against the raiyats, who number in all 600 or 700. It was certain that, unless the raiyats could establish fixity of rent, an enhancement of far more than 12½ per cent. would be decreed, as they most undoubtedly held for a very long time at very low rates on condition of growing oats. Is it reasonable that, if a test case had been tried, or from some other reason, the raiyats came to the conclusion that it would be to their interest to accept a 25 per cent. or even 50 per cent. enhancement, they should be prohibited from doing so, and the landlord should be forced to drag them each one into Court, and obtain decrees for the full amount he was entitled to, with costs, stamp-fees, &c.? There are large numbers of raiyats holding at low rates on condition of cultivating indigo, and it is within my personal knowledge that, when it is proposed to discontinue indigo, they agree willingly to large enhancements of the rents, considering it beneficial to themselves to do so. Mr. Hennessy states that he has let lands, the letting

value of which is one rupee, for eight annas on condition of the raiyats growing indigo. The raiyats would all be enhanceable on the ground of 'prevailing rate' when indigo is discontinued, and would probably consent to a 50 per cent. enhancement. Is it just to them to force them into Court with its heavy expenses? Is it just to the landlord to force him to undergo the expense ruinous to him unless he recoups himself by ruining the raiyat? It is not just, nor can I believe it is necessary. At the time of the Permanent Settlement it was thought right to leave everything to contract. We have found that freedom of contract must be limited in certain cases, just as in England it has been found necessary in the matter of hares and rabits. But if there is one thing which the raiyat thoroughly understands and is specially heedful about, it is the *narikh* or rate per bíghá which he is to pay. This is the one subject which he thoroughly understands, and which he is most deeply interested in. It is most difficult to get him to consent to an enhancement unless he is satisfied he cannot resist. It is by watching test cases and the fate of his neighbours' litigation he satisfies himself that it is more to his interest to agree with his adversary than go to law. It is a cruel mercy to him to insist against his better judgment that he shall be ruined by litigation. If the raiyat is not given power to contract in these cases, it is difficult to know in what cases he ought to have the power. I do not think that 100 years of British rule has left the raiyat in so much less intelligent a condition than he was when we came, as to call for any such provision. I know well it is intended to protect him in contracting with one more powerful, but in this case I think this protection is illusory and the mischief very real.

"As regards the motion before us and the question of re-publication, I will only say that I regard the kernel of the Bill as sound, and the general object and scope of it as salutary, and that it should be proceeded with and necessary amendments made in Council. The recent modifications have been in the direction of meeting just objections of the zamíndárs, and I am not aware that any new matter has been introduced into it which would call for re-publication. In considering the desirability of future delay the possibility of agitation among the raiyats should not be lost sight of.

"The hour is late, and I will reserve the remarks I have to make on various other sections for the Motions to amend those sections, which are very numerous."

The Council adjourned to Monday, the 2nd March, 1885.

R. J. CROSTHWAITE,

FORT WILLIAM; *Offg. Secretary to the Government of India,*
The 13th March, 1885. *Legislative Department.*

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