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ABSTRACT OF THE PROCEEDINGS

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LAWS AND REGULATIONS,

1883,

WITH INDEX,

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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 Vict., cap. 67.

The Council met at Government House on Monday, the 12th March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E.
His Honour the Lieutenant-Governor of Bengal, 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.
Major the Hon'ble E. Baring, R.A., 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 Rájá Siva Prasád, C.S.I.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal be referred to a Select Committee consisting of His Honour the Lieutenant-Governor, Major the Hon'ble E. Baring, the Hon'ble Messrs. Ilbert,

Reynolds and Evans, the Hon'ble Kristodás Pál, the Hon'ble the Mahárájá of Darbhangá, the Hon'ble Mr. Quinton and the Mover.

He said that the Council were aware of the circumstances under which his hon'ble colleague, Mr. Ilbert, had introduced the Bill on the 2nd of March, and he (SIR STEUART BAYLEY) could only congratulate the Council and himself that his enforced absence from here had transferred to Mr. Ilbert's hands the duty which he had so admirably performed. After the clear and elaborate statement which Mr. Ilbert had made on the 2nd March, as to the necessity for legislating, and on the principles of the Bill, SIR STEUART BAYLEY did not at present propose to say anything more on the subject, but he would reserve to himself the right to answer the objections which may be made in the course of the debate, which objections, he had no doubt, would be numerous. But he had just one word to say pertinent to the motion before the Council. He was at liberty to say that it was the intention of His Excellency the Viceroy to appoint to this Council a representative of the planting interests in Bihár, Mr. Gibbon, and on his being gazetted, and if he agreed, and if the Council agreed, he would be appointed to the Select Committee, and that hereafter, when vacancies occurred in the Council, as would be the case next year, it would probably be expedient to strengthen the Committee by the appointment of additional members who might fill those vacancies. Although the Bill will now be referred to a Select Committee, the Committee would not meet till next November, but during the Simla session criticisms would be received from the Bengal Government, and from the associations and individuals concerned; and those criticisms, when received, would from time to time be circulated to the members of the Committee for their consideration, and he hoped that, when the Council re-assembled in Calcutta, they should, by this means, clear a good deal of ground, and enable the Council to set to work at once.

His Highness the MAHÁRÁJÁ OF DARBHANGÁ then said:—"My Lord, it is not without considerable diffidence that I submit my views on the Bill which affects all classes of people.

"It is now more than six years that it was proposed by Sir Richard Temple to change the present law of landlord and tenant, and as the Government has already made up its mind to change the law, it would be useless for me to say that this Bill ought not to be introduced. But I might safely say that, as far as Bihár is concerned, no change in the present law is needed: neither the raiyats nor the zamíndárs have asked for a change, and that in itself is sufficient proof that no change is needed. The zamíndárs certainly do

not wish to get any further facilities for the collection of their rents, and the tenants also do not complain of any oppression by the zamíndárs.

"A great deal has been said about the oppression of zamíndárs in Bihár, and I doubt not that in Bihár there are a few bad zamíndárs as well as a few bad raiyats. But it is most unjust to think that all the Bihár zamíndárs, as a class, are oppressive. That there was a great deal of oppression in former days I do not deny, but Mr. Reynolds, after his last tour, was able to say that things have quite changed of late.

"Illegal distraint used in former days to be common, but that is now almost a thing of the past. The zamíndárs now have sufficient knowledge of law to know that by illegal distraint they render themselves liable to criminal prosecutions, and the raiyats also know how to protect themselves, and they are not now at all likely to let a zamíndár distrain their crops illegally. Besides, though the former system of distraint was certainly illegal, it was not necessarily oppressive. The Government itself, as the guardian of two of the largest proprietors in Bihár, was obliged to have recourse to this illegal system of distraint up to 1876. In the Darbhangá Ráj, when under the Court of Wards, it used to be considered the proper thing to distrain the raiyats' crops without serving them with formal notices. It was in 1876, however, that steps were taken to introduce a system of legal distraint, and I am happy to say that the system of illegal distraint has now entirely disappeared throughout Bihár, and this is simply owing to the good example set by Sir Richard Temple and my hon'ble friend Sir Steuart Bayley. It would therefore be unjust now to call the zamíndárs of Bihár oppressive, and I hope I may be excused for having gone out of the way to say a few words in justification of the zamíndárs of Bihár, who have already been more than sufficiently abused in the report of the Rent Commission for carrying on a system of distraint which, though illegal, was not oppressive, and which the Government itself was carrying out until lately.

"I will now say a few words on the subject of occupancy tenures in Bihár. The zamíndárs, as a body, are not averse to the cultivators acquiring this right. It gives the raiyats a permanent interest in their lands, and they are, therefore, more likely to increase the value of their lands. But the Bill does not create this right in favour of the actual cultivators. On the other hand, it distinctly says that the sub-lessees, who after all are the actual cultivators of the soil, are not to acquire rights of occupancy. The actual cultivator is not to

acquire the right unless he happens to pay in his rent direct to the zamíndár, and he is to be perfectly at the mercy of his middleman. This seems to me to be perfectly anomalous, and it would be a better proposal that a raiyat who is not an actual cultivator should not be allowed to acquire right of occupany. Unless some such provision is made, we are bound to create a set of occupancy tenants, who are not the actual cultivators, but middlemen, and these middlemen would be in a far better position to oppress the cultivator than the much-abused zamíndárs. The zamíndárs have to deal with those raiyats whose names are registered in the village papers, but these middlemen will have to deal with people who have in most cases no documentary evidence to prove that they are the actual cultivators. Then there is another provision of the Bill which concerns the zamíndár more directly—I mean the provision which debars the raiyats from contracting against their rights of occupancy. Such contracts are but seldom made. A zamíndár might especially wish to have a piece of land all to himself, though it might not necessarily be his *zarat* or *khámár* land. It might be a jungle or a preserve, and supposing he was to lease out a part or the whole of this plot, on condition that at some future time it is to be given back to him, is he to be prevented from the use of his land for ever? Then, again, zamíndárs very often plant trees on their lands, and lease out the ground to raiyats to grow crops for a certain number of years, and, in most cases, at very low rates, on the condition of regaining possession of the lands when the trees grow up, and the raiyats gladly take such lands on short leases. Are these raiyats supposed to acquire rights of occupancy? Then, again, why provide for a right of occupancy against any contract to the contrary? Such a provision does away with the freedom of parties to contract. Parties understand their own interests better, and it is idle for the legislature to affect to protect their interests. To secure some personal benefit, a raiyat may very well give up his rights under the law, but if the provisions of the Bill are passed into law they would not be able to secure such advantages for themselves.

"I am glad to see that the Bill proposes to do away with the law which entitled the tenants to acquire rights of occupancy only when they could prove that they were in the possession of an identical piece of land. There would be little harm done to the zamíndárs if, where raiyats occupy different lands in different years, the right of occupancy is allowed to spring up in respect of a particular quantity of land held for a certain number of years. But the Bill goes on further, and provides that if a raiyat occupies a very small quantity of land, and in respect of that quantity acquires a right of occupancy, such right would attach to all land which he may hold within the estate for however short a period. This is certainly unfair.

"About the proposed facilities for the collection of rents, I must confess that the position of the zamíndárs would be much worse if the proposed changes are carried out. The Rent Commission had proposed to abolish the system of distraint altogether. The new Bill has effected a compromise in this respect between the suggestion of the Rent Commission and the existing law; but I am confident that the proposed mode of distraint through the Civil Court, and the deposit of the proceeds for a month, would frustrate the very object of distraint, which is only had recourse to as a mode of speedy realization of rents. The present mode of distraint is the best and most speedy way of collecting rents. The proposed law, however, in a way abolishes distraint altogether. It burdens the zamíndár with the cost of an application to the Civil Court on stamp-paper, as well as with the expenses of paying lawyers; whereas now he has practically no expenses to incur. Illegal distraints are no doubt objectionable, but, as I have already said, it is only a very short time ago that the Government even used to resort to this illegal system in managing the Court of Wards' estates. This shows clearly that though illegal the distraint never operated as a hardship. It would, therefore, be most undesirable to change the present law, especially as the raiyats and zamíndárs have begun to know the law, and there has been absolutely no complaint by the raiyats that this instrument is used by the zamíndárs illegally, or as a means of oppression. It has been said that the law of distraint is an off shoot of the English law. It may be so. But then how is it that you find in Nipál, which has had less to do with foreigners than any other State in India, that distraint has been carried on for certainly more than a hundred years?

"Now I come to the most important point of the Bill—I mean the question about the enhancement of rents. The Bill proposes fixing tables of rates for each pargana. This may have been quite possible before the time of the Permanent Settlement, but I doubt if it is possible to do anything of the sort now. It is hardly possible to find two fields in the same village of exactly the same quality of land, and parties will never cease to question the correctness of classification of lands. I know of a pargana where the rate for some of the villages is two rupees, whereas the rate for similar lands in another village is only two annas. Instead, therefore, of deputing officers to draw up tables of rates, would it not be better that the law should fix a certain proportion of the average produce as the zamíndár's rent.

"Now as to the question of transfer of occupancy holdings. The zamíndárs ought to be thankful for getting the right of pre-emption. But it is not always that the zamíndár is in a position to buy occupancy holdings, and in

such cases would it not be advisable to give a *khúdkásht* raiyat the right of pre-emption in preference to an outsider, and immediately after the zamíndár? This might in some cases prevent an outsider coming in who has got no common interest with the villagers, and who does not necessarily care for the goodwill of the village community.

"Here I might also mention the fact that though the zamíndárs have been allowed the right of pre-emption, still they are not allowed to buy on the same conditions as raiyats. A raiyat who buys an occupancy holding, and who does not wish to cultivate himself, can lease it to one who cannot acquire rights of occupancy; but if the zamíndár leases out any such holding the cultivator at once acquires rights of occupancy.

"About the survey of *khámár* lands I have to make only a few observations. Such surveys would cost a great deal of money, which the raiyats or the zamíndárs might eventually have to pay, and even then I do not see what good the raiyats or the zamíndárs are ever likely to get. No doubt it would be a first-rate thing to have proper records-of-rights, but it would be impossible to have proper records-of-rights by having a mere survey of a village.

These are some of the observations which a cursory reading of the Bill suggests, but this is not the time to enter into all its details.

"In conclusion I beg leave to make the following observations:—The Bill was originally intended to give relief to the zamíndárs as well as to the raiyats. Sir Richard Temple and Lord Lytton thought that the zamíndárs should get further facilities for the collection and realization of rents, but the proposed Bill does not give the zamíndárs any facilities for the realization of rents. Now as to concessions to the raiyats I have very little to say. It is the zamíndárs' interest to make any fair concessions to their raiyats. All that a zamíndár needs is a law which secures him his rents and provides him with modes for speedy realization of the same, but I am obliged to say that if the procedure as laid down in the Bill is to become law, the zamíndár's position is sure to be much worse than what it is now, and I can safely state, before concluding, that Bihár zamíndárs are quite satisfied with the existing law, and do not wish for the change contemplated."

The Hon'ble KRISTODÁS PÁL said:—"I wish to begin with a personal explanation, for which I crave your Lordship's indulgence. It may be supposed

that, as I have the honour to sit in this Council under your Lordshid's orders, with the suffrage of the landholders, it is my duty to look to the interests of the landholders alone. But such is not the case. I cannot divest myself of my natural sympathy with the millions who till the soill and constitute the backbone of the nation. Indeed, I would not be true to myself, to my cherished convictions, and to my humble labours for the promotion of my country's welfare, if I were to shut my eyes to the interests of one party for the sake of the other. All that I want is justice and fairplay to both. No good landlord, I submit, my Lord, is blind to the interests and happiness of his tenancy. In fact, rightly understood, the interests of the two are interwoven with those of each other. A prosperous and contended tenancy is a blessing to the landlord and to the country at large. In considering the vitally important question before us, happily we have not to deal with a *tabula rasa*, and are not left to our own unaided judgment. Both the landord and tenant in Bengal have their charter of rights, and if we rightly interpret that charter we cannot go far wrong. This charter is none other than the Permanent Settlement Regulations. I consider it my duty to call the attention of your Lordship and the hon'ble Council to the main points of that charter, and to invite your unbiassed decision upon those points.

"Before I proceed to discuss the Bill, I desire to offer my hearty acknowledgment of the ability, industry and thorough mastery with which the learned Law Member has grappled with this intricate and complicated subject. The Bill is, doubtless, the work of many hands, but he has accomplished his task in a few weeks which might baffle the efforts of many an expert in as many years. But I hope he will pardon me if I say I cannot accept all his conclusions and endorse all the views and opinions he has expressed on the subject. My Lord, the papers on the Bill have been before us for nine days, and I ma free to confess that, consistently with my other avocations, I have not been able to give it that close attention which I ought to have given. I am, therefore, likely to make statements and remarks from an imperfect study of the Bill, for which I hope I will be excused. In submitting the Bill to the Council, the ho'nble and learned Law Member reviewed the whole question from the days of the Permanent Settlement, and in following his example I am afraid I shall also have to traverse a wide area. I may be tedious in my statements and observations, but I hope the Council will bear with me kindly.

"I think we ought to consider, in the first place, who are the zamíndárs who come within the scope of the Bill; what was their position originally; what functions did they perform in the administrative and social economy of the country, and how far were they useful to society and to the State? To ascer-

tain the position of the zamíndárs, it is not necessary for me to go back to the ancient history of India—I mean to the days of Hindú supremacy. It is enough for us to know that when the Muhammadans took over this country they fully recognised the position, the status and rights of the proprietors of the soil. It is true that the revenue demand was variable, but the rights and status of the zamíndárs were not at all interfered with. Before, however, I proceed to point out the position of the zamíndárs at the date of the Permanent Settlement, I will quote here the opinion of an eye-witness of the settlement as to the state of the country when the Permanent Settlement was effected, and the eminent service which that settlement rendered to the national Exchequer. I will read to the hon'ble Council the opinion of Mr. James Pattle, one of the best fiscal officers of the East India Company, who before his retirement held the honourable office of member of the Board of Revenue. Mr. Pattle writes:—

'The country brought under the Decennial Settlement was for the most part wholly uncultivated. Indeed, such was the state of the country from the prevalence of jungle infested by wild beasts, that, to go with any tolerable degree of safety from Calcutta to any of the adjacent districts, a traveller was obliged to have at each stage four drums and as many torches; besides, at this conjuncture, public credit was at the lowest ebb, and the Government was threatened with hostilities from various powerful Native States. Lord Cornwallis's great and comprehensive mind saw that the only resource within his reach in this critical emergency was to establish public credit and redeem the extensive jungles of the country. These important objects, he perceived, could only be effected by giving to the country a perpetual land assessment made on the gross rental with reference to existing productiveness, and, therefore, promising to all those who would engage the encouragement of an immense profit from extending cultivation. Admitting the sacrifice was very great, I think it cannot be regretted when it is considered what difficulties it conquered, and what prosperity it has introduced. For my part I am convinced that our continuance in the country depended on the adoption of that measure and that our stability could not otherwise have been maintained. This was my opinion at that time and it has remained unaltered.'

"This is the opinion of an eye-witness of the Permanent Settlement as to the state of the country when that settlement was effected, and also when it was in operation for some time. And it was his deliberate opinion that the Permanent Settlement enabled the Government of the day to keep the British power in the country. It may be said—and it is sometimes said—that the Permanent Settlement was financially a mistake, but in those days it saved the pubic treasury. The Company's treasury was on the verge of insolvency; their territories were threatened by powerful enemies; on one side an adventurous European rival was plotting, and on the other mighty Native Chiefs were arrayed against the Company; it was then a question of the continuance of English supremacy in the East; on the other hand the land-revenue, on account of

varying assessment, could not be regularly collected. It was at this juncture the Permanent Settlement was made.

"Ninety years have elapsed since this settlement was concluded. Within that period we have seen what changes, what commercial and material changes have taken place, and how the jungle which then covered the land has been removed and cultivation has been introduced; what financial prosperity has since succeeded the insolvency to which Mr. Pattle referred, and how active has been the national industry. I will not say that these results have been achieved wholly through the agency of the Permanent Settlement, but I do not hesitate to say that it has contributed greatly to the consummation of the changes which we now contemplate with so much satisfaction. It is well known that one of the charges brought against the Bengal land system is that it has involved the Government in an unnecessary sacrifice of prospective revenue. But, my Lord, if an examination of the development of the finances of these Provinces were made, it would be seen that in no other Province has the public revenue progressed so satisfactorily as in Bengal, and that whatever sacrifice was made by the Permanent Settlement of the public demand in Bengal has been more than made up by the enormous indirect increase of the revenue from many sources. This was particularly pointed out in the Duke of Argyll's despatch on the Road Cess.

"I now come to the position of the zamíndárs before or at the time of the Permanent Settlement. The name of Mr. Francis is well known in history as one of the colleagues of Warren Hastings in the administration of India. When he was in this country, the question of the land settlement occupied the attention of the Government, and enquiries were set on foot as to the position of the persons who were then known by the name of zamíndárs. Mr. Francis in a Minute, dated 22nd January, 1876, or rather in a note to that Minute, wrote :—

'The inheritable quality of the lands is alone sufficient to prove that they are the property of the zamíndárs, taluqdárs and others, to whom they have descended by a long course of inheritance. The right of the Sovereign is founded on conquest, by which he succeeds only to the state of the conquered Prince; unless, in the first instance, he resolves to appropriate or transfer all private property, by an act of power in virtue of his conquest. So barbarous an idea is equally inconsistent with the manners and policy of the British nation. When the Moguls conquered Bengal, there is no mention, in any historical account, that they dispossessed the zamíndárs of this land, though it is frequently observed that where they voluntarily came in and submitted to the new Government, they were received with marks of honour, and that means were used to gain and secure their attachment.'

"These were the men whom the British Government, on the first acquisition of this country, found in possession of the land. Mr. Francis admits that the Muhammadan Government always recognized their position and rights, and in fact did all they could to gain and secure their attachment. I do not know whether many members of this Council have read that curious book called, I believe, the 'Four great zamíndárs of Bengal,' by Mr. Rouse. It is now out of print, but it is a very interesting and useful book. It contains good deal of information about the Permanent Settlement, about the status of landlords in those days, and gives a very interesting history of the four great families of zamíndárs in Bengal, namely, Burdwan, Dináipur, Nattore, and Kishnagur. It also gives some account of some minor zamíndárs. I allude to this book only to show that in the days of the Permanent Settlement there were men in possession of large properties or estates, and that they were considered absolute proprietors of the soil. Now, in what light were these zamíndárs regarded by the authors of the Permanent Settlement? Were they regarded as proprietors of the soil or not? Here is the opinion of Sir John Shore, afterwards Lord Teignmouth:—

'I consider the zamíndárs as the proprietors of the soil, to the property of which they succeed by the right of inheritance, according to the laws of their own religion; and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it when there are any legal heirs. The privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the Díwání.'

"I will give an extract from the Minute of Lord Cornwallis, dated the 18th September, 1789. He says:—

'Mr. Shore has most ably, and, in my opinion, most successfully, in his Minute delivered in June last, argued in favour of the rights of zamíndárs to the property of the soil. But if the value of permanency is to be withdrawn from the settlement now in agitation, of what avail will the power of his arguments be to the zamíndárs for whose rights he has contended?'

"Again, His Lordship writes:—

'Although, however, I am not only of opinion that the zamíndárs have the best right, but from being persuaded that nothing could be so ruinous to the public interest, as that the land should be retained the property of Government, I am also convinced that, failing the claim of right of the zamíndárs, it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded.'

"So that Lord Cornwallis was deliberately of opinion that the zamíndárs were the proprietors of the soil, and that, even if their rights were questioned, still,

as a matter of policy, proprietary rights should be conferred upon them The zamíndárs before the Permanent Settlement were not only proprietors of the soil, but they actually exercised powers which legitimately belonged to the State or Sovereign ; they levied duties on internal commerce, a power which, as far as I am aware, no private landlord is allowed to exercise in any civilised country. But in those days, as I have observed, the zamíndárs actually exercised that sovereign power. Lord Cornwallis justly held, on grounds of public policy, that such power should be withdrawn from the zamíndárs, and in his Minute, dated 3rd February, 1789, he wrote :—

'I admit the proprietary rights of the zamíndárs, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that, however it may be sanctioned by long usage, I am convinced there are few who will not think us justified in resuming it.'

"And so this power was resumed—I do not say unjustly ; I admit that it was very properly resumed. But I mention it to show that the zamíndárs not only exercised the powers of landlord, but even, to some extent, the sovereign power. Lord Cornwallis, as the hon'ble Council is aware, fixed the revenue demand at ten-elevenths of the gross rental, and, by way of compensation to the zamíndárs, surrendered the waste-lands to them. The Government has always recognised the right of the zamíndárs to the waste-lands, and the assurance given to them in the days of the Permanent Settlement was repeated in the subseqqent Regulations. Thus, I find the following in the preamble to Regulation II of 1819 :—

'It appears to be necessary, in order to obviate all misapprehension on the part of the public officers and individuals, * * * formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a Permanent Settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud or on any pretext whatever.'

"Section 31 of the same Regulation states that—

'Nothing in the present Regulations shall be considered to affect the right of the proprietors of estates for which a Permanent Settlement has been concluded, to the full benefit of all waste-lands included within the ascertained boundaries of such estates, respectively, at the period of the Decennial Settlement, and which have since been, or may hereafter be, reduced to cultivation.'

"I will not allude here to the assumption sometimes made that the waste-lands should be treated in the same way as lands settled at the time of the settlement. It should be remembered that these waste-lands were howling wildernesses at the time, and that it was left entirely to the discretion of the zamín-

dárs to settle them in any way they might think proper. To that question I will not advert at present. I have said that the waste-lands were given to the zamíndárs by way of compensation for the exorbitant assessment of the Permanent Settlement. The Council was doubtless well aware that the assessment was so heavy that most of the first zamíndárs, with whom the settlement was made, were literally swept away under its effects. The great house of Nattore, which, I believe, used to pay 52 lakhs of rupees of revenue, was broken up completely under the crushing effects of the heavy assessment of the Permanent Settlement. The house of Dinájpur suffered similarly, and so did the house of Bírbhum and many other families. The Burdwan house was also tottering, and was only saved by the introduction of the patní system. I cannot do better than read to the hon'ble Council the remarks which no less an authority than Sir George Campbell has made on this subject in the Bengal Administration Report for 1872-73. He says:—

'The Government demand was then one which left a margin of profit, but small compared with that given to zamíndárs in modern days. There was wide spread default in the payment of the Government dues, and extensive consequent sales of estates or parts of estates for recovery of arrears under the unbending system introduced in 1793. In 1796-97, lands bearing a total revenue of sikká Rs. 14,18,756 were sold for arrears of revenue, and, in 1797-98, the revenue of land so sold amounted to sikká Rs. 22,74,076. By the end of the century the greater portions of the estates of the Nadiyá, Rajsháhí, Bishanpur, and Dinájpur Rájás had been alienated. The Burdwan estate was seriously crippled, and the Bírbhúm zamíndárí was completely ruined. A host of smaller zamíndárs shared the same fate. In fact it is scarcely too much to say that within the ten years that immediately followed the Permanent Settlement a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement.'

"Now, what do these startling statements show? The Permanent Settlement, as I have shown from a quotation from Mr. Pattle, was intended to benefit the landlords as well as the State. The State derived immediate benefit by the replenishment of the treasury. The landholders, however, at the time suffered extremely. In fact, as this statement shows, most of the original zamíndárs were swept off the face of the earth by the tremendous sacrifices they were called upon to make at the time the Permanent Settlement was established. Most of the present zamíndárs have come in by investing their capital, and they have done so in perfect reliance upon the good faith of the Government.

"I have shown that the waste-lands were made over to the zamíndárs by way of compensation. Now, how were the waste-lands brought into cultiva-

tion? My object is to show what functions the zamíndárs have performed in the social economy of the country. The zamíndárs in the first place invited tenants, because in those days it was the land which sought the tenant and not the tenant who sought the land. They established villages at their own expense, and they appointed the village smith, the village barber, the village priest and other members of the village establishment, by giving them rent-free lands. They made takkávi advances to the raiyat for the cultivation of the land; they charged no rent whatever in the first instance, and subsequently levied a progressive rent as cultivation advanced, and in this way they reclaimed the jungle which covered the greater part of Bengal in the days of the Permanent Settlement. You may now go to any part of the country, and you will be struck by the smiling fields and the teeming populations which meet your eye in every direction. But, in 1793, you could hardly go a few miles from Calcutta without drums and torches to keep away wild beasts. Those who brought about these changes certainly deserved the thanks of the public.

"Now, what have the zamíndárs done in other respects? Have they been content only with the introduction of cultivation and the reclamation of waste-lands? No. As population has increased, as cultivation has extended, as civilisation has advanced, the zamíndárs have risen to the requirements of the time, and have also assisted in the execution of public works in accordance with the spirit of progressive time. Go through the villages and you will generally find in most of them large tanks. I am sorry to say that tanks now-a-days are not dug with the same zeal as heretofore. But you will find many old tanks dug by the zamíndárs, and there was a double motive in the execution of this work. In the first place, water was necessary for cultivation in times of drought, and, secondly, it was necessary for drinking purposes. The zamíndár wanted to foster the settlement of raiyats, and, therefore, he opened these tanks; he had also partly a religious motive in providing drinking water for the people. As this hon'ble Council knows well, among the Hindús religion supplies a strong impulse for many of their acts, and the digging of tanks was one of these. Then, as the country advanced in prosperity, there was necessity for roads, and the zamíndárs were not remiss in making them. They, in co-operation with their tenants, laid out large sums of money in making roads through different parts of the country. I will give you the example of one district only—the district of Huglí. The list which I hold in my hand does not comprise all the roads made in the district within the last few years, but it gives a good account of what has been done. These roads were made at the time of the Ferry Fund Committees which existed before the Road Cess Com-

mittee was constituted. The following is a list of the roads and bridges referred to :—

Names of the Roads and Bridges.	Lengths.	By whom constructed.
Bhastara to Tribany	16 miles.	Zamíndár of Bhastara.
Jonye to the Surussutty	8 do.	Ditto of Jonye.
Jonye to Connaghur	7 do.	Ditto ditto.
Biddabatty to Gobindpore . . .	7 do.	Singoor zamíndárs.
Biddabatty to Huripal . . .	25 do.	Zamíndárs and F. F. Committee.
Chinsurra to Dhoneakhally . . .	25 do.	Ditto ditto.
Huglí to Dwarbassiny	12 do.	Ditto ditto.
Pandua to Calna	18 do.	Ditto ditto.
Howrah to Jugutbullubpore . . .	12 do.	Ditto ditto.
Metalling of the road from Serampore to Salkea.	13 do.	Ditto ditto.
The Bally Tension Bridge . . .	...	Ditto ditto.
Two bridges on the Dhoneakhally road .	...	Ditto ditto.
Three bridges at Nosorye, Tribany and Satgan.	...	Zamíndár of Noapara.

"Now, what has been done in Huglí has been more or less done in other districts in Bengal. If the Council will refer to the Famine Report of Sir R. Temple, they will see that the zamíndárs gave, free of cost, all the lands required for roads and tanks which were constructed during the scarcity of 1873-74. In fact, the question arose whether the Government could take over lands free of all consideration, and the learned Advocate-General was of opinion that it could not. But the zamíndárs in a body refused to receive a pice for the lands they gave for those purposes.

"Now, have the zamíndárs done anything for education, in the way of establishing or promoting the establishment of schools? I have been just reading the last report of the Director of Public Instruction, Bengal, and I find that

the total amount of private contributions was nine lákhs last year, including both endowments and private subscriptions. The statement is this :—

—	Government Institutions.	Aided Institutions.	Unaided Institutions under regular inspection.	TOTAL.
	Rs.	Rs.	Rs.	Rs.
Endowment	65,015	64,332	32,957	1,62,304
Subscriptions . . .	14,870	6,19,206	1,11,838	7,45,913
GRAND TOTAL .	...	...	...	9,08,217

"Any one who knows the sources from which these contributions usually come will admit that the bulk of it came from the pockets of the zamíndárs. In the same way, in 1881-82, the total expenditure on dispensaries was Rs. 3,74,000 and the subscriptions from the Native community amounted to Rs. 1,20,000, and it may be also said that the bulk of this money came from the zamíndárs. I ought to have said, while noticing the support which the zamíndárs have been giving generally to education, that some of the most munificent benefactions in the cause of education have come from the zamíndárs. Take, for instance, the magnificent Tagore Law Professorship Endowment at a cost of three lákhs of rupees, which was founded by the late Hon'ble Prasanna Kumar Tagore, the illustrious uncle of my friend Mahárájá Sir Jotíndra Mohan Tagore. My friend the Diggiapattí Rájá has given, I believe, Rs. 1,20,000 for the Rajsháhi College; munificent donations have also been given, for the Revenshaw College at Cuttack, and for the Berhampore and Kishnagur Colleges by other zamíndárs; and I say it with much pleasure that one of our hon'ble colleagues, the Hon'ble Durga Charan Láhá, has given Rs. 50,000 towards the cause of education. I could mention many more names, but it is not necessary. I cannot, however, refrain from alluding to the many magnificent benefactions given by my friend the Mahárájá of Darbhangá, and I think it is not too much to say that the zamíndárs generally have not been deaf to the call on their purses in the cause of education. Then there was one branch of education which the zamíndárs from the first encouraged with the greatest liberality – I mean Sanscrit learning. I believe hon'ble members were aware that rent-free lands to the extent of more than a crore of rupees were assigned by the zamíndárs, of their own free-will, for the support of men professing Sanscrit learning. The great house of Nadiyá gave away in this way, I believe, the bulk of its property.

These were voluntary contributions. But the zamíndárs were also subject to compulsory contributions for public purposes. I may mention, first, the dâk cess. It is not necessary for me to go into the question of the dâk cess, whether the zamíndár was liable to render postal service or not. It is enough, for my present purpose, to say that they were required to pay the cess. Then the zamíndárs were also liable to pay the road and public works cesses, and with them their raiyats are also liable, and the amount thus contributed by the zamíndárs annually comes to 35 lákhs of rupees. Then the zamíndárs construct embankments voluntarily, for the protection of their raiyats, and they are also liable to an embankment cess for those embankments which are maintained at their expense by the State. They are also called upon to perform certain official services. Whenever troops march through their estates they are required to provide supplies for them; whenever public officers pass their way, they also do their best to send provisions to them; whenever heinous criminal offences were committed within the limits of their estates they were required to report the same to the police. In the days of the salt monopoly of the East India Company, the zamíndárs were made liable for the illicit manufacture of salt on their estates. Whenever statistical or economical enquiries are made the zamíndárs are required, through the Police and the Magistrates, to make reports, and whenever any great public work has to be done their services are put into requisition. Take, for instance, the census operations. I appeal to His Honour the Lieutenant-Governor to say whether the Government could have carried out the census work at double the cost which was incurred if the zamíndárs had not freely offered their own services, and those of their servants, in furtherance of this great work. And they perform these public services ungrudgingly; they fully acknowledge that property has its rights as well as its duties. Then, again, the public seem to think that they have a claim on the purses of the zamíndárs for all public purposes, for whenever there is any call for money, who is it that is first appealed to? It is the zamíndár. Take, for instance, the calls made here for contributions for the relief of the sufferers from the Crimean War, the Scotch famine, the Irish famine, the Lancashire distress, and many other funds. If you examine the list of contributions, you will find that zamíndárs have always headed it; even for race stands, agricultural shows and other objects their purses have been taxed. The district officers do not hesitate to appeal to the zamíndárs whenever they have a public object in view. And in times of difficulty the zamíndárs have loyally, willingly and cheerfully placed their services at the disposal of Government. Take, for instance, the Sepoy Mutiny. Happily the flame of the Mutiny did not extend to Bengal Proper, but it did spring up in parts of Bihár, and the Government have heartily acknowledged the loyal services which the Bihár zamíndárs rendered

in that crisis. In Bengal, too, they did some service in their own way by supplying elephants and other things for which the Government applied to them. Even in fiscal emergencies the Government has not hesitated to appeal to the zamíndárs, relying on their loyalty, and with the greatest alacrity they have responded to the call. I am personally acquainted with the circumstances of one case. In 1878 there was a financial pressure, and Sir John Strachey, who was then the Finance Minister, wanted temporary accommodation to make the two ends meet. He did not desire to raise a public loan, he simply wanted a temporary accommodation, and he spoke to Sir Ashley Eden and asked him if he could secure some lákhs of rupees in that way. I was taken into confidence, and I know that several of my zamíndár friends willingly came forward with the required help. So whenever there has been any occasion for help, and whenever any appeal has been made to the zamíndárs, they have not hesitated to render every assistance in their power to the State. I may also cite the Minute of Sir R. Temple as a testimony to the services which the zamíndárs rendered to their tenantry during the great famine of 1873-74. I wish I had before me a copy of that Minute to read to the Council a few extracts from, but I am sorry to say I have not got it. I dare say that Minute has been read by most hon'ble members, and they doubtless recollect that the zamíndárs, as recorded in that Minute, remitted lákhs of rupees of their rent, suspended the payment of rent, gave takkávi advances, and afforded charitable relief to their tenantry in that crisis without any grudge, and Sir R. Temple justly complimented the zamíndárs by saying that they had nobly redeemed their character as landlords. Apart from these facts, I may tell you that, whatever disputes may here and there exist or arise between zamíndárs and raiyats, the raiyat generally looks up to the zamíndár as a protector against oppression and injustice. If a policeman troubles him he goes to the zamíndár; if a private individual assails him he goes to the zamíndár; if there is a quarrel between the raiyat and his brother, his sister or his uncle, he goes to the zamíndár for an amicable settlement of the quarrel. In fact, whenever the raiyat is in difficulty he looks up to the zamíndár for assistance, for advice, and for arbitrament. But while the zamíndár performs these functions I hope the Council will kindly bear in mind that the zamíndár does not get all the profits from the land in the shape of rent. The road cess returns show that there is a long chain of sub-infeudation in the country, and that the profits from land are largely intercepted by middlemen. When the Permanent Settlement was first made these middlemen were not in existence, except the dependent taluqdár, the istimrárdár and the mukarrarídár. But as I have shown, the pressure of the assessment was so severe that even the big house of Burdwan was tottering, and for his sake the patní system was

introduced, and from that time sub-infeudation commenced. A large number of tenure-holders sprung up under this system, and they gradually intercepted the profits from the land. I do not say that this is to be regretted, for the more wide spread are the profits from land the better for the country, but this fact should be borne in mind, because it was generally thought that all the profits from land were monopolized by the zamíndárs. On this point Sir R. Temple, in the Administration Report of Bengal, for 1875-76, wrote :—

'The material advancement of the sub-proprietors, the raiyats and the peasantry in Eastern Bengal has been mentioned with satisfaction on former occasions. A remarkable illustration has been afforded by the detailed inquiries which are being made for the valuation of the lands in the deltaic district of Bákirganj. It appears from the road cess returns that the rent-roll payable to the intermediate tenure-holders is often twelve, twenty or fifty times the rent paid to the superior landlord. It seems probable that not less than a crore of rupees (assumed as equal to one million sterling) are annually paid in rent in this district, and that the value of the agricultural produce of the district can hardly be less than five millions sterling annually, and may be much more. The returns, moreover, while they show the prosperous condition of the tenure-holders and other middlemen, show also how the profits of the land are slipping out of the hands of the zamíndárs, who have permanently alienated their interests in the soil, and, in many cases, have fallen into the position of needy annuitants.'

"So that the zamíndár did not monopolize the profit from the land which constituted rent.

"Now, I have gone to this length to show who the zamíndárs were, what functions they performed in the social and administrative economy of the country, and what services they have rendered to society and to the State, only with a view to impress upon the members of this hon'ble Council the propriety of showing some consideration to men who were so useful to the country. I do not believe that those who perform such important functions will not receive due consideration at the hands of this Council in dealing with the law of landlord and tenant. If they have performed such useful and beneficent functions, have they no claim to your generous consideration; and are they not entitled to have their rights duly recognised by the State and the legislature? The hon'ble and learned Law Member, in introducing the Bill, said that the zamíndárs were in no sense absolute proprietors of the soil; that according to the definition of owner in certain English Statutes, he apprehended that the zamíndárs were no better than managers or trustees or limited owners of the land. I will, with your Lordship's permission, read one short extract from the hon'ble member's speech. He said :—

'In the first place, the term, as applied to land, has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of

land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place, the term was freely applied to the zamíndárs of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and, therefore, could not possibly be taken as indicating or, to use a technical term, connoting rights created at that date. And, thirdly, the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement literature of British India. It means, in those parts of India which are not permanently settled, the person who, whatever may be his rights on the soil, has the right of having a settlement made with him, the person namely, whom, for purposes of land-revenue, and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor or the land. Such a recognition, of course, is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number of other persons. All such rights are simply left outstanding. The use of the term proprietor in this sense is closely analogous to the use of similar terms in English statute-law. Here, for instance, is a definition of owner taken from a recent English Act, the Public Health Act of 1875 :— ' Owner means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word in used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent."

"I appeal to this hon'ble Council to consider whether, when Lord Cornwallis and Sir John Shore effected the Permanent Settlement, they understood the words ' proprietor of the soil ' in that sense. I have already read to the Council extracts from the Minutes of Sir John Shore and Lord Cornwallis, giving their opinion on the status of the zamíndár at the date of the Permanent Settlement, and I will now confine myself to the one point raised, namely, the legal position of the zamíndár. I dare say the hon'ble and learned Law Member will acknowledge the high authority I am going to cite. I allude to the opinion of Lord Lyndhurst,—Vol. I, Moore's Indian Appeals, p. 348—

' It is to be gleaned from these Regulations that the proprietors of lands in India had an absolute ownership and dominion of the soil, that the soil was not vested generally in the Sovereign, that proprietors did not hold it at the will of the Sovereign, but held the property as their own. * * * I think it is impossible to read those articles without coming to the conclusion that the zamíndárs and taluqdárs were owners of the soil, subject only to a tribute, and that it was the object of the Regulation to make that tribute fixed and permanent.'

"My Lord, I am no lawyer, and am, therefore, bound to accept the interpretation of the law as it may be given by the learned Law Member; but, in the face of this opinion from no less an authority than Lord Lyndhurst, I hope I may be excused if I refuse to accept even the high authority of my learned friend. If Lord Lyndhurst holds that the zamíndárs are the actual and

absolute proprietors of the soil, I appeal to the Council to consider whether many of the provisions contained in the Bill are consistent with that reading of the law. For, if I understand the Bill aright, it proceeds wholly on the assumption that the zamíndárs are not owners of the soil, and, therefore, they must submit to a redistribution of property, as it were, under the operation of the proposed law. From 1793 to this day, the zamíndárs have been recognized by the Government over and over, by solemn Regulations and Acts, and also in solemn State papers, as proprietors of the soil. Even Act X of 1859 did not do away with the material incidents of proprietary right, though it recognised the occupancy-right of the tenant under the twelve years' rule ; it did not take away the right of enhancement of rent, of eviction of the raiyat, and many other rights inherent in an absolute proprietor of the land. But, after the lapse of ninety years, the zamíndárs are now told, by no less an authority than the learned Law Member of your Excellency's Council, that they are not proprietors of the soil, that they were hitherto labouring under a huge delusion, and that they must prepare their minds to surrender their rights as soon as they can, that there is another class waiting to participate in the land with them ; that in fact there is to be a redistribution of the landed property. I hope this hon'ble Council will seriously consider the effect of these propositions, for if I read the Bill aright it amounts to this.

" Now I come to the necessity for legislation. I at once concede that there is necessity for legislation. There has been for many years necessity for legislation. I regret much that it has taken the Government so long a time to give that relief which both the zamíndár and the raiyat have stood much in need of for so many years. From 1871 Government has been promising to simplify the law for the recovery of rent. It is well known to this Council that it was no part of the obligations of the zamíndárs to collect the road cess and public works cess for the Government. But Sir George Campbell, when he imposed the road cess, succeeded in getting the assent of the zamíndárs to collect the cess on behalf of the Government, on the understanding that the law for the recovery of rent would be simplified without delay. The zamíndárs had felt the delay in the recovery of rents as a great grievance, and they said that if the Government would give them the *quid pro quo*, they would undertake the duty of collecting the cesses. It is to be borne in mind that the zamíndárs received no remuneration whatever for the cellection of the cesses either by way of percentage or in any other form ; and I do not know whether any commercial community would undertake such a duty without charging commission of some kind. But the zamíndárs did not take any remuneration. They were only

buoyed up by the hope that the law for the recovery of rents would be simplified. When Sir George Campbell left the arena no change was made. He made promises, but no change was effected. He made inquiries and intended to do something, but nothing was done. Then came Sir Richard Temple. He too, saw the propriety of changing the law or procedure for the recovery of rent. He also prepared a draft Bill, but nothing was done. Then came Sir Ashley Eden. During the first two years of his rule he was very active in this matter. He actually caused a Bill to be introduced into the Local Council, but that Bill was dropped on the plea that the whole rent-law should be dealt with. From that time rose the cry for a general revision of the rent-law. Heretofore, the complaints were about the recovery of rent and the settlement of rent, but now came the cry for a general revision of the rent-law, a comprehensive revision of the substantive rights of landlords and tenants. Against such a general revision the zemíndárs protested. There was not the faintest echo from the raiyats in any part of the country to the cry raised by the Government that there should be a general revision of the substantive law. And yet the Bengal Government thought it necessary to appoint a Commission to prepare a draft Bill for the general revision of the rent-law. The Commission was fairly constituted, and I must do them the justice to say that they performed their work with great intelligence, ability and zeal. But, my Lord, I cannot help saying that the Bengal Rent Commission did not work in the way in which Commissions of a similar kind worked in England, and, as far as I am able to judge from the papers submitted by them, they have not given sufficient data for the conclusions arrived at by them. They made no statistical enquiries; they made no local enquiries; they sat in their own chambers; they called for official reports, and from the depth of their own consciousness they evolved their theories and propositions. Ransack their reports, ransack the voluminous literature which they have produced, and find out if you can any information as to what extent evictions were resorted to in this country. That was one of the first propositions they were charged with enquiring into. It was said that evictions were on a large scale resorted to in Bengal; but where were proofs in support of such a statement? They ought to have given some figures showing the current of evictions district by district; but where were they? On the contrary, is it not a fact that evictions were rarely resorted to by the landlord, and that the Courts were most reluctant to order eviction? Then there was the question of the transferability of occupancy tenures. On this point have the Rent Commission given any details? Of course, they say that this right is recognized in some parts of the country; but where are the facts and figures? Were not the records of the Courts open to the Commission? and could not they give facts and figures extending over some years, to show that to this extent the custom has prevailed?

"Now, with regard to the enhancement of rents. Is it a fact that the enhancement of rents is going on under the provisions of Act X of 1859? It is generally believed that these provisions have brought enhancement of rent to a deadlock. I, for one, would have been glad to receive some statistics on this point—how far enhancement has been stopped by the present provisions of the rent-law; how far the rates have been altered, that was to say the rates at which the rent was paid before and is now paid; in what proportion rents have been increasing, and so forth. Enquiries of this kind have been lately made in some districts for the collection of tables of rates; but the papers produced by the Rent Commission offered little information on the subject. I think that if a Commission of this kind had been appointed in England they would have given fully the facts and figures on which their conclusions were based.

"But the Rent Commission of Bengal, I am sorry to say, did not furnish us with such facts and figures as would fully bear out their own conclusions and opinions. That Commission, I believe, was appointed with the view of securing to the Bengal raiyat what were popularly called in England the three F's. Now, it is worthy of consideration whether the three F's, consistently with the economic conditions of this country, have not already the fullest operation here. 'Fixity of Tenure.' The twelve years' rule, under Act X of 1859, has practically given fixty of tenure to the bulk of the agricultural population of this country. Some estimate it at ninety per cent. I cannot of course be positive about the figure; but, from all I have seen and heard, I hold that the right of occupancy in Bengal is enjoyed by the vast majority of these tenants. In Bihár, too, though the raiyat does not fully appreciate the right, the right is practically enjoyed by the raiyat as appears from the report of Mr. Finucane, and it is for the Council to consider how the occupancy-right in Bihár is to be secured by law. The fact remains that it is already in operation. 'Fair Rent.' Now I invite hon'ble members to enquire and say whether the rents now levied in Bengal are not fair; whether the raiyats in any district now pay rents which may be called rack-rents, I mean in any district in Bengal Proper. So that you have now fixity of tenure, and fair rent. As for the third F, 'Free Sale' I admit that it is not common; that the custom obtains only in some districts, and that there even it is not fully recognized. It is a question whether the right of free sale should be fully recognized in the interest of the raiyat, and whether it would be quite consistent with the rights of landlords. I will return to this question hereafter.

"I now come to the Bill itself. I have already said that the Bill has been prepared with great ability and care, but I do not quite understand the primary object of the Bill. Is it to prevent dispute and litigation and to pro-

mote peace and harmony amongst zamíndárs and raiyats by reasonable, fair and equitable provisions, or is it to redistribute rights in land, to promote and foster litigation, and set class against class? I should be very sorry to believe that the authors of the Bill had the latter object in view. I repudiate any such notion; but at the same time, when I read the Bill and contemplate its tendencies, I cannot help feeling that, however opposed such a tendency may be to the views and wishes of the hon'ble authors of the Bill, it will be practically difficult to control that tendency of the Bill, so long as the provisions contained in it are allowed to have full play. I was in hopes that it would be in my power to propose a compromise which might be acceptable to both zamíndárs and raiyats and thus to contribute in some way to the promotion of that peace and harmony on which I lay great stress. But the present Bill, I am sorry to observe, is so one-sided that I cannot entertain any hope of proposing any such compromise. Indeed, there could be no compromise without concession on both sides, but the Bill leaves little room for compromise. I do, however, entertain the hope that when the Bill will be considered in Select Committee, with the light of public criticism and public representations, the Committee will take into consideration outside views, and deal with an even hand with both classes which are interested in and affected by it. After giving, as I have said, rather an imperfect perusal to the Bill, I find that its tendency is to drive both the raiyat and the zamindár into Court at every stage and to foster litigation all round. In the first place, it is proposed to make a distinction between *khámár* and raiyati land. Now, as far as Bengal Proper is concerned, I can say that there has been made no attempt whatever to absorb raiyati land into *khámár* land. The enquiries which I have made on the subject have satisfied me that the absorption of the raiyati land does not apply to Bengal Proper, nor has there, I believe, been any complaint on the part of the raiyats that they cannot obtain land from the zamíndár because he has absorbed the raiyati land into *khámár* land. When such is the case, is it desirable to throw the country into the ferment of expensive and harassing litigation, by ordering a survey and measurement and registration of these lands? I believe the most important principle of legislation is, that it should be made to meet the actual needs of the country. Now the question is this, whether there is any actual necessity for the measurement, survey and registration of these lands in Bengal. Well, if the power is meant to be permissive, then it is not intended to apply it to Bengal Proper, because such necessity does not exist here.

"Then comes the question of occupancy-right. Now it is not my intention to go into the history of that question. That history has been repeated times without number, and the question has been discussed threadbare. It is

enough for my purpose to recognize the position that Act X of 1859 gives the right of occupancy to the raiyat who holds the same land for twelve years consecutively. I accept that position. I have already said that the occupancy-right has already extended to the majority of raiyats in Bengal; and the question is, is it necessary to extend this right further, and to give a construction to the law which would practically give the raiyat the right to claim all lands as occupancy holdings, provided he occupies any one sprt for twelve years? The present law is, that the right of occupancy shall accrue upon the same land. The provision of the proposed Bill is, that the right of occupancy shall accrue upon all lands which a raiyat might hold in the same village, or estate, if he has twelve years' possession of any particular plot; so that the effect would be that the raiyat who might hold two cottahs of land in village A for twelve years will thus acquire the right of occupancy in two hundred bighás of land in villages B, C and D, though he might have had possession of the same lands for only three or four months or years. I say the extension of the right of occupancy in this form is not consistent with the principles of the rent-law of 1859, nor consistent with the proprietary rights of zamíndárs. It has been said that this provision has been rendered necessary by the recourse some zamíndárs have to shifting raiyats from plot to plot, from land to land, in order to destroy the actual of the right of occupancy. But, as far as Bengal Proper is concerned, I am not aware of a single instance in which the zámíndár has sought to defeat the right of occupancy in this way. Those who have written on the subject, including no less an authority than Sir George Campbell, have readily admitted that this practice is not know in Bengal Proper, and yet it is to be extended to Bengal Power under the present Bill. Now, I have said that this Bill will drive the rayats and zamíndárs to Court at almost every step. How do I establish my position? If a raiyat is allowed to acquire an occupancy-right by the accumulation of time, if he holds different plots of land at various periods, there will be so many disputes about the calculation of periods that nothing will be practically decided without recourse to Courts.

"Then comes the question of rent. In every case the settlement of rent will be practically subject to litigation. Whether it is settled by the Court or by a special revenue-officer, it will be a legal proceeding in some form or another. Nothing can be done, as the system has been devised, by private arrangement between the zamíndár and raiyat. If the zamíndár and raiyat come to a private understanding and enter into a contract, they must go to the revenue-officer as the keeper of their conscience. If they don't come to a private understanding, they must go to Court. So they cannot act as free agents or free men; they must have recourse to litigation.

"Next comes the question of the realization of rent. Of course, if there are arrears, there must be litigation, and so on through all stages, even in matters of minor dispute. We will have, if I may be permitted to observe, a Pandora's box in the name of peace and harmony.

"I have said that the practical effect of this Bill will be the redistribution of property. If any one will carefully read through the Bill he will see that it takes away some of the most important incidents of proprietary right. In the first place it abolishes the right of contract as regards occupancy-right. Now, what is the ground upon which this extreme proposition is based? The hon'ble and learned Law Member has produced what he thought was a horrible *kabúliyat*, and asked the Council to consider whether the legislature could conscientiously protect such a thing. I have not seen the original of that *kabúliyat*, but will consider it in the form of the translation in which it is given in the statement of the hon'ble member. I have compared it with the *kabúliyats* and *pattás* given by Government in *khás* estates, and also with the form of *kabúliyat* which the Government had at one time held up as a sample for landlords, and which the Government used to sell to the general public. I do not know whether that form is now for sale, but I find, from a notification by Government in 1875, that a form of *kabúliyat* was printed and sold for public use by the Government, and in comparing this form with the condemned form which the hon'ble member has laid before the Council, I find that there is no very material difference, except upon one point. Now, I will briefly dwell upon this subject. The first point in the *kabúliyat* to which the hon'ble member took objection was the monthly instalments. He said that 'monthly instalments were oppressive. They drive the raiyat to the money-lender before the harvest, and they enable zamíndárs to worry the raiyats by bringing suits every month, and saddling the raiyat with costs.'"

His Honour THE LIEUTENANT-GOVERNOR enquired whether this form was issued from the Bengal Office.

The hon'ble speaker stated that they were sold in the Bengal Office.

The MAHÁRÁJÁ OF DARBHANGÁ said that they were circulated in Court of Wards' estates.

The speaker continued:—"Now, if the hon'ble member had enquired he would have known that Government revenue was formerly paid in monthly kists, and throughout the country rent was paid in monthly instalments, and that subsequently, it was divided into quarterly instalments, and that in many

parts of the country it is still paid in monthly instalments. So that this is no new condition, but even the payments of quarterly instalments might drive the raiyat to the money-lender, as he could not always pay before the harvest.

"I should mention that these monthly *kists* have been recognized in this country for a long time, and that even Suvankar, the Cocker of Bengal, has given, in one of his arithmetical tables, the calculation of monthly *kists*, so common was the practice. In the Government *kabúliyat*, I find that the first condition was 'in default of instalments, monthly interest at the ..... per centum you shall pay.' Now this is important, because it is a sample pattá which is prescribed by the Government, and the first condition is, that if there was default so much interest must be paid. It is not necessary to go into this point at any length, but I will observe that Regulation XI of 1793, admitting this usage, imposed these *kists*, and severe penalties for default were prescribed in section two. I have said that the same condition is prescribed in the Government form of pattá. But what does the Government do in its own estates? What is the practice of Government in its own *khás maháls*? I will read some passages from the forms of leases prescribed by the Board of Revenue:—

* * 'pay the Government revenue *kist* by *kist*, according to instalments noted at the foot of this engagement. If I fail to pay the full amount of one instalment or a part thereof, due within the year, Government shall have power on its own authority, without the interference of Courts, to cancel any lease even before the close of the year.'—*Vol. II, page 131, Form 16.*

"So here we see that the Government tells the tenant, 'if you fail to pay monthly revenue *kists*, the Government will have power, on its own authority, and without the interference of Courts to cancel your lease even before the close of the year.' Then, again, Vol. II, page 138, 'pay the revenue *kist* by *kist* according to the kistbandí noted at the foot of this agreement.' So that the horrid private pattá which contains the condition about monthly instalments is not singular or *unique*.

"The next point is, 'if I fail to pay rent on a due date, I will pay interest at the rate of two pice in the rupee until the date of realization.' The remark of the hon'ble member was that thirty-one per cent. was charged in the *kabúliyat* he had read out. It was well known that this was what was usually considered or called a penal sum, and that the Courts never decreed that rate of interest, the law allowing only twelve per cent. per annum, and such a clause, the hon'ble member knows, finds place in bonds in England; here the zamíndár charges interest if the raiyat wilfully defaults. What does the Government do in its own *khás maháls* if the raiyat defaults? Here is a provision in Form

25, page 141: 'If I default * * * I may be ejected at the will of the Collector.' The zamíndár is content with interest, which the Court will never decree at more than twelve per cent annum; but under the form quoted, the Government, in case of default, has taken power to eject a tenant without the intervention of the Courts.

"I would ask the Council to compare the terms of the *kabúliyat* taken from Government raiyats on Government estates upon the same points. I would refer to the Board's Rules again: the tenant engages—'I shall not ask for any abatement of revenue in consequence of inundations, drought or any other calamities, and no such requests if preferred will be listened to.'—*Board's Rules, Vol. II, page 131, clause 6, Form 21.* Again, 'I shall not raise any objection to the full and punctual payment of the said revenue on the score of inundations, &c., or other accidents affecting the value of the said land or the outturn thereof, and I shall raise no claim to abatement on any such account.' —*Form K, clause 5.* It will be seen that no deduction is to be allowed to a Government tenant even in case of diluvion. And these were *kabúliyats* which the Government obtained from tenants on their own estates.

"The next objection is that the raiyat is not allowed to enjoy the value of trees, or to cut down trees. Now, similar rules will be found in Government Forms. Thus—'I shall not sell or cut any trees on the estate whether bearing fruits or not.'—*Form 16.* I presume that the raiyat who executed the private *kabúliyat* must have been a new comer; and, if he was a non-resident raiyat, I do not see any reason why the proprietor should be debarred of the right of making a contract with him that he should not be entitled to the right of occupancy. If this is considered objectionable, landlords will be able to accomplish their object in a different way, that is to say, by taking terminable leases for, say, ten years, and renewing the same at the end of ten years; and so defeat the accrual of the right of occupancy. In this *kabúliyat*, I see the zamíndár has gone straight to his work; but I hope it will not be supposed that, because there may be some instances of new raiyats who may enter into an engagement claiming no right of occupancy, for the simple reason that they have no just claim to such right, therefore, the right of occupancy is not allowed to accrue in this country. On the contrary, as I have shown, since Act X of 1859 came into operation, the right of occupancy has extended to some ninety per cent. of the raiyats throughout the country. But how does the Government meet such cases in the *kabúliyat* which it takes from its own tenants? The tenant declares 'in the event of my dying during the continuance of the term of this engagement,

the Government shall have power to settle the mahál with any one.'—*Form 16.* In this private *kabúliyat*, the right of the heir is recognized, but in the Government instrument that right is not recognized. Then the hon'ble and learned Law Member comments on that clause of the *kabúliyat* in which the raiyat engages to pay the road and other cesses. Of course, I do not know what the words in the original *kabúliyat* imply, but no Court of Justice will decree the full amount of the road cess against the raiyat. As regards the dâk cess, it is payable by the zamíndár. But if the hon'ble and learned Law Member will refer to section 12 of Act VIII of 1862, he will find that private contract in this matter is allowed, so that the zamíndár is perfectly within the law if he makes a contract between himself and his raiyats providing that they would pay their share of the dâk tax. With regard to trees, I find that only one-fourth of the value of the wood is to be given to the raiyat under the private *kabúliyat*. What is the provision in the Government *kabúliyat* on this point? Form 16 says, 'I shall not cut or sell any tree on the estate whether bearing fruit or not.' So under this stipulation the Government tenant will not get even one-fourth of the value of the wood, which the zamíndár allows under the *kabúliyat* before the Council. Then there is Form 22 in which an option is given to the raiyat to enjoy the right of cutting trees or not, and in Form 23 it is stated: 'I am entitled to take and enjoy the fruit only of the existing trees or of such trees as may be planted by me.' Comments on these conditions are superfluous. I shall not pursue the subject further. I have shown that the conditions contained in the *kabúliyat* quoted by the hon'ble and learned Law Member are much the same as those in the Government sample Form advertized in 1875, and that the condition of the *kabúliyats* taken by Government from its own raiyats contain similar, if not harder, conditions. If such is the case—if Government itself, in its own wisdom, has thought fit to prescribe such *kabúliyats*—I ask whether they are of such an outrageous nature as not to justify the protection of the law. I submit that, if it be considered right and just that the raiyat and zamíndár may enter into a contract with regard to the disposal of land on permanent or temporary lease, that the raiyat may enter into a contract in all other matters affecting his own interests, and that a coolie in Bengal may enter into a contract for the sale of his labour in the wilds of Assam, I do not see any good and valid reason why the zamíndár and raiyat should be debarred of the right to enter into a contract of this kind, because the matter relates to the right of occupancy in the soil. Surely, this matter ought to be dealt with in the same way as other matters of contract affecting the rights of landlord and tenant.

"I now come to the question that the proprietor has a natural right to elect his own tenant. This right is admitted by the hon'ble and learned Law Member. He says that, in order to secure that right, we propose to give the zamíndár the right of pre-emption; that is to say, if the occupancy-tenant should wish to sell his tenure or to mortgage it, the zamíndár shall have the right to pre-emption in regard to it, and that if the zamíndár and the raiyat should fail to come to any settlement as to price, they shall go to the Court for such settlement. Here, again, both the zamíndár and raiyat are driven into Court for the settlement of their differences. Now, apart from that, let us consider what will be the economic effect of a provision like this. If, as I have ventured to show upon the authority of Lord Lindhurst, the zamíndár is the actual and absolute proprietor of the soil, is it right that, when one class of his tenants should leave his land, he should be made to pay a fine for securing his proprietary right in the same? Why should he be made to purchase what ought to belong to him as a matter of right? Even admitting, for argument's sake, that the zamíndár's power of ownership is limited, that he must not absorb into his own *khámár* what is raiyatí—admitting that to be the case—I ask, why should the zamíndár be compelled to purchase his own land again in order to exercise the right of ownership over it? I think that the provision contained in the Bill of the Hon'ble Mr. Reynolds was more equitable. While conceding the right of transferability to the raiyat, he would not take away from the zamíndár the right of proprietorship; I believe his Bill provided that no occupancy tenure should be transferred without the consent of the zamíndár. I say such a provision would not clash against the leading principles of the Bill, while it would secure the right of the zamíndár to elect his own tenant. I leave it to the Council to imagine what the position of a zamíndár would be if this provision were put into force by the raiyats in any large number of cases. Take, for instance, the case of a person purchasing an estate for two lákhs of rupees on a calculation of so much annual return. Well, he calculates the interest and makes a simple money investment upon a certain percentage of profit. He holds this estate for five years. After that, when this Bill becomes law, a number of occupancy-tenants come in and tell the zamíndár, 'We have sold our holdings to such and such persons for so much; if you will pay us the price we will sell the lands to you, otherwise you must forego your right.' Of course the zamíndár, in order to keep away inimical tenants, would, if he had the means, buy up the tenures. But what is his position? He has, firstly, paid the full price for the estate, and now he must pay again for these lands if he wishes to exercise the right of pre-emption. What return does he get? *Nil.* As the Bill provides, he must let out the land at the same rate and, perhaps, even less. Now, I wish to ask the Council whether such a provision is fair, just or equitable.

"With regard to enhancement of rent, I confess I do not clearly understand the very complicated provisions which have been made on this subject. As far as I understand the Bill, it appears that as a rule, the maximum of rent shall not exceed twenty per cent. of the gross produce. Tables of rates are to be prepared, and, if applicable, they shall be the guide. If not, the proportion theory shall, to a certain extent, be resorted to, and then the maximum of twenty percent. should be adhered to, that was to say, as regards occupancy-tenants. Now, as regards the tables of rates, I hope the enquiries made by the Bengal Government will satisfy the Council that it will not be worth while to go to the trouble and expense of preparing these tables of rates. I am indebted to the courtesy of His Honour the Lieutenant-Governor for copies of the reports of Mr. Finucane and Bábú Párbati Charan Rai. In the report of Mr. Finucane, this is the conclusion he arrives at with reference to the tracts he enquired into:—'The rate varies from four to one hundred and odd.' So that the ascertainment of a uniform rate of rent which will apply to all holdings is impracticable, and yet the Bill contains provisions for an enquiry into rates, and I believe the cost of the enquiry is to be borne by both zamíndárs and raiyats. I do not see the necessity for such an enquiry, nor the justice of charging the zamíndárs and raiyats with the cost. With regard to the enquiry of Bábú Párbati Charan Rai, I find that he reports that the rate of rent has not varied from the days of the Permanent Settlement in certain tracts which he has enquired into. Now, here is one proof also of the moderation with which the zamíndárs in some districts have treated the question of rent. Then, as to the twenty per cent. maximum, it is quite true that I, in another capacity, had recommended twenty-five per cent., but I confess I am not prepared to accept the recommendation of His Honour the Lieutenant-Governor for twenty per cent. The proportion of rent in Bengal has varied very much. At the time of the Permanent Settlement, as I find from a Minute by Sir John Shore, it varied from one-half to three-fourths of the value of the gross produce. At the present day, the proportion has been considerably reduced by rise in the value of produce. In the Eastern districts, I am inclined to think this proportion of rent may not be unacceptable, but in the Western districts it will be strongly objected to. There, I believe, the proportion is not less than one-third. In Bihár, it is much higher, and varies, I believe, from seven to nine annas in the rupee. Therefore, the twenty per cent. maximum, if sanctioned by law, will be a source of gross injustice to many zamíndárs in these parts. When I recommended twenty-five per cent. I did not for a moment suspect that the Government would go lower down, and I observe that the Rent Commission accepted my recommendation. But it is necessary for me to add that most of the zamíndárs did not agree with me, and did not consider twenty-five per cent. fair or just. The rules which pro-

vide for the settlement of rent of the ordinary raiyat, or the tenant-at-will, will be practically a bar to enhancement. The rules have been so framed that either the ordinary raiyat or the tenant-at-will will become, by force of circumstances, an occupancy-raiyat, or will leave the land with both his pockets or hands full. Now, from the time of the Permanent Settlement, a broad distinction had always been made between *khudkásht* and *paikasht* raiyats, that was to say, between resident raiyats, and tenants-at-will. But this Bill makes away with that distinction by importing certain ideas which are entirely foreign to the land-system of this country, and which I cannot help saying have been apparently borrowed from the Irish land-law. In the first place, the ordinary raiyat or tenant-at-will, according to the customs of this country, is not entitled to compensation for improvements. This question of improvements is a very large one. In this country, if a raiyat wishes to make any substantial improvements for the purpose of cultivation or manufacture, he generally takes a long lease, and secures his right, and then makes the improvements he needs. That has been the general practice. Ordinarily few improvements are needed for the cultivation of the soil. Nature has been so bountiful that if you merely scratch the soil in many parts of the country mother earth will yield her fruit. But this Bill introduces the novel idea of compensation for improvements. Now, what are the improvements that a tenant-at-will generally makes? I should feel obliged if any hon'ble member present would kindly enlighten me on this subject. As far as I am aware, irrigation is very little needed in Bengal Proper. Embankments are here and there needed but for the most part they are made by the zamíndár. Would you consider those little ridges which separate the fields one from the other as improvements? and would you like to give to the raiyat a new handle for litigation, by inciting him to find out improvements which had never before entered his unsophisticated mind? I again say that, by bringing in this chapter of improvements, you will simply drive the raiyat and the zamíndar to the chapter of litigation. That is one of the weapons placed in the hands of the tenant-at-will to use against the zamíndár, because, if the zamíndár must pay for improvements before he can enhance the rent of a tenant-at-will, he must perforce desist.

"But this is not all. If the tenant-at-will should refuse to pay the enhanced rent, the zamíndár must pay him ten times the amount of the proposed annual enhancement by way of compensation for disturbance, or forego the right. The tenant-at-will will, by this unnatural process of law, become an occupancy-tenant.

"Now, what right has the tenant-at-will, who is a creature of to-day or yesterday, to demand from the zamíndár a compensation for disturbance as it is

called? He will have the right to relinquish the land if he chooses, but the zamíndár will not have the right to eject him. This provision I say is open to three objections. In the first place, the rich zamíndár, who alone can pay the value of improvements and compensation, will be subjected to so much fine if he wishes to keep the land in his own possession and prevent the tenant-at-will from acquiring occupancy-right. The poor zamíndár, who cannot pay, will be obliged to put up with this forced occupancy-right, and in every case the zamíndár and the raiyat will be driven to litigation. Now, it is well known to the hon'ble Council that, as matters go, there are abundant causes of dispute between the different classes of the agricultural community, and is it right and proper that this new idea should be forced into the unsophisticated minds of our raiyats? The practical effect of the provisions I have commented upon will be the destruction of proprietary right, and the deterioration of private property.

"I have already alluded to the distinction which has been made between *khamar* and *raiyati* land, and I only wish to draw your attention to the provisions of the Permanent Settlement Regulations, giving the zamindár the right of disposing of his lands, with the exception of dependent, istimrári and mukarari, in the best way he might think fit. Section 52, Regulation VIII of 1793, says:—

'The zamíndár, or other actual proprietor of land, is to let the remaining lands of his zamíndári or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following.'

"This clause to my mind proves two things. In the first place, the zamindár had an absolute right to dispose of all lands, except independent taluqs, in the best way he could, and, in the next place, it recognised the right of the zamíndár to enter into contract. In fact from 1793 to 1859, I find repeated enactments in which the zamíndárs are exhorted to enter into contracts with the raiyats, and if the interchange of pattás and kabúlyats had been regularly enforced by Government, there would by this time have been such a record-of-rights as would have prevented the necessity of over-riding contracts.

"Now, I have said that rack-renting, as it is generally understood, is not known in Bengal Proper. If the country had been so rack-rented as has been

represented, there could not have been so much prosperity as the Government has from time to time testified there is. I find that Sir Ashley Eden, on assuming the reins of the Bengal Government in 1877, made a tour through the Eastern districts, and in a memorable speech he then said:—

'Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as confortable as the peasantry, I believe, of any country in the world; well-fed, well-clothed, free to enjoy the full benefit of their labours and able to hold their own and obtain prompt redress of any wrong.'

"Similar testimony with regard to other parts of Bengal is, I believe, to be found in the Administration Reports of the Bengal Presidency. I need hardly remind the Council that, when Sir Ashley Eden left the country last year, he, in defence of his excise policy, made this broad statement, that the development of the excise revenue was the best test of the growing prosperity of the agricultural population; and I ask whether this prosperity could go on if the raiyats had been handicapped, or if they had been depressed by rack-renting, as is sometimes alleged? I am afraid I have trespassed upon the time of the Council very long, but I hope I may be permitted to notice a few other points.

[At this stage the Council adjourned for lunch, and on their re-assembling the hon'ble member continued his remarks as follows:—]

"My Lord, when I closed I had alluded to the question of rents in Bengal. I said that it could not be rightly urged that, as far as Bengal Proper was concerned, it was rack-rented. Now it may be interesting to enquire what is the condition of the peasantry in the other Provinces of India, and such an enquiry may throw considerable light on the present subject. I hold in my hand a pamphlet on the effects of periodical revision of the land-tax in India. It is from the pen of a well-known Indian publicist and sincere well-wisher of this country, Mr. John DaCosta, who was senior member of the late firm of Messrs. Ashburner & Co., and with whom I have had the privilege of being long associated in the work of Indian reform. Mr. DaCosta, in referring to the Madras Presidency, says:—

'Beginning with Madras, the last Administration Reports from that Presidency show that the arrears of revenue, annually recovered by the sale of land, steadily increased from Rs. 31,880 in 1865, to Rs. 6,65,091 in 1879. This rapid rise, showing the growing difficulty of collecting the land-revenue, indicates the impoverishment of the cultivating claims.'

"Then, with reference to Bombay, he says:—

'If we next turn to Bombay we find that in consequence of unsatisfactory reports regarding the collection of the land-revenue in that Presidency, the Secretary of State has quite recently sent out orders authorising a reduction of twenty per cent. in assessments in the Sholapur district. That the assessments there have long been excessively oppressive may be seen from a Minute of the Government of Bombay indicated about seven years ago, in which it is recorded that 'the Government had read with much concern the opinion expressed by the Collector of Sholapur as to the undue pressure of the revised rates, in consequence of which a large quantity of land had been put up for sale in default of revenue, much of which found no purchasers.'

"As reference to the Bombay Revenue Commissioners' reports will show, moreover, that 10,880 acres of cultivated land in Surat, and 25,035 acres in the fertile Province of Guzarát, were abandoned in 1872 and 1873, when the revised assessments were enforced; and that while the unfavourable year 1871-72 was followed by two exceptionally propitious seasons, the depression of the people, as manifested by the relinquishment of their fields, had continued. From the same causes the revenue collected in the Northern Division in 1874 decreased, although the rates had been enhanced; and official reports of the same period from Puna state that 'the amount of land-revenue unrecovered was very considerable, and that, in order to realise the amount actually recovered, it was found necessary to sell up many occupancies.' Further, a memorial was addressed to the Viceroy in 1875 by some 3,000 landholders in the Bombay Presidency, complaining that the demand made upon them for land-revenue was out of proportion with the productive value of the land; and that owing to their inability to satisfy it, many had been deprived of their estates, cattle and other moveable property, while their tenants and cultivators were on the verge of starvation. These reports materially help to account for the appalling severity of the famine which shortly afterwards devastated the Bombay Presidency, showing, as they do, that the very life-blood of the people had been sucked in the process of raising the land-revenue.

"Next, I turn to the North-Western Provinces. You know how harassing a process a settlement work is, and how much the people suffer as long as its operations go on. Mr. DaCosta quotes the following from an official memorandum of Sir Auckland Colvin, who writes:—

'Settlement-operations have now, in one district or another, extended over nineteen years. By the time the settlement of Banda falls in and is disposed of, twenty-six years will have elapsed from the date on which the two first districts were placed in the hands of a Settlement officer. Others were begun twelve years ago and are not yet sanctioned; one of these is not even yet completed. These facts are significant to those who know what the settlement

of a district means; the value of property depreciated, until the exact amount of the new assessment is declared; credit affect, heart-burning and irritation between landlord and tenant; suspicions of the intention of the Government; hosts of official underlings scattered broadcast over the vexed villages. . . Nothing can equal the injury inflicted by a slow uncertain settlement, dragging its length along, obstructed by conflicting orders, harassed by successive administrations, and finally threatened with annihilation at the moment when it seemed to have nearly finished its course. Little wonder that we hear of the land needing rest.

'We have hitherto been connected by so kindly a bond in one of the greatest political dangers of the day. * * * The Commissioner of Allahabad, adverting about the same time to the depressed condition of the Futtehpore district, stated that 'the imposition of a ten per cent. cess in addition to the ordinary land-tax fell heaviest on the villages which were least able to bear it, that many villages broke down, and many more were threatened with ruin.' * * * From the District Collector's report it appeared, moreover, that many landlords who had failed to pay half the revenue were imprisoned; their personal property was sold, and their estates were attached for arrears of revenue. * * *

'The Collector of Cawnpore, referring to the revised settlements, stated:—'The margin left for the cultivator's subsistence is less than the value of the labour he has expended on the land. This district has the benefit of water-communication by both the Ganges and the Jamna; it is intersected by the East Indian Railway, and partly traversed by the Ganges canal; yet the land is only worth five years' purchase, and the state of the average cultivator is one of hopeless insolvency and misery.' The Lieutenant-Governor, in his Administration Reprt published in 1873, said that, while travelling, he was forcibly struck with the wretched condition of the Lallatpur district 'in which many estates were so depopulated, and so much land had fallen out of cultivation, that the assessment has become very severe.'

"The extracts which I have read from this pamphlet unmistakeably show what is the condition of the tenantry in the other Provinces of India. One fact is well-known to this hon'ble Council. Relief Acts have been enacted by this Council for the the benefit of agriculturalists of the Dekkhan and of Jhánsí; but happily things have never come to anything like that state in Bengal, so as to require exceptional legislation. On the contrary, as I have shown from the words of Sir Ashley Eden, and as is evident from the annual Administration Reports of Bengal, the prosperity of the agricultural population of this Province has gone on uninterrupted, from year to year, since the revolution of prices commenced in 1853, or since the Crimean war. Now, if the condition of the tenantry of Bengal is so prosperous, it cannot be reasonable to suppose that the land-law has pressed upon the springs of industry. I think, my Lord, it would be interesting if we could know what proportion does the revenue levied upon the peasantry of Madras, Bombay and the North-Western Provinces bear to the value of the gross produce of the soil. Is it one-half, or one-third, one-fourth, or what? I have no accurate information on the subject, but an

enquiry into the matter may clear up doubts which exist upon the subject. I, however, know this much, that while the enhancement of rent has come to almost a deadlock on private estates in Bengal, under the working of the proportion theory of the High Court, the enhancement on Government estates in *khás maháls* has been going on of late years at a tremendous rate. I find that within the last few years—I cannot give the exact period—there has been an increase of rent in Chutiá Nágpur estates from one-hundred to three-hundred per cent.; in Tipperah I hear that the increase is much higher, and matters are much worse in Chittagong. In Jalamati, in the district of Mednipur, the increase has, I believe, been from sixty to eighty per cent. On the other hand, the Government expenditure on improvements in the *khás maháls*,—I believe it was stated in an official paper sometime ago—has been very limited. And while I speak of the Government estates, I think it right to point out that, while the Government goes on increasing the rent on its own estates, and while the Government imposes such hard *kabúliyats* upon its own tenants, the Government enjoys peculiar facilities for the settlement and recovery of its own rents. It is well known that the Government employs almost the same agency as the private zamíndár employs for the management of its estates. The tahsíldárs of Government estates generally come from the same class that supplies the *náibs*, *gumáshtas* and other ministerial officers of the zamíndár's private establishment. But while the Government manages its own estates through these men, it is not content with the ordinary powers which a private landlord enjoys; takes advantage of exceptional powers for the realization of its own rents. Now, it ought to be borne in mind that the Government exercises a prestige, by virtue of its position, which the private landlord can never command. First, there is always a sort of intimacy between the Police and the revenue establishment of the Government, which is unseen by the outside public, but which is fully felt by those coming within the operations of the revenue establishment. Notwithstanding all these advantages, which the private landlord cannot claim, the Government has a summary procedure for the settlement of rent, and a summary procedure for the recovery of rent. Now, I ask, if the Government considers it necessary to have recourse to all these exceptional methods for the management of its own estates, is it not manifestly its duty to give similar facilities to the private zamíndár, who is bound to pay in the revenue under the stern sunset law? That is to say, if the zamindar fails to pay in revenue before sunset on a particular day, he is liable to be sold out at once. Therefore, is it not fair that the zamíndár should have the same facilities for the settlement and realization of rent? It may be said that the Government cannot place the same confidence in the servants of the zamíndár as it can in its own servants. Now, the Bill prescribes certain forms

in which the zamíndáry accounts are to be kept and receipts are to be given and if, with all these safeguards, the zamíndár's servants should still commit fraud and wrong, cannot they be checked by the imposition of penal damages on the zamíndárs in any case in which they may abuse their powers? If, by taking such precautions, the procedure for the settlement and recovery of rent could be assimilated, whether the demand be for Government or for the private landlord, is a point deserving of the fullest consideration of this Council. With regard to the realization of rent the hon'ble and learned Law Member has said that it is not practicable to secure the ends of justice by a summary method. Now, the Government has, from the days of the Permanent Settlement, always recognized its duty to be to help the zamíndár in the realization of rent. So long ago as 1795 the Government thus declared:

'Government not admitting of any delay in the payment of the public revenue receivable from proprietors and farmers of land, justice requires that they should have the means of bringing their rents and revenues with equal punctuality, and that the persons by whom they may be payable, whether under farmers, dependent taluqdárs, raiyats or others, should be enabled, in like manner, to realize the rents and revenues from which their engagements with the proprietors or farmers are to be made good.'

"Increased punctuality on the part of landholders in the discharge of their duties was now expected, and justice required that they should have the means of obtaining the rents due to them even more now than in 1795.

"From 1793 to 1859, there was a double procedure, a summary procedure and a regular procedure through the Civil Courts, and it was left to the option of the landlord and tenant to have recourse to either. This subject was thoroughly discussed when Act X of 1859 was passed into law, and Sir Barnes Peacock then raised the question that the Civil Courts ought to be invested with jurisdiction, and he proposed to take away the jurisdiction of the Revenue Courts. The majority of the members of the Council were opposed to the change, and Mr. Currie openly declared that, if the jurisdiction was transferred to the Civil Courts, he would rather abandon the Bill than submit to it. Sir Henry Rickett s, Mr. Harington and other members were also opposed to it. Well, the law was passed leaving the jurisdiction to the Revenue Courts intact; but, in 1869, Sir William Grey carried out the transfer of jurisdiction to the Civil Courts. I by no means take objection to this transfer of jurisdiction. I think that, with their legal training, the Judges of the Civil Courts are admirably fitted to decide questions of right and title which are involved in the trial of rent-suits. But, if it be not deemed desirable that the jurisdiction should again be transferred to the Revenue Courts, surely the Government ought to consider whether the procedure cannot in some way be simplified. The proposals made by the hon'ble and learned Law Member will not remove the con-

plaint of delay to any material extent. Now, knowing the origin of the proposal for a change in the land-law, namely, the complaint of the landlords of delay in the trial of rent-suits, and remembering also the promise which Sir George Campbell gave when charging the zamíndárs with the collection of the road cess for the simplification of the procedure for the realization of rent, and the repeated efforts made by successive Lieutenant-Governors in that direction, I think it is very disappointing that the zamíndárs should be told at this time of day that they cannot expect a summary procedure for the realization of rent, and that it is not practicable to do so consistently with the ends of justice, I have just now told you that in the *khás maháls*, Government has a summary procedure of its own, and, surely, what is good for the *khás maháls* should be equally good for the estates of private landlords. If justice is not sacrificed by the summary procedure applicable to the *khás maháls*, why should it be held that justice will be sacrificed by extending the same procedure to private estates? If there be any loop-hole through which the ends of justice may be defeated, by all means stop those loop-holes; but do not summarily reject the prayer of the landlords for a summary trial of rent-suits.

"I think, my Lord, I have touched upon the salient points of this Bill. There are many other points on which I cannot dwell at present for want of time. Perhaps they may be best considered in Select Committee; but there is one other point I should like to notice. Whatever difference of opinion may exist as to the different provisions of this Bill, I am glad to say that I am at one with the hon'ble and learned Law Member upon this, that we take our common start from the Permanent Settlement Regulations. I believe his object is to bring back the landlords and tenants in Bengal to the *statu quo* which existed at the time of the Permanent Settlement, and I should be very glad to see it restored. In fact, I look upon the Permanent Settlement Regulations as the Magna Charta of the rights of zamíndárs and raiyats, and I would earnestly wish that that charter should be respected by both parties.

"The two main questions which underlie the scheme of legislation before us, are, what is the position of the resident raiyats and of the tenants-at-will, and what are the rights of the zamíndárs?

"Upon these two important points I will, with your Lordship's permission read two extracts: one from Harington's 'Analysis', and the other from a Minute of Mr. Seton-Karr, late a Judge of the High Court. I find these passages in Harington's 'Analysis', pages 422-23, Volume 3:—

'Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure be

considered as hereditary tenants; and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and having only a temporary, accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class; and when oppressed, easily abandon the land, to which they have no attachment."

"It will thus be seen that there was a broad distinction drawn between the *khudkásht* and *paikásht* raiyats, and that, in the days of the Permanent Settlement, the former paid more than the latter. Again, he says:—

'It would be endless to attempt the subordinate variations in the tenures or conditions of the raiyats. It is evident that, in a country where discretions has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible.'

"In other words there was no fixed law or custom for the determination of rent, which was left entirely to the discretion of landlord and tenant. With regard to the rights of the landlords, Mr. Justice Seton Karr, to whom I have alluded, does not take an exaggerated view. This is his rendering of the Permanent Settlement Regulations on this subject:—

'The zamíndár, at first sight, appears certainly possessed of very high privileges and powers. He is at liberty to impose rents on every bíghá of land included in the area on which the revenue for which he is responsible is assessed. He can, *proprio motu*, and without having recourse to an action at law, dispossess all persons who set up rent-free grants of a date subsequent to December, 1790. The lands of all raiyats who die without heirs, or who abscond, revert to him. He has the undoubted privilege of levying and assessing rents at a higher rate on the better qualities of land, and on some of the more valuable kinds of produce. His title to demand rents from tenants who are mere occupiers without any title, is, it has been judicially held, barred by no length of time, not even by sixty years' abstinence from demand, inasmuch as the mere liability for rent is held to be a constantly recurring cause of action. As regards his distinct proprietory right in some of the very products of the land, there is, in all the ordinary pattás which the zamíndár issues to raiyats, an invariable restriction against the cutting of trees by the raiyat, which might even seem to imply that the right to the timber and the fruit trees belongs, not to the raiyat, but to the zamíndár. Tanks are not usually dug, nor are new roads cut, without his permission; and the former are sometimes excavated at his expense. This is one of the few instances in which I have known zamíndárs lay out any money on the land. The motive, however, is generally a pious one. The theory that the rent-bearing area of the estate is not to be reduced without his permission is, in this and other instances, namely, in the excavation of tanks and the formation of roads, openly recognised. The zamíndárs' right to rent includes not only agricultural produce, leviable in kind or in money, but rents from fisheries in running streams and in marshes; from the actual produce of the forest; and from the very droppings of the trees.'

"This is the interpretation of the Permanent Settlement law by a learned Judge of the High Court, who was by no means a friend of the zamíndár, and I ask whether the rights and privileges which the Permanent Settlement Regulations conferred on the zamíndárs are respected in the Bill before us. I ask whether, while professing to restore the *statu quo ante*, which existed at the time of the Permanent Settlement, my hon'ble and learned friend has not practically gone in the opposite direction. This is not the first attempt which officers of Government have made to legislate in a direction not quite consistent with the guarantees of the Permanent Settlement. But the Government has always scrupulously respected the solemn compact entered into by it with the landholders of the country. In 1819, I find the Government, through no less a personage that Mr. Holt Mackenzie, himself a high authority on the Revenue law of Bengal, Secretary to Government, declared as follows, in a letter, dated the 22nd of April, 1819.

'But it is the firm determination of Government to maintain inviolate the rights and privileges bestowed on the zamíndárs by that settlement, notwithstanding any errors or abuses that may now be discovered to have been practised, and although the profits of any one from his estate should be many lákhs and his jama only a few rupees, yet Government will on no pretence break its agreements.'

"In the words of Mr. Holt Mackenzie I appeal to your Lordship, and I am confident that when the whole question is considered by your Lordship and this hon'ble Council, the rights and privileges conferred and guaranteed by the Permanent Settlement, both on the zamíndárs and raiyats, will be preserved in fact and inviolate. I observe that, at the present stage, the Bill is to be referred to a Select Committee, and I confess I do not quite understand my position with respect to the Bill. I have said there is necessity for legislation on the subject, at the same time, I have denied the necessity for a general revision of the rent law. On the other hand, I see that the Bill, in its skeleton form, has received the assent of the Government of Bengal, the Government of India and Her Majesty's Secretary of State. I see that the Bill, as laid before the Council, contains provisions which are repugnant to the principles of the Permanent Settlement, and which I, therefore, consider it my duty to oppose. But the question is whether, the Bill having already received, as regards its main principles, the assent of Her Majesty's Government, it will be open to the Select Committee to consider those provisions which constitute the leading principles of the Bill, and whether the Government will be prepared to make any changes in the substantive part of the Bill, when, by the rules of the Executive Council, which require the previous assent of the Secretary of State to any project of legislation, the members of this Council are prac-

tically precluded from considering any fundamental principles of a Bill so sanctioned. I, for my part, do not see any advantage, so far as these main points are concerned, of referring the Bill to the Select Committee.

"Of course, as regards details, the Select Committee will be the proper body to settle them. Be that as it may, I take it that when a Bill of this momentous nature is submitted to public criticism, the Government will not decline to consider any representations or suggestions which may be reasonable or just, though such suggestions may be opposed to their previous conclusions. I feel grateful to your Lordship that arrangements have been made for giving a wide publicity to this Bill, and for inviting public opinion upon it; but I think the public ought to receive an assurance that their criticisms and representations will not be thrown away, because the leading principles of the Bill have already been discussed and determined upon by the Government of India and the Secretary of State. If the Select Committee be tied as it were hand and foot in regard to the fundamental principles of the Bill, then public discussion will be of little advantage, for whatever the public may say or write, and however reasonable their suggestions may be, the Select Committee will not be at liberty to make material alterations in the Bill.

"And now, my Lord, in bringing to a close my wearisome address, for which I apologize to the Council, I venture to express a hope that, as this is a measure of the greatest importance to both landlords and tenants in this Province, the like of which had never before, I may say, engaged the attention of the legislature since 1793, that this hon'ble Council will not seal with its sanction this Bill, without giving to it a patient, attentive and full consideration, and that it will not consider the object of the Bill as merely an attempt to adjust the relations between landlord and tenant, but also as a matter involving deep economic problems, as a matter involving the sacred question of the plighted faith of Government, and as a matter involving the prosperity and happiness of sixty millions of the population of Bengal."

The Hon'ble Mr. EVANS said:—"I do not propose to detain the Council at any great length on this question, and I am glad to find that the Hon'ble Mr. Kristodás Pál is at one with me on at least one subject, and that is the necessity for legislation. I do not think that anyone who has seriously and attentively considered this subject, and has seen how matters were going on, can help feeling that there is a necessity for legislation. When it is found, as I myself have found, that the Law Courts have come to a dead-lock, and that they can do nothing with the cases for enhancement and settlement of rents that come before them; that such enhancements are introduced by illicit means, where

the zamíndárs are strong and the raiyats weak, and that just demands are resisted where the zamíndárs are weak and the raiyats strong, then it is evident that a very serious state of things has arisen—a serious state of things for the Government of the country, and a serious state of things for the landlords themselves. The mass of the raiyats in this country are ignorant people, as a rule, incapable of combination, except on a very small scale, although they have begun to show, in some parts of the country, that they are learning the advantages of combination, and can combine in an effectual manner against the landlords. If you find, on the one hand, the landlords beginning to use other than legal pressure to enforce their claims, and the tenants beginning to combine to resist, by means other than legal, those claims, you have a state of things which might, if left alone, develop into a serious danger. We all know there is nothing more troublesome or difficult to manage, when once it has begun, than an agrarian agitation, and, therefore, I think that, in the interests both of the landlords and the raiyats, legislation of some kind is clearly necessary.

"The landlord has great difficulties in enhancing and settling his rents, and difficulties of various sorts in the collection of them. Therefore, as everyone seems agreed on the necessity for legislation, the question really resolves itself into one of the length to which legislation should go. The hon'ble member who last spoke has said that this matter was formerly discussed, and it was felt there was necessity for some legislation for the benefit of the zamíndár, and that successive Governments found themselves unable to give the relief wanted for various reasons. He also said there were two points on which legislation was required, namely, for the recovery of rent, and the settlement of rent. But there, my Lord, is the hitch. How are you to settle the rents unless you get at the rights of the parties? And that is why each Lieutenant-Governor found himself unable to settle the rents. They could not settle the rents until they found some proper method of settling them, and they could not give the zamíndár summary power to recover rents till it was settled what the rents were. The zamíndárs, no doubt, would be glad if they could have a summary procedure, which enacted that the tenant was to be sold up for whatever the zamíndár considered to be his rent. But it was impossible for a Government which had the charge of all these millions of raiyats to grant that boon—a boon which might in the end turn out to be an exceedingly fatal one to the zamíndár himself. Therefore it is that Commissions have been issued, and all this mass of evidence before us now has been collected. I quite agree that the work of these Commissions is wanting in statistics. I cannot, however, go with my hon'ble friend as regards the want of statistics about the question of transferability, because

we find pages 365 to 373 all taken up with divers transferable tenures, and the districts in which they are transferable and the number of transfers which are registered. There are a certain number of valuable statistics in regard to transfers; on other points there are no statistics. This is a great disadvantage. But this is not to be imputed to any fault of the Commission, because, as a matter of fact, there was no means of procuring these statistics. The statistics, as to the occupancy of the lands are to be found nowhere except among the zamíndárs themselves, and if there is any body which can give these statistics it is the Zamíndárs' Association. Well, now, this being so, the question has been forced before the Government, after careful consideration, how are rents to be settled? And here I may observe that my hon'ble friend Mr. Kristodás Pal appears to assume, with regard to the great bone of contention, the position of occupancy raiyats, that Act X of 1859 has practically accorded that right to a large proportion—he thinks ninety per cent.—of the tenants of Bengal. If that is so, there can, as already stated, be very little reason for extending it further. But what is the fact?

"If ninety per cent. of the tenants in Bengal have got the occupancy right, the fact remains that they cannot prove it, and it would be ruin to most of them to try to prove it. Now, of course, if you get a class of men and give them certain rights, but place them in such a position that, having those rights, and knowing that they have them, yet they are unable to enforce them, there arises a very lamentable position. If a man has a right and cannot press it, what will he do? If there are many of them, they will create disturbances. Therefore it is that, looked at from this point, the Bill appears to be a Bill, not for overturning the Permanent Settlement, but for securing to the ninety per cent. of the raiyats in Bengal some means of getting the benefit of this right of occupancy declared by Act X, and being able to assert it. I saw in a letter not very long ago, in one of the newspapers, a statement by a zamíndár that most of the raiyats on his estates had morally a right of occupancy. That is a curious expression. It means they had got it, but had not got it; and that, practically, is no doubt the state of affairs described by my hon'ble friend to-day. There is the moral possession of a right of occupancy, unaccompanied by an actual or fructuous possession of it. Now, if this is the state of the case, it is not really so great a blow to the zamíndárs as we have been led to suppose, to pass a law by which the difficulties of proof should be minimized, by which the onus of proof should lie less heavily on these tenants, and by which they may be able to get a more effectual enjoyment of this already existing moral right. I understood my hon'ble friend the Mahárájá of Darbhangá to say that, as a matter of fact, he thinks it would not be a bad

thing that raiyats should have some sort of fixity, and I think that is the feeling of a great many zamíndárs. If they could get a fair settlement of their rents, and get rid of all the litigation in which they are at present involved, they would not look upon such extension of the right of occupancy as is given by the Bill with any great alarm. Now, this being the case, we are invited by my hon'ble friend to consider this matter as if it were some interference with the Permanent Settlement, and the first thing he asks us to consider is the position of the zamíndár and raiyat, and he lays claim on behalf of the zamíndárs to what he terms the actual property of the land, and his case, as I understand it, is that, antecedently to the Permanent Settlement, the zamíndárs were absolute owners of the land; that they were subject to payment of revenue to the Government, but that they were absolute owners, and that this right was not then created but confirmed, and exits to this day, and that Act X of 1859 was a serious interference with that right. I cannot agree with that view of the matter. As regards the position of the zamíndárs before the Permanent Settlement, I would refer to a Minute of Lord Cornwallis.

'Under the former practice of annual settlements, zamíndárs who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Díwání, been dispossessed in numberless instances and their lands held khás, or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zamíndárs in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.'

"Well, it was so; it was a delusive possession of property. However, I think it is quite clear that, whoever they were, they were not absolute owners, even taking it from the point of view as between themselves and the Government. But I do not really care to discuss that matter, because, whatever was their position as between themselves and the Government before the Permanent Settlement, it is clear that, as between themselves and the Government, the Government did give over this right of making any further demands upon them and constituted them, so far as Government was concerned, absolute owners. That was the position in law. I have no doubt at all that a very large number of them were hereditary zamíndárs, and many of them were members of the old princely houses, who had originally (as ruling chiefs) rights in the land; I agree that it was a hereditary interest, and an interest which would pass to their children. But this did not at all conclude the question whether the raiyats had any interest. The fact is, that land is capable of having a number of interests in it. As between the Government and the zamíndárs, if the Government surrenders its rights in the land to the zamíndár, the zamíndár becomes the actual proprietor of that land so far as the Gov-

ernment is concerned. But when we come to the question whether the raiyats had anything to say in reference to this land, that is another thing altogether. What do we find was the old customary land-law of India? I am quoting from memory now, but even Menu lays down that ownership in land arises from the reclamation of land, and I think you will find that even that right of ownership was not a full and absolute dominion, but that a right, subject to the rights of Government and some other persons, did arise on the reclamation of land, according to the old custom of Hindustan, and so we find it to be the feeling of the country to this day.

"Zamíndárs held certain large estates, and under them were the raiyats, and the raiyats from time to time reclaimed jungle and then held lands under the customary law of India. What was that customary law? The first thing was that, having been recognised as raiyats, they had a right to sit there at pargana rates. That right did not interfere with the right of property of the zamíndárs. The right of the zamíndár was absolute as between himself and the Government But those rights did not cover all the rights in the land, as other people also had rights in that land. My hon'ble friend has relied on a passage from a judgment of Lord Lyndhurst. Now this passage which has been read comes from the well-known case of *Freeman* v. *Fairlie*. It was a suit brought in the year 1828. The decision in it was that land in Calcutta descended as a free-hold inheritance to the heir, and did not pass to the personal representative. That was the point Lord Lyndhurst had to consider and his remarks were all made in reference to it. It appears that one Susannah Oldham died, leaving three houses in Calcutta. These three houses she bought from different people. But, as was the custom in those days she got a pattá from the Collector of Calcutta. She died and left an executor and differences having arisen between this person and those interested, the question arose whether the houses passed to the heirs or the personal representatives, whether this was real estate or whether it was personal estate. They went before the Master and the Master made his report, and it was decided that the English law applied, and that it went as a free-hold inheritance. This is a very interesting question, but has really nothing to do with the question now under discussion.

"It was contended in that case that no interest which could be held in land in India could be said to amount to an estate in fee simple according to English law, although English law had been introduced to some extent into Calcutta, and it was said that all holdings under the East India Company were too precarious to constitute so high an interest as an estate in fee simple, for various reasons which may be read at length in the report.

"It was *apropos* of these contentions that Lord Lyndhurst remarked that a perusal of the Bengal Regulations had led him to the conclusion that the interest of the zamíndárs in land under those Regulations was an absolute proprietorship and not such a precarious or temporary interest as had been suggested. His object was to show that, if such an interest was vested in an Englishman in a place where English law applied, it would be an estate of inheritance in land descendible to the heir, and not something in the nature of a chattel interest divisible among the next-of-kin. If Lord Lyndhurst had before him a question as to the relative position of zamíndár and raiyat in a zamíndári, his decision would have been entitled to the highest respect, and the hon'ble and learned mover might well be uneasy if he had gone against so high an authority. But in truth the passage cited is only another instance of the danger of citing isolated passages from judgments without considering the point discussed in those judgments.

"In the *résumé* given by Mr. Justice Seton-Karr of the position of the landlord, just read by my hon'ble friend, he points out that the zamíndár has a right to the rent which is barred by no length of time. Here is a curious thing. If you have an absolute ownership, and if another person holds possession for twelve years, it becomes his own, because he has adverse possession. But the rule laid down by Mr. Seton-Karr was that, if it be in the possession of a raiyat, and the raiyat cultivated it not alleging himself to be a zamíndár, he does not hold adversely. Now although he sits there for sixty years, his title is not adverse, and the landlord does not lose his right even though he may omit to collect the rent. What is the reason? That originally the status of the raiyat and the zamíndár did not depend on contract at all. There was one person who engaged with the Government for the land and obtained an assignment, temporary or permanent, of the right of Government to obtain revenue from every bígha of cultivated land not specially exempted by a grant from the ruling power; then squatters came and squatted; they never dreamt of saying they were zamíndárs, but simply raiyats; if the landlord came and asked for rent they would pay what their neighbours paid; if they reclaimed the land, they would ask to pay less, and generally would be allowed to pay less; but if they took possession of cultivated land, they would have to pay the pargana rate or go away. But it was not possible to say that these persons were anything else but raiyats. Tenancy in England was by contract, and if a person comes and sits on your land and cultivates it, and has not made an express or implied contract, his possession is adverse to the landlord and after twelve years he becomes owner of the land free of any obligation to pay anything to anyone. But this is not the case here. I know that Sir Barnes Peacock and other great authorities, who have

taken a strictly English view of the question, have said that the relations between the zamíndár and the raiyat are similar to those of landlord and tenant in England. But many of the Judges—Messrs. Steer, Jackson, Seton-Karr and others—held that the relation of zamíndár and raiyat could be established independent of any contract. If that is so, it throws great light on the subject, and I think there are many other things which point to the conclusion that permanent cultivation of land in India by a person other than a zamíndár was sufficient evidence of a raiyati holding according to custom.

"There has been much confusion arising out of the use of the term 'actual owner' or 'actual proprietor of the soil.' In many zamíndáris there is a zamíndár, a patnídár, a darpatnídár, and under them a *jangalburí* or an occupancy raiyat. Each one of these is an actual owner or proprietor of such interest as he has in the soil.

"But say the opponents of the Bill—how about the waste-lands? There were no raiyats on the waste-lands. The zamíndárs by the Permanent Settlement became, as to the waste-lands, owners of their own former rights (if any) *plus* the Government rights, and as no one else had any rights they must have become absolute owners in the fullest sense, and able to do what they liked with their own.

"The answer is that the position of the waste-lands was not changed by the Permanent Settlement, save so far as the rights of Government were transferred to the zamíndárs. If, therefore, before the Permanent Settlement raiyats who reclaimed or settled on waste-land acquired any rights, raiyats who did the same thing after the Permanent Settlement would acquire the same rights and occupy the same status as they would have acquired or occupied had they settled before the Permanent Settlement.

"No doubt the incidents of a customary holding may be varied by actual contract (unless prohibited by law). But all original contracts which I have seen between zamíndárs and raiyats about to reclaim waste-lands have been contracts whereby the raiyats have obtained a right to sit at lower rates, either permanently or for a time, than the ordinary rates prevailing on the neighbouring cultivated lands. I have never seen or heard of any case in which a raiyat undertook to reclaim waste-lands on worse terms than the customary terms on which permanent tenants of adjacent cultivated lands were then holding.

"But I have seen and I have heard of many cases in which, from the power of the zamíndár and the weakness and ignorance of the raiyat, the successors of those who had reclaimed land on specially favourable terms since the Permanent

Settlement have been unable to enforce or maintain those terms and have been reduced to the level of ordinary raiyats.

"It may be taken that all land reclaimed since the Permanent Settlement has been reclaimed either on the old customary terms without a written engagement, or on a written engagement more favourable to the raiyat than the customary terms.

"I will only make one or two further remarks. The most effective part of the hon'ble member's on-slaught on this question was his attempt at what I may call the *argumentum ad Governmentum*, in which he said that the Government had treated the raiyats on their khás maháls or Crown lands just as the zamíndárs had treated them, or rather worse, and that they had declined to recognise in the raiyats any higher rights than the zamíndárs had recognised, and that they had mercilessly enhanced their rents and evicted them if they did not consent.

"It is no argument to say that the Government in various departments have done the same thing. In speaking of the Government, it must be remembered that there are many departments of the Government. From one point of view, you may have the Government sitting here consulting for the general good of the country and taking broad views of the question. On the other hand, there is a department which represents the Secretary of State, who represents the positive right of the Government in their property, just as in the case of Crown lands in England. When you deal with the Government in this capacity, I am sorry to say they don't seem to be the same kind of people as the Government of India in its broader capacity. I have seen the same thing at home. I have seen what I considered to be very hard and unjust conduct on the part of the Commissioners of Woods and Forests—conduct which was worse than would be expected of any private proprietor. They are in the nature of a Corporation, which has to preserve the rights of the Crown, and they come to look on every body else as natural enemies, who are endeavouring to deprive the Crown of its rights; and I have seen a good deal of the same sort of thing in India, and I am quite prepared to believe it is true, as many of the Government officials must know, that these officers often think it their duty to exact as much as they can. I am only suggesting this as an explanation of what has been said of the dealing of officials in Government and Court of Wards' estates. Suppose there is a substratum of truth in the figures brought forward by the hon'ble member, and it should be proved that enhancements to the extent of one hundred per cent. have been made on these unfortunate Government estates, I think the Board of Revenue, on learning of the existence of such things, would put a stop to them. But if the state of things is as

has been stated to the Council it is certainly very deplorable. But it furnishes an argument against my hon'ble friend. If the Government officials, who have no personal interest in them, would do such frightful things by abusing the special summary powers entrusted to them, how much more will the managers of zamíndárs do them?

"I have not had time to go through the details of the Bill; but I think several grave and serious questions arise in reference to it. The question of compensation for disturbance and other important questions require serious consideration, and I offer no opinion upon them at present. The practical working of the different clauses of the Bill have to be considered.

"But the great thing is to try and secure, as nearly as possible, absolute data on which to proceed. I do not believe in the beneficial effects of any form of words, unless you have facts to act on. I believe that, before the present state of things can be set straight, a full record-of-rights will have to be undertaken. I know that is not a thing which my friend will be pleased to hear. But I do say that nearly one-half the litigation in Bengal arises from the impossibility of ascertaining facts. You cannot get at the rights of any question unless you can get at the real facts. Any number of papers may be produced,—jamabandís, jama-wásil-bákis and the like,—but they are frequently worth nothing. I don't say the zamíndárs have anything to do with the representation in Court of untrustworthy documents; many of them are very respectable people, but the *náibs* or managers think nothing of fabricating a set of papers. Now, the records being untrustworthy and the oral evidence very worthless, it is very difficult for the Courts to decide the points which come before them. I believe most of the litigations will be rendered unnecessary if you can get in Bengal a real record-of-rights, and if you get rent receipts of a trustworthy character. All these things will practically diminish litigation, and then, if you get a settlement of rents by establishing tables of rates or otherwise, which would last for a considerable time, I do not think the zamíndárs will have any great difficulty in recovering rents, for the rent will be definitely settled. Under these circumstances, there will be very little use in false evidence, and judgment will be given, and in a month or so the holdings in default will be put up for sale. I think improvements can be made, for I think zamíndárs should have all reasonable facilities for the recovery of rent which can be given to them without causing oppression to the raiyats. If anybody can show any way of giving increased facilities in this respect, I think the zamíndárs ought to have the benefit of it.

"The Government demand is constant and inexorable, and the Government have kept in their own hands a summary and effectual process for realizing

it from the zamíndár. The Government is bound, if possible, to enable the zamíndár to realize the assessment promptly from the actual cultivator. Had the Government from the first insisted that an authentic Government record of rights and rates should be kept up, and that a reliable system of recording payments should be enforced, there would be no difficulty in complying with the demand of the zamíndár; and it would be the clear duty of Government to do so. But unless the Government will resolutely determine to face this matter, it will never be able to do equal justice to the zamíndár and the raiyat: to give the raiyat proper protection is one duty; to give the zamíndár the power to realize punctually from the raiyat that rent or revenue which the Government exacts so punctually from the zamíndár is another duty. Neither of these duties can ever be effectually performed without an authentic record of rates and payments, and if this Bill be not supplemented by vigorous executive action in this direction, it will join the long list of Acts and Regulations of high-sounding promise and little performance of which raiyat and zamíndár have been the subject."

The Hon'ble MR. THOMAS said:—"My Lord, I had wished to speak generally in support of the Bill, from experience of like tenures in other parts of India; but, looking to the lateness of the hour and the number of speakers yet to follow, I think I shall best consult the convenience of this Council by forbearing to do so: but with reference to the quotation made by the Hon'ble Kristodás Pál with a view to show the pressure of land assessment in the Madras Presidency, from which I come, I may be allowed to say just the one word that his figures are not normal figures, and refer to the great famine time, and the uncollected arrears are the arrears mostly of men and families who had died of famine, and have no sort of relevancy to the normal pressure of the assessment there."

The Hon'ble MR. REYNOLDS said:—"I desire to thank Your Excellency's Government for the introduction of this Bill. I think it superfluous to enter upon any discussion as to the acknowledged and proved necessity for legislation upon the rent question, after a perusal of the papers which have been laid before us in connection with the Bill. It is conclusively shown by those papers that this necessity has been recognized by the Government, by the Courts of law, by the officers engaged in revenue and administrative duties, by the zamíndárs and other rent-receivers, and by the cultivators and other rent-payers. The Bill before the Council is the result of long deliberation and patient enquiry; it is an honest attempt to hold the balance impartially between interests which, though they are really identical, are apt to come into apparent conflict at various points of contact, and the authors of it have resisted the temptation to

legislate upon new lines, or to put forward new theories of the rights of the different classes of the agricultural population. I cannot agree with the Hon'ble Mr. Kristo Dás Pál in the estimate which he has passed upon the Bill. I have studied the rent question in Bengal for nearly as many years as he has; I have studied it, not merely in books, but by practical experience of its working, and I have striven to make myself acquainted with its real facts and bearings; and I say with confidence, that the feature which I most admire in the Bill is the eminently conservative and constitutional character of its main principles. In some points of detail I venture to think that this character has not been maintained, and I shall not shrink from noticing these points in their proper place. But, taking the Bill as a whole, it is essentially a measure framed in accordance with the ancient prescriptive law of the country, and, as such, it ought to be acceptable to those who think that the most useful, and certainly the safest, province of legislation is to formulate and crystalize those principles which have been tested by long experience, and accepted by general consent. I think it useless to speculate upon the question whether, in ancient times, the right of property in the soil was vested in the Sovereign, in the zamíndár, or in the raiyat. That question has been discussed with more learning than I could bring to bear upon it by my hon'ble friend Mr. Evens, and I imagine he would agree with me in thinking that the expression 'right of property,' when used in such a connection and employed in its modern and European sense, is altogether misleading, and connotes an idea entirely foreign to the age and the country. But there are two great principles which underlie the question of agricultural tenancy in these Provinces,—principles which took their rise in remote antiquity, which though they may not have been formerly embodied in any statute, are written in the hearts of the people, which were not affected by the legislation either of 1793 or of 1859, and which have survived the lapse of years and the rise and fall of dynasties. These two principles are, first, that the resident raiyat cannot be ejected from his holding in the village lands so long as he pays the established rent, and, second, that it is the right and the duty of the ruling power to determine the rent payable by the raiyats to the zamíndár. I observe with much satisfaction that not only are these principles recognized in the present Bill, but that the Bill is based upon them, and that its provisions are such as naturally spring from the acceptance of them.

"Chapter II of the Bill is of comparatively little importance in Bengal Proper; but in Bihár it will be extremely valuable, if full use is made (as I [illegible] will be the case) of the power to make a survey and register of *khámar* lan[illegible]

"In Chapter III, section 15 reproduces the present law regarding the sumption arising from twenty years holding at on unchanged rent. This [illegible]

sumption was first introduced by the Act of 1859, and I have always thought that it bore somewhat hardly on the landlord, and especially on two classes of landlords who seem entitled to favourable consideration,—landlords who have dealt leniently with their tenants in past years, and landlords who have purchased their estates at sales for arrears of revenue. I was at one time disposed to recommend that the presumption should be removed altogether; but I have since seen reason to modify this view, and I am now content that the section should stand, as it will always be in the power of the landlord to apply, under Chapter XII of the Bill, for the preparation of a record-of-rights on his estate. It has, I think wisely, been determined to limit the sections regarding registration to tenures. There is no doubt something attractive in the proposal of the Rent Commission (which was retained in the Bill prepared by the Government of Bengal) to extend the same procedure to occupancy holdings. But the country is not ripe for this. There is no agency for carrying the major into effect, and the law would be either a dead letter, or would be worked to the prejudice of ignorant and helpless cultivators.

"The short chapter on patni tenures contains nothing which seems to call for remark. The sale procedure, as specified in the schedule, will doubtless come under the consideration of the Select Committee. The law on this matter needs amendment on various minor points, and the Bengal Government Bill contains a number of useful suggestions and recommendations.

"Chapter V, which is really the keystone of the Bill, deals with the important subject of the occupancy-right of the tenant, and of the landlord's right of pre-emption. It avoids the fatal mistake committed in Act X of 1959 (or at least in the interpretation of that Act which has generally been accepted), of limiting the right to those particular fields which may have been held in continuous possession. It defines the settled raiyat as the tenant who has held raiyati land for twelve years in any village or estate; and it declares that such settled raiyat shall have a right of occupancy in any raiyati land held by him in that village or estate. It may be objected that the proposed definition is at once too wide and too narrow: too wide, becaue the cultivation of land in the same *estate* was never held to confer the position of a khudkásht raiyat: and too narrow, because a much shorter term than twelve years might reasonably be taken as evidence of settled occupation. The definition may in some measure be looked upon as a compromise: and the correspondence shows that it is not the definition originally proposed by the Government of India. But what we have to consider is the practical effect which this or any other definition will produce. Assuming the proposition (which indeed cannot be controverted) that the resident raiyat has a right of occupancy in the village lands, what is the definition which will

secure this right to the greatest number of those who ought to possess it, and extend it to the smallest number of those who are not entitled to enjoy it? I, must own that I am not at present prepared to suggest a better definition than that provided by the Bill, and those who object to it may fairly be asked what they would propose to substitue for it. This, however, will certainly be one of the points upon which the Bill will be attacked: and it will be the duty of the Select Committee to see that the definition is not narrowed down by any limitations which would deprive it of its due significance or its proper effect.

"There is, however, one section in this chapter against which I feel bound to record an emphatic protest. Section 48 provides that the occupancy-right may be acquired by grant from a proprietor or permanent tenure-holder. I think I can understand the reasoning which may have led the framers of the Bill to insert this provision, but the section is, nevertheless, of a revolutionary and dangerous character, and any extension of the occupancy-right which may result from it would be too dearly purchased. It is practically an admission of the vicious principle that the occupancy-right may be made a matter of bargain or contract between landlord and tenant. The occupancy-right cannot be granted by the landlord, for it is nothis to grant: it is essentially inherent in the status of the resident cultivator.

"Of the incidents of the occupancy-right, the only one which calls for notice is that which makes the right transferable. It seems probable that the right was not originally transferable; but the custom of transfer has become common, and it is for the advantage of both parties that the right of transfer should be formally legalized. The landlord's interests are sufficiently protected by the power of pre-emption which the Bill gives him. It has been said that the result of a general power of transfer will be, that the land will pass out of the hands of the cultivators into the possession of middlemen and mahájans. But experience does not justify this apprehension. The transfers which already occur every year may be counted by thousands; but the purchasers of the holdings are men of the same class as the sellers. There are at least two classes of occupancy-raiyats who possess and have long possessed an acknowledged and recognized right of transfer: the guzashtádárs of Shahábád and the thání raiyats of Khurda in Puri. It is certain that with neither of these classes has the power of transfer had the effect of making the lands pass out of the hands of *bona fide* agriculturists.

"The sections regarding the right of pre-emption must be taken in connection with those relating to merger, and the Bill seems to me somewhat defective in that it fails to explain clearly the nature of the landlord's title in a hold

ing which he may have purchased. The draft Bill of the Bengal Government contained an express provision that the doctrine of merger should not operate to convert a holding, when purchased by the landlord, into *khamar* land. The present Bill provides that, if the landlord lets the land, he must let it as an occupancy holding; but the Statement of Objects and Reasons explains that, if he pleases, he may keep the land in his own hands, and cultivate it by his servants or labourers. This is a serious departure from the rule of the old Regulations. By Regulation VIII of 1793, the zamíndár was not only permitted, but required, to let the lands of his estate; he had no power to hold them himself. If, indeed, a zamíndár may hold raiyati land in this way as long as he pleases, it is practically equivalent to the conversion of the land into *khamar*. Section 56 of the Bill will undoubtedly be evaded: and the whole question of the exact nature of the landlord's rights in a purchased holding ought to be carefully considered by the Select Committee.

"By chapter VI, the maxmium rent of an occupancy-raiyat is not to exceed one-fifth of the value of the gross produce in staple crops. It ought to be clearly understood that this is a limit and not a standard: for, in the Eastern districts, any such standard as one-fifty would involve an enormous enhancement. I am also inclined to think that the period of ten years provided by section 78 is too short. The Famine Commission suggested thirty years. This is possibily too long; but, if it takes twelve years for a raiyat to become settled, twelve years is surely not too long for him to remain free from claims for enhancement, and the Select Committee might consider this point. The provisions regarding a table of rates appear reasonable and fair; but I doubt whether any extensive use will be made of them. Careful enquiries on this subject have lately been made by the Government of Bengal in a number of selected areas, and the general results tend to the conclusion that tables of rates based upon classifications of soil cannot ordinarily be prepared in the Lower Provinces. I anticipate that the provisions of chapter XI will be found more generally useful than those which relate to the preparation of a table of rates.

"I should be glad to see the provisions of section 79 extended so as to correspond with those of section 74. If a raiyat is paying more than the established rate, this ought to be a legitimate ground for an application for reduction. I have noticed the references to this point in the correspondence, and I am aware that the omission is not an oversight; but I think the matter calls for further consideration.

"In section 81 it is to be noticed that, though at present the landlord's share is in some cases nine-sixteenths of the *grain*, the whole of the straw and chaff belong by custom to the tenant. To give the landlord half the gross produce would, therefore, be giving him a larger share than he is entitled to.

"The prices spoken of in section 83 are market prices; but it is to be observed that section 75 refers to the price at which the raiyat sells his crops, and this is a very different thing from the market price. I presume the tables mentioned in section 83 are intended to assist the Courts in determining cases in which the limit referred to in section 75 comes into play; but if this is the intention, it would be well to insert words to keep in mind the fact that the price at which the raiyat sells his crop will ordinarily be fully twenty per cent. below the quoted market price of that crop in the bázár.

"The above remarks refer mostly to matters of detail; but my objections to chapter VIII are of a different character. I must own that this is the part of the Bill which I least like or approve. Short as it is, it probably contains more innovations then the rest of the Bill put together. I object strongly to the title of the chapter. The ordinary raiyat in Bengal is the occupancy-raiyat; and it is a dangerous novelty to countenance language which implies that the status of the non-occupancy-raiyat is the rule, and that occupancy-raiyats form an exceptional and privileged class. The clause relating to compensation for improvements is an innovation, but a comparatively harmless one, as a non-occupancy-raiyat would never make improvements, unless he were protected by a lease. But 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 to be objectionable. Either the landlord as the right to eject the tenant or he has not. If he has the right, he should not be required to pay compensation for exercising it; if he has not the right, no money payment ought to be sufficient to give it him. Section 91 refers to the limit fixed by section 119, which provides that the rent of an ordinary raiyat or under-raiyat shall not exceed five-sixteenths of the value of the gross produce of the land. I question the wisdom of attempting to fix by law the limit of an under-raiyat's rent. Such a law is certain to be disregarded, for it is not the interest of either party that it should be observed. But the provision which puts the non-occupancy-raiyat, on the same level as the under-raiyat, and on a different level from the occupancy raiyat, as regards the rent which he may be called upon to pay, is open to far more serious objection. It is an unconstitutional proposal; for it implies that the occupancy-raiyat is entitled to hold at a privileged rate of rent, and this is not, and never has been, the law of Bengal.

"I am fully alive to the difficulties which surround both these question,—the question of the under-raiyat, and the question of the non-occupancy tenant. I am aware that the state of things has entirely changed since the days when the paikásht raiyat could practically dictate his own terms; and I do not object to a reasonable modification of the law to suit the altered condition of affairs. But I disapprove of any infringement of the sound principle that no raiyat, whether he has the occupancy right or not, can be required to pay more than the established rate of rent; and I therefore think that, in areas in which a table of rates is in force, it should be applicable to both classes of raiyats alike.

"In chapter IX, the provisions of section 98 regarding the instalments of a raiyat's rent seem to me to be sound in principle, but to require some verbal modification. As the Hon'ble Mr. Kristodás Pál told us in his speech, monthly instalments of rent are in accordance with the custom of the country, and should not be interfered with; but interest should not be chargeable, nor should a suit lie for arrears, unless default continues for at least three months. This is the practice of the Government in regard to its own revenue. In all the dowls of the Permanent settlement which I have seen, the revenue is made payable in monthly kists; but no measure for enforcing payment can be taken except at the quarterly days of payment. The provisions of this chapter regarding receipts and deposits of rent seem to me to be excellent. I am inclined to doubt the expediency of retaining section 114; and I should prefer to make the division absolutely final. Indeed, the provisions of sections 114 and 115 seem to me to be inconsistent with each other. Section 118 does not go nearly far enough. It is not sufficient to say that the danabandí papers shall be filed in the Collector's office. It should be declared that these papers are to be produced on the trial of any suit for arrears of the rent of the land, and that the suit shall be decided only in accordance with the entries in the papers.

"In chapter X, the wording of section 133 requires modification. There seems to be a confusion between revenue-free land and rent-free land. I know of no reason why a landlord should not measure revenue-free land if he is in receipt of the rents. On the other hand, he ought to be allowed to measure rent-free land if it is within the limits of his revenue-paying estate. The sections regarding the appointment of a manager on behalf of joint-owners have my full approval, except that I would suggest the omission of the word 'jointly', in section 148. I see no harm in allowing the management to be restored to the owners in all cases in which it is shown that the estate will be managed by them without inconvenience to the public or injury to private right.

"Chapter XI and XII appear to me to contain excellent provisions for settling disputes and avoiding litigation. I trust and expect that these provisions will be extensively made use of.

"The chapter on distraint is of no great practical importance in Bengal Proper, where distraint is comparatively seldom resorted to; but in Bihár it will be of great value and use; and I attach special importance to sections 185 and 186. I have heard to-day with a good deal of surprise that illegal distraint does not exist now-a-days in Bihár. The fact is flagrant and notorious. The abuses and oppressions which have been and are still committed in Bihár under colour of the law of distraint require to be put down with a strong hand: and nothing short of an express declaration that they are offences punishable by the criminal law will be sufficient to suppress them.

"In the remaining chapters of the Bill I find nothing which appears to me to call for special remark. In what I have said, I have commented with some freedom on what seem to me to be errors or omissions in the Bill. But I must repeat that, upon the whole, I look upon this as an excellent measure, broad and liberal in its scope, constitutional in its principles, impartially fair to the different classes whom it affects, and calculated to apply a practical remedy to the evils of which landlords and tenants alike have lately complained. If there are any members of the landlord class who consider that the Bill unduly interferes with their incomes or curtails their privileges, I believe they might safely be challenged to point to any essential part of the Bill (I do not speak of every point of detail) which touches any receipts to which they are justly entitled, or any privileges which they have not usurped. I repeat that this Bill is (in all its main features) a constitutional Bill: its object is to establish on a settled foundation, and to express in unmistakeable language, principles which have always been part of the unwritten agricultural law. It is the special duty of the Government to undertake this legislation, not merely in the general interests of the country, not merely for the sake of public peace and public prosperity, but because the system by which the old law of tenancy has of late been overridden and partially obliterated has been, in some measure, the unforeseen and unintentional effect of our own legislation in the past. There can be no more striking instance of this than the example afforded by Act X of 1859. That Act was intended to be the agricultural charter of the raiyat. It has been twisted and perverted into a means of overthrowing the very rights which it was its object to establish, and this has largely been done by decisions of our own Courts of law. A day may come when the present Bill will be unsuited to the altered circumstances of the country. The Government will have the same power then, as it possesses now, of legislating for the protection and welfare of

the dependant taluqdárs, raiyats and other cultivators of the soil, and this power it will not hesitate to use when the occasion shall arise. But for the present, and under the conditions which prevail to-day, the Bill before the Council appears to me substantially to provide a remedy for acknowledged evils, a redress of agrarian abuses, and a recognition of prescriptive rights, and I shall heartily and thankfully give my vote for referring it to a Select Committee."

The Hon'ble DURGÁ CHARAN LÁHÁ said :—"I will make a few remarks, confining myself to some of the principal changes contemplated by this Bill.

The object of chapter II seems to be to restrain the practice said to be prevailing in Bihár of converting raiyatí lands into khámár or zírat lands. I must say that, if it exists, it is only confined to that Province. In Lower Bengal, I am prepared to say, there is no desire on the part of landholders to increase the area of khámár lands. On the contrary, the landlords here retain with reluctance raiyatí lands in khás possession, simply because they cannot find tenants for them.

"The provisions in chapter V relating to occupancy rights are entirely new, and I must say that these changes are most objectionable. The existing law or custom does not support them, nor are they based upon the enactments which were superseded by the Act of 1859.

"Under existing law, a tenant with a right of occupancy has the right of holding his tenure so long as he continues to pay his rent, which, however, is liable to enhancement or reduction to fair and equitable limits under certain conditions. On failure of payment of such rent, he is liable to eviction under a decree of Court. He does not appear to have ever enjoyed a status higher than this. But it is now proposed to confer on him the status of a permanent tenure-holder, without fixity of rent, at the cost of the rights of the zamíndár. The right of pre-emption reserved for the latter will not serve the purpose of restraining transfers to objectionable tenants, because, in point of fact, it will involve an unnecessary outlay, for which he can never expect anything like an adequate return. Again, a settled raiyat, as described in this chapter, may have a right of occupancy in any land in the village without any reference to the period of his occupation, and in spite of any contract under which he held it.

"These and other provisions in this chapter introduce a radical change in the established law, and are calculated to create an unnecessary conflict in the relations existing between landlord and tenant.

"In chapter VIII, which deals with the ordinary ráiyat, the Bill confers on him a status which is entirely novel. The result of the extension of his right—one which is not unforeseen by the framers of the Bill—will be the multiplication of subordinate tenures, which would have the effect of defeating the very object for which the provisions have been made. But it is stated that the Government will put down the evil by future legislation. To my mind it seems to be more judicious not to allow the mischief to arise, than to create complications, and then to find means to check them.

"Then as to the question of enhancement of rent. The Bill lays down that it is to be effected either under a table of rates, or, where there is no such guide, at the discretion of the Court at fair and equitable rates within certain limits, or by contract to be approved by a revenue-officer. As to the first course, I submit it will be impracticable, and, even if practicable, it will never be a safe and satisfactory guide. As to enhancement at the discretion of the Court, the matter remains exactly where it now is, with the addition of a restriction to the exercise of such discretion. And as to the last of these means the validity of a contract being made conditional on the approval of a Government officer, a private settlement between landlord and tenant becomes at once a matter of considerable difficulty.

"In section 93 of the Bill the provision for compensation for disturbance is quite foreign to this country, and its propriety is questionable.

"The effect of this innovation will practically be to preclude the landlord from all possibility of obtaining from the tenant a fair share of increment in the value of produce.

"The subject is so vast and complicated that I cannot hope to do full justice to it. I have barely touched upon a few of the salient points embraced in the Bill, in order to show that the Bill, as it has been framed, is repugnant to the spirit and letter of the Permanent Regulations, which had guaranteed the rights of both zamíndárs and raiyats, and to actual facts. It gives no practical facility for the recovery of rent, nor satisfactory means for enhancement, where enhancement may be fair, reasonable and perfectly justifiable. On the other hand, it enacts provisions intended, no doubt, for the benefit of the raiyat but which, in course of time, will be found to operate prejudicially to the interest of the actual cultivators of the soil.

"In conclusion, I am inclined to think that this Bill will, in practice, do more harm than good, by destroying good feeling between the zamíndár and the raiyat and putting them perpetually at logger-heads. When such is mani-

festly the tendency of the Bill, a departure from the existing law in a way that will unsettle the relations between landlord and tenant cannot but be regarded as an experiment of questionable character and doubtful efficacy."

The Hon'ble MR. HUNTER said:—"My lord, at the present stage of the Bill, I intended to say only a few words, and from a special point of view. The hour is now so late that I shall probably consult the wishes of the Council if I curtail even those few words within the narrowest compass. I agree with the general objects of the Bill; but there are three points which I hope the Select Committee will carefully consider. These are, first, that attempts to interfere by statute, as opposed to custom, between tenants-at-will and the laws of supply and demand have seldom been successful. Second, that, although we may declare that rents shall not exceed five-sixteenths of the produce, the laws of supply and demand will, in the case of the tenants-at-will, be too strong for a hard-and-fast line of this sort. Third, that the compensation for disturbances amounting to ten times the enhancement of the rent, is excessive, and, as such, is unjust. I had intended to insist on these points at some length, but my hon'ble friend Mr. Reynolds has already dealt with certain of them; the debate has been unusually prolonged; and the hour is very late. With regard to the general principle, I shall at present only say that the legal difficulties and supposed guarantees which seemed to some thinkers to stand in the way of this measure have been effectually disposed of by the speech of the hon'ble and learned member who introduced the Bill. The instructions of the Court of Directors before the Permanent Settlement, and the express words of that Settlement, prove to my mind that the Goverment of that day neither intended to make a contract with the landholders which should prevent it from afterwards securing the rights of the tenants, nor made any such contract. Even if such a contract had been made, the hon'ble and learned member has shown that it could not therefore with the right of the tenants who were no party to it. But after these and all other legal difficulties have been cleared away, the Bill has still to be discussed and judged of on other and quite different grounds. For this Bill is in reality an attempt to counteract by legislative devices fundamental economic change which has taken place in the relation of landlord and tenant in Bengal. It is by economic tests that the measure must now be tried, for by its economic results it will hereafter be justified or condemned. This law endeavours to reinstate the cultivators in a security of tenure somewhat similar to that which they enjoyed at the time of the Permanent Settlement. The Permanent Settlement found two classes of cultivators in possession of the soil, one of which was protected in its possession by customary rights, the other by economic laws. The first class was the *khudkásht* or resident cultivators. The

Permanent Settlement reserved the rights of this class, but omitted to define them. After two-thirds of a century had passed, Act X of 1859 endeavoured to discharge the duty thus left unfulfilled, and the present Bill completes the task which Act X began. The other class of cultivators at the time of the Permanent Settlement were the *Paikásht*, non-resident or migratory tenants, who held land in a village other than that in which they lived. These men, although possessing few rights, were at that time protected by economic laws more powerful than any legal system. There was then more land in Bengal awaiting cultivation than there were people to cultivate it. The demand was by the landlord for cultivators, not by the cultivators for land: and the cultivators had necessarily, under such circumstances, the best of the bargain. The charge of enticing away tenants by offers of land at low rent was frequently brought by one landholder against another, and had to be decided by the English head of the District. The increase of population during the past century has reversed this state of things. The population in many parts of Bengal has outgrown the soil. It is no longer the landlord who stands in need of tenants, but the tenants who are competing against each other for land. The same economic laws of supply and demand which protected the tenant at the time of the Permanent Settlement, place him, in many Districts, at the mercy of the landlord to-day.

"The present law endeavours to redress this state of things. To the *khud-kásht* or resident tenants, who were protected by usage at the time of the Permanent Settlement, it gives the protection of a Code of clearly defined liabilities and rights. For the *Paikásht* or tenants-at-will, who were protected by the economic law of supply and demand at the time of the Permanent Settlement, it creates certain legal safeguards which it hopes will save them from the extreme pressure of competition. In doing so it attempts to set up a breakwater between the operation of supply and demand and a portion of the cultivating classes. No one can read the elaborate evidence which has been submitted to the Council with regard to the state of the agricultural population in Bengal, without feeling that the Government is called to make this attempt. But no one can study the history of similar efforts to interfere, not by customary usage, but by statute, between economic laws and their economic results, without seriously asking himself whether such an attempt is likely to be successful. My hon'ble friend Mr. Kristodás Pál has shown how much can be said against such an attempt. Legal restrictions which curtail the landlord's power over his estate tend to render him averse to investing capital in the improvement of his land. Nor must it be forgotten that, in Lower Bengal itself, the circumstances of districts differ so widely as to make any single rule inapplicable to all. In Bihár and other overcrowded

tracts, the tenant is at the mercy of the landlord. In Chittagong and some other districts, there is still a surplus of lands for the cultivators to pick and choose among at their pleasure. The Commissioner of Chittagong, in a recent report, describes the practice there in vogue as a system which 'checks all disposition to rack-rent, and enables the cultivator to take up as much or as little land as suits him.' I trust that the economic difficulties of the measure will be clearly realized, and that the Select Committee will give a fair and patient consideration to the arguments of the landholding classes whose rights will be curtailed by the Bill."

The Hon'ble Rájá SIVA PRASÁD said:—"My Lord, I know I am not a good speaker or a scholar. I have not read that logic which enabled Archbishop Whately to prove that Napoleon Bonaparte was not born; or enabled Doctor Ballantyne to prove that the moon moved on its axis against all the mathematics of Dr. Kaye. I crave your Excellency's indulgence if my ideas are crude or my arguments confused. Nay, I may be here and there, perhaps, strictly speaking, out of order, but as I have been an observer of facts my whole life, I base what I am going to say on my personal experience. I have yet only glanced over the Bill, but taking the lucid introductory speech of the hon'ble Law Member as an index or key of the voluminous records connected with the subject, and of the conclusions arrived at by the highest authorities, I had better dwell upon the speech first, and then the Bill.

"The speech commences with the refutation of some imputations. I have not heard of any 'imputation' of the Government being 'actuated by a spirit of mischievous and restless activity', or 'being influenced by political or party considerations'; but I have heard of another kind of imputation, that the Government, being sorry to find their demand limited for ever by the Permanent Settlement, is now going to limit the demand of zamíndárs also, solely out of revenge. I know there is not a particle of truth in it. I can swear to the purest motives and the highest principles of the Government, but I must own that any condemnation of voluntary rack-rent in one Province comes with very bad grace from those who are forcing an over rack-rent in another. Those who are acquainted with the system of the Government revision of settlements in the unpermanently settled Provinces do not stand in need of any elucidation; but for others I may be allowed to give one or two examples. I have a village, Gangrain, in the Gorakhpur district. The Settlement-officer fixed the rate of rent according to his whims and fancies, or according to some averages supplied to him by the Board of Revenue, and fixed the Government demand on the total of that rent. The Settlement-officer went away, and the Government sanctioned the settlement. But my tenants refused to pay me at that rate, left

the land, and ran away with heavy arrears. For several years nearly half the village, some five or six hundred acres, remained uncultivated. At last I reduced the rate and the fellows have come back and are cultivating, though I pay to the Government the same amount which was fixed,—very punctually. I have heard, though I will not vouch for its exact authenticity that a zamíndár in the Allahabad district, finding the rates fixed by Sir Auckland Colvin, when he was Settlement-officer there, unrealizable, and being thus unable to pay the Government demand, made a bequest of that village in favour of Sir Auckland and left it. The case came to the notice of the authorities when steps were taken for the recovery of the Government revenue, and then, perhaps, the rate were modified. I suppose it was Dr. Irvine who reported through Mr. Court, the then Collector, to the Government, that in the three trans-Jamna parganas of the Allahabad district he seldom met three men of whom one was not lame, on account of eating *khisári*, a very inferior pulse, better food than which the tenant could not afford to have on account of the high rate of rent. The Government modified the settlement and lowered its demand. I do not think the Doctors find that disease here in Bengal or Bihár. Numerous instances can be quoted like the above, but I wish not to be misunderstood; it is far from my intentions to oppose any measure which aims at limiting the rack-rent by making the produce or the value thereof as an ultimate standard. What I intend to show is simply this—that it would behove the Government better if the Government were to apply the principle first in the Provinces where Government is an interested party and shares in the rise or fall of the rent; for instance, let the Government rule in the unpermanently settled Provinces that no Court is to give a decree for any arrears of rent which the tenant proves to exceed, say, half the estimated value of the estimated average produce for a certain number of years; and at the same time declared that the Government demand is never to exceed so much per cent. of the actual assets of the zamíndárs. Then, and only then, would the Government be justified in coming forward in the permanently settled Provinces and telling the zamíndárs, 'Friends, you also cannot go beyond that'.

"Going to extremes is often to be deprecated. To say that zamíndárs had no existence at all, and are the British Government's creation, is simply to expose one's own ignorance of the country and its history. Still the copper-plates are dug up, granting villages in perpetuity, with their boundaries and all within them—*jalkar*, *bankar*, *dih*, *dábar*, *&c.*—the inscriptions generally ending with the threat that, if any one resumes the land, he will live sixty thousand years a worm in hell. Now if these grantees had no proprietary right in the soil, what right had they? If they were not zamíndárs, what were

they? Could they be farmers or officials? Farishta writes:—'Ala-ud-din Khiljí resumed all religious endowments and rent-free tenures, and confiscated all property in the soil (*har dehe ki dar vakf ya dar inam ya dar milk i kase bud hama ra khalisa kard*)'. *Milk* means property and *malik* proprietor. Farishta goes on further to say that the 'Emperor took half the produce of the soil from everybody, whether he was a Mukaddam or Chaudharí. The Chaudharís and Mukaddams, who once rode state horses, wore princely arms, dressed sumptuously and pursued the games like the Nobles, had at last been reduced to such extremities under this Emperor's rule, that their women were obliged to go out and work for their bread'. Chaudharí and Mukaddam of that time seem to be synonymous words for zamíndár. Firoz Shah Tughlak writes in his memoir of 'the portion mulcted at the delivery of the *landlord's* shares by the cultivator, and its attestations by some official'. Firoz Shah took only a tithe of the produce of land. I well remember to have read somewhere that when Humáyun marched down from Agra his baggage was plundered by the zamíndárs in the Gangetic Doáb. The Hon'ble East India Company itself had at one time purchased the zamíndárí of the Twenty-four-Parganas from the Emperor of Delhi. Are the zamíndárs like the Mahárájás of Bardwan, Dumráon, Darbhangá and Bettiah, or Rájás of Majhauli, Manda, Bejaypur, and a thousand others of the British creation? They have still many sanads and farmáns of the Muhammadan Emperors in their possession. Many will quote books that those Emperors had all along been acknowledged as the lords of land; but they forget that in the same sentence they are acknowledged as the lords of the persons and possessions of their subjects. So with this theory the Government will have the same right to interfere with one's lands as with his person or other personal property.

"Let us see how this movement began, and how it ends. The hon'ble the Law Member says:—'What then are the facts with which we have to do, and what are the evils for which legislation is required?' Let us see what are 'the facts.' Sir Ashley Eden says:—'In Bihár what is most wanted is some ready means of enabling the raiyat to resist illegal distraint, illegal enhencement and illegal cesses, and to prove and maintain his occupancy-right.' Sir Richard Temple intended 'to introduce a Bill to define the principles on which the rights of occupancy raiyats and tenure-holders should be forced, to simplify the procedure for realizing the arrears of rent in undisputed cases and to make the interest of an occupancy raiyat liable to sale for default in paying rent, and transferable by private agreement'. In the Bengal Council it was 'recognised that the legislature would have to alter the law with reference to ejectment, distraint, instalment and deposit of rent, and possibly sub-letting.' The Commis-

sion propose 'to create a new class of subordinate occupancy raiyats by providing that a tenant who had held for three years and less than twelve years should be protected from ejectment at the will of his landlord.' Also that 'limits were to be set to the rack-rent' and to what an occupancy raiyat 'might demand from an under-tenant.' Sir Ashley Eden writes in his letter of the 15th July, 1880, that 'the would like to see the Bengal raiyats, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times.' He wrote to the British Indian Association in December, 1880, that 'protection against arbitrary evictions must certainly be given to every settled cultivator who pays the established rent', and that 'a substantial tenantry, free from debt, and in a position to stay and bear the pressure of occasional bad seasons, is what Bengal requires. The Lieutenant-Governor desires, therefore, to see the occupancy tenure made the rule and not the exception; but at the same time he would have it kept as far as possible in the hands of *bonâ fide* cultivators, and sub-letting by occupancy tenants should be discouraged, if it cannot be altogether prevented.' The most important conclusions at which Sir Ashley Eden arrived, as given by Mr. Justice Cunningham in his Minute, are 'that the rents of Bengal were and must in existing circumstances, continue to be customary, not competitive'; and 'to guard against the conversion by the landlord of raiyatí land, that is, land over which occupancy-rights exist, or can be acquired, into 'khámár''. 'Khámár' lands appear to have been originally merely the surplus unreclaimed lands of the village which the landlord was allowed, during the continuance of his revenue engagement with Government, to cultivate for his own benefit, but which became 'raiyatí' as cultivators settled on them'. The Famine Commission say that 'measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and widening the limits of that security, together with the protection of the tenant-at-will in his just rights and strengthening of his position by any measure that may seem wise and equitable'. The hon'ble the Law Member does not find, in any of the Regulations of 1793, words which can throw the whole of the then vast area of the unreclaimed land of Bengal into the category of khámár or private land; and so he has framed his definition so that the existing stock of khámár land cannot hereafter be increased. Now I ask him, in the name of justice, if the whole outcome of all these wishes, suggestions, reports and proposals is to culminate in depriving the zamíndárs of the right of increasing their khámár land by acknowledged legitimate means and

by most ancient customs or usages, and conferring the right of occupancy even on 'squatters and nomads', because the price of land and 'the disturbance money' are just the same to a zamíndár? There will be no ejectment, and any man would acquire occupancy-right if he has pluck enough once to plough and sow the land; but the zamíndár will never, even if he pays all the gold and silver of the world. Leave the custom and usage aside, no one had even thought hitherto of such an innovation. The Government tells the zamíndárs: 'Keep so much land and no more; this is enough for you; let the others take the rest; they are in greater need than you are.' I think if the principle is fair and equitable, it would be better to plunder all the banks and distribute the money to the poor and the needy.

"The hon'ble the Law Member says that in Bengal the raiyats are strong and the zamíndárs weak, but in Bihár the zamíndárs are strong and the raiyats weak; whereas in Bengal the raiyats combine to resist the payment of rent, in Bihár the zamíndárs destroy all the tenures and all the rights of the tenants and turn their land in zarat or khámár, or, in other words, Bihár is groaning under rack-renting and acts of lawless and high-handed oppression. My Lord, for seven years I have had to look after the affairs of Bettiah, which is one of the largest zamíndáris in Bihár, and I am in a position to assure your Excellency that I have not found a stronger set of raiyats, happier or better off, in any part of the country, from Kashmír and Rájputáná down to Púna and Haidarábád; and I am almost sure that a Briton by birth and stuff, Mr. T. M. Gibbon, C. I. E., will corroberate the truth of my assertions. I have seldom seen a more generous hearted zamíndár than the Maharájá of Bettiah. Though he has received no decoration yet from the Government, neither the Star of India, nor the Lion and Sun of Persia, to adorn his breast, but it is adorned with a heart which melts like wax for the poor. One day, nay it was about midnight, some ejected tenants came and cried out *duhai* at the gate; he begged of me to enquire about them. Mr. Gibbon told me that they were great *bádmáshes*, and were legally and deservedly ejected. But the Maharájá insisted upon their immediate reinstatement, and told me that a Rájá's first duty is to protect his tenants '*Rájá ká pahlá dharma prajápálana hai.*' The difference, in my humble opinion, between a Bengal and a Bihár zamíndár is simply this—that the Bengal zamíndárs are now highly educated, and the poor Bihár zamíndárs, with very few exceptions, are still what they were. So the Persian saying '*Yake nuksáni máyah dígre shimátati hamsáyah*' (on one hand the loss of property, and on the other the abuse of neighbour) is fully applicable to them. His Highness the Maharájá of Benares has a large property (I beg pardon—I am not sure whether a zamíndárí can be called any longer a property

under the hon'ble and the learned Law Member's new definition) in Bihár, and so my many other friends of Benares have, and yet the same law is proposed for Bengal and Bihár. We have a saying, '*take ser bhájí take ser khájá*' (two pounds of cake for two pice, so two pounds of salad too). Though the hon'ble the Law Member may say '*chu az kaume yake bedánishi kard na kihrá manzilat mánad na mih rá*' (if one man in a nation commit a crime, neither low nor high are to be spared; all are to be punished); if a villager killed a soldier, the whole village is to be executed, as the Russians, I hear, are doing now.

"Now I have purchased some thousands of acres of waste-land in fee-simple under Lord Canning's Resolution, and spent much money in bringing parts of it under cultivation. What will be the fate of that land, or, I may say, my own and my children's under this Bill? The registered kabúliyats of my tenants, under the name of 'contracts,' will be null and void. I will not be able to eject them, and for any enhancement I must be prepared to spend in litigation a sum the interest of which will far exceed the amount of such an enhancement. I wonder if it is known to the Government what was the cost or how much money was cast away in the great rent case of 1865. I shall feel extremely obliged if the hon'ble the Law Member would be pleased to give a short definition of the treacherous English word "fee-simple' and a short contruction of the sanad signed by a Secretary to the Government, as he as given of the words zamíndár and landlord, and of the proclamation of Lord Cornwallis. Lord Canning may be laughed at very shortly, as Lord Cornwallis is now; but allow me, my Lord, to put here on record the motive with which that great statesman was actuated. During the Mutiny of 1857 he had seen how useful and valuable these Britons were to the State. Lord Canning had seen how a Venable had held the district of Azamgarh single-handed for the State, and driven out the mutineers from it; and how many others like him had done the same in other parts of the country. He wished to increase their number. He asked men like Mr. Glyn to take land and settle in the country. They refused, under the plea that, with such a system of settlement and the rent-law, they could not persuade themselves to acquire land in India and invest their capital in improvement. Lord Canning resolved then and there to open a way for the acquirement of land in fee-simple, though, as soon as he had breathed his last, the policy was changed. I am sorry I was not living at the time of Lord Cornwallis; but if the science of spiritualism has any truth in it, his spirit may be smiling on our incapacity to understand how he had found the body of Bengal and Bihár zamíndárs, and the very constitution of zamíndárí, far more useful to Government than ever Lord Canning found the whole body of Oudh

taluqdárs or all the Venables of the world. He lost no time to make a settlement with them on such a permanent basis as to secure a permanent safe basis for the future operations of the Government, which has extended its dominion beyond Attock (Atak), falsifying the very name of the place, which means 'stop'. I shall find myself much mistaken, and shall have to revise my history of Hindustan, if the zamíndárs of Bengal and Bihár, as a body, are not as loyal subjects of their Kaisar-i-Hind as any crowned head in the world, from Noah up to this moment, can boast of. I have seen with my own eyes some zamíndárs of the Benares Province placing flower wreaths on the tomb of that great and good man, Lord Cornwallis, even now. I am fortunate at present to find my waste-land situated beyond the pale of the jurisdiction of this Bill, otherwise I would have had to deplore that the land was mine on the 2nd of March, but it passed over to others on the 3rd, without any fault of mine; however, the principle of the Bill seems to be contagious. It will be better for me to look after my property before it is too late. What course is left to me to follow? I am bewildered. The only course open before my eyes just now is simply to serve notices of ejectment on all my tenants before the end of this month, which is fixed by the law as the last month for the purpose in the year, and allow the whole land again to revert to its pristine condition of groaning under a thick forest haunted by the wild beasts; but allow me, my Lord, to declare most sincerely that it will be worse than death to me ever to think of your Excellency's illustrious and endeared name to be associated with any measure which may convert the land now smiling under luxuriant crops into a gloomy forest, while the policy of Lord Cornwallis has turned, as acknowledged by the hon'ble the Law Member himself, the wastes and ancient forests of Bengal and Bihár into culturable land.

"The only nail which the hon'ble the Law Member has hit on the head is a frank acknowledgment of 'the misapplication of English analogies to Indian facts.' He says that the 'Bengal zamíndár is not a landlord, or land-owner, in the English sense of the word.' I say that the money paid by an Indian tenant is not rent in the English sense of the word. For the meaning of 'rent,' Malthus is no authority for us Indians, though he may be for an English Chief Justice of the High Court, like Sir Barnes Peacock.

"The word rent is misapplied in India. It is a tax on produce in its true sense and meaning. Under the sacred laws of *Manu*, acknowledged to be the most ancient, 'the King (Rájá) took one-sixth of the fruits of soil (produce); but when it was of bad quality his share was limited to one-twelfth. On the cattle, gems, gold and silver he levied one-fiftieth, and on the produce of trees

flesh, meat, honey and the like accumulations of nature and of art, a sixth. Besides this all the artisans and labourers worked for him gratis one day in the month. He was entitled to five per cent. on all debts admitted by the defendants on trial, and ten per cent. on all denied and proved.' In this so complete a list of taxes, if one is a tax, then all the others also are taxes, and if one is rent, then all the others also are rent. The famous Káli Dás says in his *Raghuvans—Shashthánsam vali magrahít*, that is, the Rájá took the one-sixth of the produce as his tax. It is out of this tax, or the share of the State, that all the tenures, zamíndárí, mukarrarí khám, khálisa, raiyatwári, khont, mustájiri, jágír muáfi, krishnárpan, &c.. &c., have been created. Under the Slave Dynasty this tax was raised to one-fourth of the gross produce. Alá-ud-din Khiljí assessed it at one-half. Sher Sháh reverted to one-fourth, but Ákbár took one-third. In many places it is still divided half and half between the proprietor and the cultivator, or the zamíndár and the tenant. In Benares it is called *adhaiyá*, which means half and half, and this proportion has been acknowledged as customary by Lord William Bentinck in his celebrated circular. The question is, whether there is a proprietary right (*Svatva* or *Hakki Milkiyat*) possible in land or not. In England, William I conquered the land and distributed it amongst his feudal chiefs. So when the Aryans came here from the North-West and vanquished the non-Aryans (Aborigines), their Sovereign apportioned the land amongst his followers, as is written in the Vedas: 'Indra the lord conquered and drove out the Dasyus and Rakshasas and gave their land to the white-faced followers.'

"The hon'ble the Law Member says, 'that the great mass of the Bengal raiyats were, at the time of the Permanent Settlement, in the enjoyment of certain customary rights, which at least included the right, of occupancy in the land conditionally of the payment of the rate of rent current and established in the locality, and, I may add, the right of having that rate of rent determined by the State.' May I be allowed simply to ask if it is not so now? Are there not fixed-rate and occupancy-tenants? Nay, are they not growing? Just the other day seven paikásht (non-resident) tenant have acquired occupancy-right in my village, Bodarvar, by lapse of time, simply through a mistake of mine in the calculation of years. The tenants in Jaunpur district have now become mostly fixed-rate. The hon'ble the Law Member quotes the Court of Directors' instructions to the Indian Government 'not to depart from our inherent right as Sovereigns, of being the guardians and protectors of every class of persons living under our Government.' May I be allowed simply to ask if any zamíndár class of persons has ever asked or expected from the Government more than the mere protection of his rights and privileges, or of his property and life, and

why the zamíndárs are denied the protection? The hon'ble member further quotes the declaration of the Governor-General in Council: 'It being the duty of the ruling power to protect all classes of people'. That is our Magna Charta, and the zamíndárs can well claim that protection.

"The hon'ble the Law Member says that 'no one can acquire the status of settled raiyats, and the occupancy-right which is attached to it, unless he has been a landlord, or he and his ancestors before him have been land-holders for a least twelve years in the same village or estate. Thus mere squatters and nomads are effectually excluded,' but I may be allowed respectifully to ask, will the zamíndár be allowed to eject the squatter or the nomad? Under what section? It may be said under the 'disturbance money' section. Well and good! There the zamíndár is to pay for his own land to an occupancy-tenant, who does not pay his rent and falls into arrear, in the shape of price: here a *budmásh* comes and clandestinely ploughs and sows a piece of land, upsetting all the plans of the zamíndár, and receives money from him in the shape of disturbance money, for restoring the zamíndár's land to the zamíndár. I have heard of the right of the sword, but this will form the right of the plough. Some fifty of my tenants left my village, Bodarvar, in Gorakhpur, with heavy arrears, after they had taken corps home. When I went to the village to arrange about the land they had left, I found all the land cultivated by other, say fifty, men—many of them being relatives and friends of those who had run away. I was willing to settle with them on the same terms as their predecessors enjoyed, but they refused to register their *miádi* kabúliyats. I, of course, ejected them through the proper channel, though the process cost me some thousand rupees; but, under this Bill, I would have been obliged to pay those ejected tenants a couple of thousand rupees more, in the shape of the disturbance money, or engaged *lathiwálás* to stop them by force from ploughing and sowing, and bribing the policemen, at the risk of my going to jail. But what else could be done? Land is dear, it is a second wife, and many Hindús have become Muhammadans for it. There is, perhaps, Rájá Salámát Sháh at Azamgarh of this description, and many more may be found.

"The hon'ble the Law Member has given, as a sample, some kabúliyat and pattá in his speech; but, if there are Shylocks in India, there are also wise Judges, who know what is lawful and what is unlawfal before they enforce any contract. I can show a hundred kabúliyáts and pattás which I have given to my tenants-at-will in Benares, with occupancy-right, which they call istimárí.

"The hon'ble the Law Member talks of the wants commonly known in England and Ireland as the three Fs,—fixity of tenure, fair rent and free sale. Leaving the question of sale just now aside, and seeing that the tenants of twelve years have fixity of tenure and 'fair and equitable' rent, I simply remind him here that he has completely overlooked an Indian tenant's wants, which may be called the four Ss,—supply of water, supply of seeds, supply of bullocks and saving from the Court expenses. We have a saying:—*Gráma samípe labdhvá kúpam-gráminah kin gaṇayati bhapam* (a villager who has a well near his land does not care for a king). If one tenant is ruined by a marriage, I can point out one thousand ruined by Court expenses. Just the other day one of my tenants, Debi, refused to pay me one-and-half anna acreage for half a bigha rent-free land. I applied for recovery and obtained a decree against him for Rs. 3-11, as follows:—

	Rs.	A.	P.
Amount sued (acreage for three years)	0	2	3
Arzidavi	0	6	0
Talbáná	1	8	0
Mukhtárnámá	0	8	0
Copy of decree	0	8	0
Petition for it	0	1	0
Petition for the execution of decree	0	1	0
Mukhtárnámá for it	0	8	0
Interest	0	0	9
TOTAL Rs.	3	11	0

The land was put up for sale, but as the man came to his senses, and fell upon my feet, I allowed him to remain.

All the three supplies depend upon good rent law; no bank of any kind in the world can do that.

"The hon'ble the Law Member says, 'that the powers of transferring and sub-letting, which the Bill recognises, may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy-raiyats, but under-raiyats, with but little protection from the law, is indeed within the range of possibility; but if such a state of things would ever arise we may rest assured that the Government of the day will know how to deal with it'. I may be pardoned if I say that I cannot accept such an assurance. This is the first time I have ever heard of such a legacy. At any rate it is very curious, and indeed very bold. At the instance of the present Lieutenant-Governor, to impose some discouragement on sub-letting, the maximum rent for sub-tenants or under-raiyats not having a right of occupancy appears to be fixed at five-sixteenths, or about thirty per cent.; but what protection has been devised if the occupancy-tenant takes every year a heavy nazráná (premium), besides the legal rent, from his sub-tenant under the threat of ejectment? The pleaders cannot increase their legal fee or *mchantána*, but who can prevent them from taking a tenfold shukrána (*douceur*)? The real cultivators of the soil under the Bill will till the land at a rack-rent as sub-tenants, and a new class of under-

proprietors of the baniyá class will spring up as occupancy-tenants at the expense of the poor zamíndárs. The hon'ble the Law Member disclaims any merit for the originality of his proposals; but, in my humble opinion, limiting khámár and giving occupancy-right to 'squatters and nomads' is certainly very original. He says: 'We have endeavoured to hold an even hand between the two parties, and to define and adjust their rights in such a way as may be most conducive to the common interests of both.' I beg pardon; I cannot see the truth of the statement, and I leave it to the judgment of those who do not belong to any party. I have a village, Khanavan, in Benares, three-fourths of which are under general law and one-fourth under special law. Well, in the time of Lord William Bentinck special settlement was made of this one-fourth. The zamíndár and the tenants appointed arbitrators, and the arbitrators fixed the rate of rent for ever, without any right of enhancement on any account to the zamíndár, and gave the right of occupancy and transfer to the tenants. Now, what is the consequence? Fourth-fifths of the land have come into my possession by right of purchase, and only one-fifth remains in the hands of others, a baniyá class of people, who also have come in possession of that by right of purchase. The descendants of the original tenants are tilling the land as sub-tenants. I have given occupancy-right to all my tenants in the three-fourths of the village, but will not give in this one-fourth.

"The hon'ble the Law Member ends his very long, exhaustive and most elaborate speech with a declaration that whatever has been 'endeavoured by the present Bill to do, is so to legislate for her as to preserve whatever is best in the spirit of her ancient institutions.' If the hon'ble the Law Member be good enough to acknowledge that the words 'for tenants' were simply, by an oversight or mistake, left out after the word 'best', I shall not speak further, otherwise it will be like the Benavá Fakír, who learnt only the first half of a verse from the Koran, that is, 'Don't pray', and ignored totally the other half, that is, 'when you are drunk'. I cannot say what may be the meaning of the word justice in the English sense, or the sense of the hon'ble the Law Member, but I can vouchsafe the meaning of the Arabi word *A'dl*, which means to mete out equally; or *insáf*, to make half and half. The hon'ble the Law Member acknowledges that formerly 'resident or chapparband (owner of a hut) tenants were not ejected except for arrears of rent'; but he ignores totally the acknowledged right and power of the zamíndárs to allow or refuse residence. No man could come and live in the village without the permission of the zamíndár. In the Wájib-ul-'arz (agreement) it is specially mentioned that the zamíndár would not allow any thief or bad character to reside in his village. Had the zamíndár not power of refusal, this paragraph would have been superfluous. Now, if a

zamíndár gives permission to a man to build a hut, which is, as a rule, done after taking some *mazráná* (present), and cultivate without any written contract, it will be preposterous to think that the man could be ejected at the zamíndár's will; but now the Bill allows every one to build a house anywhere he likes—in a field or a pasture—and even claim compensation for it, which will be of no earthly use to the zamíndár. The fact is that there was no period in history in which, with the zamíndárí (including jágír, muáfi and mustájirí, &c.) system, the system of khâm, khálsia or assámívár had no existence, and so there was no period in which, with the occupancy-tenants (including fixed rate, rent-free, &c.), the tenants-at-will had no existence. The mistake, in my humble opinion, is simply in the endeavour to make occupancy-right universal and tenants-at-will an impossibility. Leaving possibility or impossibility aside just now, I beg simply to assure your Excellency that what the hon'ble the Law Member is pleased to call India's ancient institution has in no period of history, as far as my knowledge goes, and in no part of the country, as far as I have seen, ever been dreamed of even. Now to the Bill:—

"My Lord, I have had time merely to glance over it. The sin lies in two ways: firstly, in commission, and secondly, in omission; but before going into the details of the Bill, which I would rather leave to some future period, I may be allowed to state that if the object to the Bill is to improve land and agriculture, or ameliorate the condition of the agriculturists and promote the well-being of the cultivators of the soil, the Bill does not go very far; it totally fails, rather, in many instances; it takes an opposite direction and makes the case worse.

"Allow me first to say a few words about the omissions. I am surprised to find that not a single provision has been made in the Bill to supply the crying wants of the tenants. They want wells, and how does the law stand now? If I dig a well at a cost of two hundred rupees, which can irrigate 24 bíghás belonging, say, to 24 tenants, I ask them to pay me the legal interest on the capital laid out, in the shape of an enhancement of a rupee per bíghá. They refuse to pay, simply because, if they accept an enhancement, they shall have every year to pay, but otherwise they hope sooner or later to have the water for nothing, by bringing the *patwárí* and my *karanda* with a couple of rupees. The only course open to me is to serve on them notices of enhancement and fight out 24 cases up to the Board of Revenue on appeal, which will not cost, at the lowest computation, less than a thousand rupees. Now if the law be framed so that a zamíndár, before digging a well, may apply to the district officer for permission, supplying him with a plan and estimate and a list of the tenants, their

land, rent and the amount of enhancement, which is not to exceed the legal interest on the capital laid out, or to fall more than a rupee per bíghá, the district officer, after giving due notice to the tenants and enquiring into their objections, if any, may give permission to dig; and when it is reported complete to his satisfaction he may order the patwárí to add the enhancement to the rent in the village-records. I am sanguine that thousands of wells will at once be dug where wanted. It is now commonly said that the zamíndárs have not done their duty, but no one has taken the least notice yet how the law operates now. For the supply of seeds and bullocks, if I advance any money, I shall have to go to the Civil Court, and after all the trouble and expense, if I am so fortunate as to obtain a decree, there will be no property against which it can be executed. I cannot understand, if the Government recovers its advances as arrears of revenue, why the zamíndár are not allowed to recover their advances as arrears of rent, provided that the interest and instalment does not exceed the limit assigned by the Government and the transaction is duly registered. If it is allowed, the cultivators of the soil will at once be placed above the want of any bank or banker. It has become the fashion of the day to vilify the bankers as takers of fifty per cent. interest. I may be allowed to explain how I take this fifty per cent. from my tenant. He wants, suppose, a maund of seed (wheat) in November, when it sells, say at a quarter of maund per rupee, so I give him a loan of my wheat, which is worth four rupees at the time on a promise that he is to pay me back a maund and half (fifty per cent. more) in kind. He returns me my wheat in May, when, generally speaking, it may be selling at half a maund per rupee, so I receive two rupees worth for what was worth four rupees at the time I lent. I may be asked then, why the zamíndár lends. He lends only because in the long run he has the satisfaction to find that his grain-pits contain ten thousand maunds when he had commenced the business with only one. Besides this, if he had not lent the seed, perhaps the land would have remained uncultivated, for a tenant cannot be expected to keep and preserve such a small quantity as a maund is for seed all the year round against fire, thief, mice, white-ants, the little urchins and hungry old hags of the family. To go to the town, often fifty miles distant from his house, to borrow money from some bank, even at five per cent. interest, to purchase seed from the bázár and bring it home on the head of a hired cooly, will simply be ruinous. I do not see any provision has been made for saving the tenants from the expenses of the Court; may I see even an application for distraint shall be liable to the same court-fee which would be payable in a suit instituted for the recovery of the arrear therein claimed (clause (2), section 167). However, the most curious feature of the Bill is, that the Local Government may suspend the provisions of sections 166 and 184; though it does not

seem why. It seems inexplicable that, if the movement commenced to facilitate the recovery of rent, why it ends with the throwing of difficulties in distraint. Sir Ashley Eden's beau-ideal tenantry of Bengal can only be hoped for under such a Bill, when the millennium comes under the prophecies.

"It is quite unnecessary to search out for antediluvian proofs, or prehistoric customs and usages. I mean the procedure followed under the Native rulers before the Hon'ble the East India Company acquired the sanad of Díwání. The Government proclaimed its intention to protect and maintain the existing rights, privileges, customs and usages, as found or acknowledged, and let it do so now. Any demur on the part of the Government to fulfil this promise, or at least expectation, will be fraught with mischief.

"The Bill aims, as I think I have said already, at making the occupancy-right universal (sections 45, 49 and 56), and ejectment, except for arrears in rare cases, practically impossible (section 149), by limiting the khámár and zarat land to its present extent and preventing its future growth (chapter II), and by making all private contracts against these drastic measures null and void. My Lord, may I be allowed to ask if, any period of the historic age, in any part of the country, under any kind of rule, such a limit was ever put to the acquirement of the khámár and zarat land? The zamíndár has a right to let out his land at any rent, whether one-half or one-quarter of the would be so-called pargana rate to A or B. But if this A or B relinquishes the land, or runs any with arrears, or even for five rupees arrears the zamíndár pays ten rupees for the land which, at any rate, was once his own, at the sale for a decree, the land cannot be again his. Any man may come, cultivate it, build on it, and make it his own; but it cannot revert to the poor zamíndár, its rightful owner (section 56), because it is out of the khámár and zarati entered in the register now to be made. It was the tyrant Alá-ud-dín Khiljí only who, professedly to keep the people living from hand to mouth, had ordained that no one was to possess any land beyond a certain extent, and that no one was to possess more cattle than a fixed number; but in the 19th century, in the reign of our Most Gracious and Beloved Kaisar-i-Hind, Victoria (God bless her), a Bill is brought before your Excellency's Council, the effect of which will be that, if I purchased a piece of waste-land under Lord Canning's Resolution and brought it under cultivation at a heavy expense, it was mine on the second of this month, but will not be mine on the third. I should have to add a codicil to my will, and all my plans will be castles in the air. Sir Richard Garth, who is truly called Chief Justice, may well denounce such a policy in the strongest term—a 'spoliation'. But I may be allowed again

to ask, if a zamíndár enters in the village-records all the land in the names of his relatives and confidential men, how the law can prevent him from reaping the advantages of khámár or zarati, though the law may promote litigation, fraud and perjury to its fullest scope, which is the tendency I am grieved to say, of this age of high education and new civilization? What will be the result of all this (I do not know really what to call, but let me call) drastic measure? A new set of petty sub-proprietors, as I have already said, generally of the baniyá class, will arise. The so-called tenants of to-day will all become pakka (strong) proprietors, only to transfer their land to baniyás, pocketing all the money which now may find its way to a certain extent to the purse of the natural and lawful proprietor, the zamíndár, and still of as little use to the State in the time of need as a straw. Your Excellency told the taluqdárs of Oudh, just the other day, 'that the primary and essential condition of agricultural prosperity is the well-being of the cultivators of the soil; the promotion of that well-being the Government has very earnestly at heart and it attaches to it an importance of the highest kind.' Now, my Lord, most respectfully I beg to ask, does the Bill in any way ameliorate the condition and promote the 'well-being' of the cultivators of the soil, who will always be, generally speaking, sub-tenants and form the mass of rural population? The Bill limits the rent demandable from an under-tenant or an under-raiyats (section 119). Will that do any good to the poor under-tenants? It is just likes sending the paper horses, which the Lamas do according to M. Hacq, for the sick and the weary travellers. Now, suppose I am a tenant and I have a sub under me for whose land, suppose, the Bill limits the rent to Rs. two. I tell him, 'My friend, the law does not allow me to demand from you more that Rs. two in the shape of rent, but unless you pay me Rs. three more annually, as a nazráná, in advance, I will not allow you to cultivate my land. Go away to some other place.' Now, what will the poor sub-tenant do? He must pay whatever I asked for. The law may go further and give occupancy-right to the sub-tenants too, and make it criminal for the tenants to take more than what may be fixed by law. But how can the law prevent the tenant from colluding with the zamíndár and relinquishing the land or having it sold for arrears solely to ruin his sub-tenants? The law may make the tenure of a sub-tenant as secure and profitable as that of a tenant, but then he also may have a sub-tenant, and so on, till the cultivator of the soil will have only enough to live from hand to mouth, and to whom an occupancy-right or any right will be quite worthless. The cultivators of the soil in India, who form the mass of the population, are generally labouring classes, and Providence has ordained that they are to earn their bread by the sweat of their brow; to place them above want is, in my humble opinion, above

any human power. I have heard of more poverty and misery in Europe, even in England, than in India. However, worse than this limitation of the khámár and zarati land is to make null and void any contract between a tenant and a zamindar (sections 45, 47 and 49). India has been famous for the honour of her contract. It will be a pity to teach her now that a man's contract is nothing; that even legal contracts are good for nothing. This very Council passed Act X in 1859, under which, having full faith and confidence in the Acts of the Government, suppose I let out ten bighás of land to A—never mind for the consideration passing between me and A, whatever to my loss or profit, or A's loss or profit, but it was agreed upon that after five years the land will again be at my disposal, and it will rest with me to re-let it or not. The agreement, patta and kabuliyat, have duly been registered and they were as legal and binding documents, at least in my humble opinion, as the Government promissory notes are, or a treaty between the British Government and any independent Chief of India, on the 2nd of this month; but on the 3rd, if the Bill passes, they are a mere piece of waste-paper. I am quite bewildered what history will have to say of such transactions. I know of a Commissioner of a revenue division, who was writing a history of India, but when he came to the transaction between Civil and Amin Chand he tore up all what he had written, saying that he could not perpetuate such a blot on the character of his countrymen. Reduce the twelve years period for the growth of occupancy-right to twelve days; reduce the rent from Rs. twelve to twelve annas—anything may be done, but for goodness sake do not repudiate legal contracts so publicly and without any tangible excuse. The Canal Bill, or whatever its true designation may be, brought forward by the brother Stracheys, which proposed to levy a compulsory rate of water and revive a modified *begar* system, and which consequently was voteod by the then Secretary of State till those two objectionable sections were removed, was nothing compared to this Bill, limiting the *khámár* and *zarati* land, and making null and void legal contracts. I do not find in the long and exhaustive speech of the hon'ble the Law Member anyone or anybody, whether Sir Ashley Eden, Sir Richard Temple, Sir George Campbell, the Rent Commission or the Famine Commission, proposing this kind of drastic measure.

"I never doubt for a moment the power of your Excellency's Council or the legality of its acts. The Council can repeal all the Regulations of 1793 if they like, and make even the Permanent Settlement itself a matter of history; but the question is simply this, whether it is wise and politic to enforce such measures, the need and necessity of which are not at least apparent to those who are mostly affected by them. Let us see what Sir James Stephen said on

the 6th April, 1871, at Allahabad, on the occasion of passing the Local Rates Bill. He said:—

'We are not a representative Government. With every wish on the part of every member of the Government to use his powers for the benefit of those whose interests they affect, it is impossible not to feel at every turn how great are the differences between the governors and the governed, and how supremely important it is for all parties that, whatever else the people of the country may feel about their rulers, they should feel perfect confidence in their good faith and in their scrupulous observance of their promises. A really representative Government may deal with the pledges of their predecessors in a very different way from a Government like ours. If Parliament, representing as it does the views and feelings of the population of the United Kingdom, should see fit to re-open the question of the Scotch and English Church Establishments, it would be absurd to say that they were debarred from doing so by the act of Queen Anne. They are themselves the representatives of the descendants of those by whom the Act of Union was passed, and they have the same moral right to undo what their predecessors did in a matter affecting the English nation for the time being, as a man has to reconsider resolutions which he has made at any particular period of his life as to his own subsequent conduct in matters in which he has entered into no contract with others. We, on the other hand, are in a position more nearly resembling that of a person who has made a contract to his release from which the consent of the other party is necessary.'

"It is true that there is no contract or compact here concerned as between two Powers, like Russia and China; and I am not one who always brings forward the common phrase 'Permanent Settlement' as a great bugbear. I know very well that it settles only the Government demand, and no question of Government demand or revenue law is just now before us. I own that it is the great duty of the legislature to protect the just rights of the tenants and promote the welfare of the cultivators of the soil; but at the same time the duty is not a bit less to protect the just rights of the zamíndárs. We, zamíndárs, do not want the rights of an English landlord, whatever he may be—a lion or a bull—we are zamíndárs; and let us have a zamíndár's right. The Government proclaims by tom tom or, at any rate, gives us to understand that every one's right is to be protected. Now is the right which has been enjoyed by the zamíndárs, at least for the last ninety years, which has been acknowledged from time to time by the law and by all the Courts of British India, and on the faith of which acknowledgment millions and millions of money have changed hand: no right at all? One has a kabúliyat duly executed and registered under section 7, Act X of 1859, that never any occupancy-right is to accrue in the land; or, according to the established custom and usage, has entered some land relinquished by his tenants in his own name, as sír or khámár or zarat in the village-records, for which he pays revenue, and now and then lets it out wholly or partly to the villagers from year to year. Now this Bill in one breath

makes the kabúliyat null and void, and the zamíndár's sír, khámár or zarati land becomes the property of a ploughman, only because it was not held by the zamíndár continuously for twelve years. Act X of 1859 can be repealed, but how on earth all the contracts entered into under it can be made null and void and all the decisions of the Court upset? When the Government makes legal, private contracts null and void, how it can be expected to respect long its public contracts?

This is, perhaps, the last time in my life that I shall have the honour of speaking anything in the Viceregal Council, and I am very sorry indeed that I have not been fated, like my hon'ble friend Mahárájá Sir Jotindra Mohan Tagore, to thank your Excellency for the fulfilment of a 'pledge'; but the onerous duty which I have to discharge, though sad and painful, compels me to warn that, if such a Bill passes, it will shake the faith and confidence of the people, not only of British India, but of all the Foreign States, in the Government to its foundation. I sincerely hope no one may have ever to say what the 'vakíl' of the then Mahárájá of Jaypur had said to General Ochterloney, when he handed over the Jaypur State to the tender mercies of Scindhia, that the conscience of the Government is subservient to the exigencies of the time. Englishmen have an adage that 'necessity has no law', and so the Muhammadans, '*gar Zarurat buvad ravá báshad*'; but we Hindus have a different kind of belief. Our great and famous Rájá of Ujjain, Bhartrihari, says: 'Let the people praise or abuse, let wealth come or go, let death approach this moment or remain far away, great men never depart from the path of justice.' (*nindantu niti nipuna yadi va stuvantu,—lakshmi sama visatu gachhatu va yatheshtam adyaiva vá maraṇa mastu yugántare vá—nyáyat pathâh pravichalanti padam na dhírah*). I am not an alarmist. I never doubt the prowess of the British nation, or the proverbial loyalty and submission of the Indians. If to-day the Government orders a general confiscation, even of the moveable property, I am certain that the loyal zamíndárs of Bengal and Bihár will bring all they possess, except what they may conceal underground, on their heads and shoulders to the treasury. But I may be allowed, my Lord, to repeat here the words of the erudite Sir James Stephen that 'whatever else the people of the country may feel about their rulers, they should feel perfect confidence in their good faith and in their scrupulous observance of their promises.' In conclusion I may be allowed, my Lord, to hope that I may not be misconstrued. It is only a sense of duty, and a deep sense of duty, which has compelled me to occupy so much of the time of the Council."

The Hon'ble MR. HOPE said:—"As this Bill comes under the broad designation of a revenue Bill, and as I may, perhaps, to a certain extent claim to

be considered a revenue expert, I should, under ordinary circumstances, think it my duty to enter into the question which it deals with at some length. But, considering that the Bill relates to only one Province of British India, and that Province is represented by so numerous and able a body of members in this Council, I do not feel myself called upon to offer more than a few very general observations. As regards the Bill itself, in its general lines, I have very little to say; except that, though I approve of it so far as it goes, I must confess I should have been glad if it had gone somewhat further in the direction of ascertaining and recording, not merely rights, but equitable and fair rates of rent, which would have been useful as standard for all classes of landlords and tenants to refer to; and if it had cast aside altogether the idea of determining the raiyat's status according to the time for which he may happen to have held his land, an idea which has done so very much harm in past in these Provinces. Still I am well aware there are excellent reasons for bringing forward the present proposition in the form in which it stands. I can only say that, such as it is, it will command my cordial and, if necessary, my active support. There is, however, one class of argument which has been brought forward by those who do not regard the Bill with favour, to which I must for a few moments give more detailed notice. The Hon'ble Kristodás Pál, if I rightly understood him, endeavoured to fortify the position of the Bengal zamíndárs, by asserting that their tenants were, through their means, in prosperous circumstances, and by contrasting the good condition of the cultivators of Bengal with the wretched condition of the cultivators in Bombay and other parts of British India. I think I may leave the condition of the raiyats in Bengal to the Bengal members who will follow me, and who will, if they feel inclined, offer proof of what I consider to be notorious, namely, the wretchedness of the raiyats of that Province. But as regards the condition of the raiyats in the Bombay Presidency, which the hon'ble member has described as being wretched in the extreme, I must emphatically deny that any such terms or any such description, can be applied to them. If the means were here at hand, I could show with the greatest readiness, from the most ample statistics, reaching back for a number of years both of trouble and of plenty, that the Province has gone on increasing in wealth and prosperity during the last fifty years in which British rule has been gradually consolidated and elaborated. This growth and prosperity I could prove, not merely as regards the Presidency generally, but as regards particular districts. Taking even the districts to which the Dekkhan Agriculturists Relief Act applies, it would be easy to show that these very districts have largely increased in population, cattle, cultivated land, wells and other substantial signs of wealth. Taking the districts of the Presidency generally, they pay larger stamp

and excise revenue than any other portion of British India, and taking even the four Dekkhan districts under the Act, they were able, when the famine came upon them, to send large sums in ornaments from their savings to the mint; and they thus offered the best evidence which any unprejudiced man could desire of having been long rising under a beneficial system of assesment. But how, then it may be asked, can these assertions be reconciled with the fact of the Dekkhan Agriculturists Relief Act, and the outcry about the over-assessment of the land-revenue in those parts? In the first place the Dekkhan Riots Commission only declare that in these districts one-third of the population were in serious debt at all. Moreover, the bulk of those said to be in debt were not resident in any of those districts or taluqás which had been subject to the revision of assessment referred to in the extracts which the hon'ble member has read. I altogether deny that the revenue assessments are high. So far from reaching forty per cent. of the gross produce, as the hon'ble member supposes, they have been found to be only on an average from one-eight to one-sixteenth of that produce. I would, moreover, state that the assessments are not based on the barbarous and unsound system of taking a fixed proportion of the gross produce, because in the Bombay Presidency we are fortunate enough to have a classification of lands, which renders any such rule-of-thumb method unnecessary. Whatever hardship or oppression may have been caused by the assessment has not been owing to the severity of it, but to certain incidents in the mode of its collection,—incidents which, I am glad to say have considerably altered since I first alluded to them in this Council. If we now turn from this fact of light assessment to seek the causes of the indebtedness of the raiyat, I would point out that one of the principle of them is one which renders the analogy, which the hon'ble member has attempted to draw, altogether a false one. One of those causes is, that the land of the Bombay raiyat has been for the last thirty years transferrable, while the land of the Bengal raiyat is not, or is not recognised to be so. In consequence of this transferability, the raiyats were of course able to borrow, if during certain prosperous times in 1865 they were tempted to borrow beyond all reason. When the times changed, the meshes of legal entanglement did not permit them to recover themselves. What, then, it may next be asked, have you to say about the throwing up of land? I reply that we in Bombay are fortunate enough to have still remaining to us that customary law of India which the Bengal zamíndárs have overridden, and that the status of a raiyat over there does not depend either on contract or on the period of his occupation of the land. A raiyat there may, by giving notice, throw up his land when prices are lower or drought has weakened his cultivating powers, and may take it up again in better times, without any loss of status in conse-

quence of not having held it during the intervening years. In short, we have an elastic system, which enables him to vary his responsibility at will, and to contract his operations in any year owing to famine or other causes. But, then, it may be asked, what is the cause of this outcry in Western India? That outcry, I reply, is essentially a *zamindárīs* outcry, and has been raised by two well-known classes of persons. In the first place, there are various petty Native chiefs within British territory who systematically take rents far above those fixed by the revenue survey and assessment, and they dislike that assessment, because it is a just standard, according to which they are periodically pressed by their own raiyats to moderate their demands. Again there is a class of superior holders, who take from their tenants a certain share of the produce, and who, according to the customs of the country, pay the Government revenue out of their share. Consequently, they of course are anxious to see that revenue reduced to the lowest possible amount and even though it were abolished altogether these are the men who would be the gainers, and not the raiyats whose advocates they pretend to be. These, then, are the causes which give rise to this outcry. And in this fact, that the outcry is a zamíndárí outcry, is, perhaps, to be found the real reason why certain members of this Council have testified their great sympathy with the circumstances of the raiyats in a far distant Province—a Province whose prosperity they have no eyes to see, and of whose circumstances they are profoundly ignorant. But the point in the argument of the hon'ble member, if I rightly understand it, is somewhat of a *tu quoque* nature. Supposing, he says, that our zamíndárs' rents are rather high the rents received by Government are high also, and as we are more or less in the same position you should give us the same facilities you have yourselves to recover these rents. This argument is partly a retort, and partly an appeal for stronger powers and a simple procedure for recovery of zamíndárs' rents. So far as it is a retort it is, as I have amply shown, incorrect in fact and devoid of application. So far as it is a basis of appeal, I would beg to point out that in the Western Presidency these powers which he covets, are used where the assessment has been carefully graduated in accordance with the capabilities of the soil after a careful survey and record-of-rights; where there is a complete recognition of the customary tenure of India, and a system which has the elasticity to adapt itself to variety of seasons and means, and where, moreover, the assessment which is fixed under this system, has been fixed for thirty years.

In Western India, I am glad to say that a large and increasing number of Native chiefs and landholders, who have sufficient enlightenment to recognise the advantages of this system, have called in the Revenue and Survey Depar-

ment to survey their lands and fixed their rents for them, have agreed to abide by their decision, and have introduced rates accordingly. Assistance to recover such rates is readily obtainable from Government. I would recommend the same course to the zamíndárs of Bengal ; and when next they desire to come before the Government asking for additional powers to recover their dues, they had better accompany their request with the other, that these rents may be fixed on scientific principles for a term of years. I think, my Lord, that this is all that it is necessary for me to say regarding the Bill in its present form ; but I may repeat that it will receive my hearty support."

The Council adjourned to Tuesday, the 13th March, 1883.

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

CALCUTTA ;
The 12th March, 1883.

S. C. P. I.—No. 307 L. D.—11-6-18.—50.