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CALCUTTA SATURDAY, JANUARY 24, 1885.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PAPERS RELATIVE TO THE BENGAL TENANCY BILL, No. II.

Note by BABU KISHORI LAL SIKKAR.

1. Clause (5) of section 5 is likely to operate to hardship on occupancy-raiyats who are fortunate to have large holdings. With the imperfect provisions on restriction of enhancement and on restriction of the right of ejectment in sections 7 and 12, respectively, it is hard to say that the position of a tenure-holder is better than that of an occupancy-raiyat. This being so, it would be probably lowering the position of an occupancy-raiyat; it converts him into a tenure-holder, and such conversion clause (4) of section 5 will facilitate. Besides, the line of demarcation is too arbitrary and will be a source of increased litigation.

2. The object of the clause, as I apprehend it, is that in the case of such big holdings as exceed 100 bighas in area, the law should not prevent the accrual of occupancy-rights under such big holdings. The object is good and fairly represents the existing custom. I would maintain this object by altering the clause in the following manner:—

"Where in a holding there are three or more raiyats domiciled on parts of the holding, who hold lands belonging to the holding as khudkhast raiyats, the person to whom the holding belongs shall be presumed to be a tenure-holder unless the contrary be shown."

3. This would get rid of the arbitrary limit of 100 bighas and at the same time would make the presumption applicable to cases where there are no khudkhast sub-tenants, or where there are only one or two such tenants. No doubt the line of demarcation I propose is also arbitrary, but I believe it is less so, and will at all events be susceptible of easy proof.

4. But the above change is one that I propose in connection with another that I would suggest. I would have section 37 modified as follows:—

"Where under a occupancy-raiyat there are two or more raiyats domiciled on parts of the occupancy-holding, all hold portions of the occupancy-holding as a khudkhast raiyat under the occupancy-raiyat, such occupancy-raiyat shall be deemed to be a tenure-holder in relation to such khudkhast holders under him, but, in all other respects he shall be an occupancy-raiyat."

5. The above change also will get rid of a very arbitrary provision, while it will maintain the good object with which that arbitrary provision was made.

6. I have suggested the above changes in view of what I know and believe to be the prevailing customs, such customs being that domiciled sub-raiyats are allowed practically almost the same rights *quoad* the lands they hold as the raiyats under whom they hold, while sub-raiyats who, not being domiciled on any portion of the tenure, hold portions of the tenure as outsiders or *paikist* raiyats are seldom deemed to possess any permanent or secure rights, except when there has been an express written contract creating such rights.

7. As a sequence of what I have said I would propose the removal of section 38, for the rights of khudkhast sub-raiyats being secured as above (they being in effect declared to be occupancy-raiyats), the rights of non-khudkhast sub-raiyats may well be left alone; only it may be provided in the case of non-khudkhast sub-raiyats they shall be presumed to be tenants from year to year unless the contrary were shown.

8. The above suggestions I make with great diffidence, and I am not prepared to press for their adoption without thorough discussion and consideration.

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9. I would next say a word about section 41. Those providing for the term of the contract being at least seven years in certain cases is, I think, one of which zamindars may take an undue advantage by misinterpreting it to ignore raiyats, and by inducing them to believe that they are bound to give some increase of rent at seven years. I wish the mention of the period of seven years might be omitted, at the same time some expression might be used to show that an increase of two annas per rupee would be more encouraged than an increase of four annas in the rupee.

10. I should also wish that the powers given to the collectors in the chapters of "Record of rights," "Settlement of Rent" and "Table of Rates" might be limited to recording existing rights, settling existing rents and recording existing rates without the power of making enhancement in any of these cases. My reasons are, that it is not safe to leave the power of enhancement to the discretion of individual executive officers, whose inclinations, which vary very greatly, generally influence their decisions; and, that to impose on them the duty of enhancing rates would be imposing on them a task too heavy, if not altogether impossible, for them to discharge.

11. To clause (1), section 231, an exception should be made to the effect that when any char land is the re-formation of, or accretion to, any holding the right to such land shall be according to the law of accretion and re-formation.

12. If the Bill be so changed as to leave any occupancy tenure as a non-transferable holding, an exception shall have to be made to section 78 for sub-occupancy-tenures.

13. On the question of enhancement for increase of price, I could have pointed out in my last letter that the ground as it is now put is so far unfavourable to the raiyat, compared with the ground in the present law, as it is made independent of actual produce, which may have diminished in quantity. Hence the necessity of the safeguard.

P.S.—I should have added in my last note that the definition of "settled raiyat" as in the Bill would injuriously affect raiyats of villages which happen to be washed away by the river.

No. 2071 T.R., dated 29th September 1884.

From—Officiating Under-Secretary to Government of Bengal,

To—The Secretary to Government of India, Legislative Department.

In continuation of Mr. MacDonnell's letter No. 1993 T.R., dated 23rd September, 1884, I am directed to submit, for the information of the Government of India, a copy of a letter dated 16th idem, from the General Secretary to the Behar Indigo-planters' Association, with its enclosures, containing the Association's views on the provision of the Bengal Tenancy Bill regarding the transferability of occupancy-right and the raiyat's right to sublet his holding.

Dated 16th September 1884.

From—W. B. HUDSON, Esq., General Secretary to the Behar Indigo-planters' Association,
To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to forward herewith, for submission to His Honor the Lieutenant-Governor, copies of proceedings of our Association at two meetings held at Mozufferpore on the 26th of July and 16th of August respectively, the one called to discuss the transferability of occupancy-rights, the other the raiyat's rights to sublet his holding and the restriction placed on such right in the Bill.

2. I have no doubt His Honor is already aware of the great importance the members of the Association attach to those portions of the Bill which treat of these two subjects, and also of the opinion we hold that it is only by a just and fair treatment of the portions of the Bill referring to transfer and subletting that we, in common with all traders, can ever hope to be in a position to treat with the cultivators of the soil on fair and equal terms. To us as a class they are of paramount importance. The foundations of all trade are security and credit—the one dependent on the other. Any attempt to lower the raiyat's credit by depreciating the value of the security he should be in a position to offer, any attempt to make the security he could otherwise offer dependent on the good-will of others, must, from the very nature of any business, make it impossible for the raiyat to meet up on advantageous terms and compel us to propitiate the landlord before entering into any arrangement with the tenants.

3. Relying on the views repeatedly expressed by the members of the Government on the subject, we have presumed that the principle of embodying transferability and the right to sublet amongst the incidents attached to an occupancy-holding has been definitely decided upon, and that it was no longer open to discussion. We have to a certain extent

followed the suggestions made to Commissioners of Divisions in your letter of the 24th of May last, and confined our discussion mainly to the restrictions placed on them in the Bill, and such other restrictions as we thought might be submitted with a view to attain the object we understand His Honor desires, that is, to prevent the land falling into the hands of persons who would purchase it with the sole object of making a profit by rack-renting.

4. We deem it, therefore, unnecessary to defend, by any elaborate arguments, the general principle of transferability of occupancy holdings, or the necessity for making provision for such in the Bill; but should His Honor, after receiving the additional information called for in your letter of the 24th of May, or when, as indicated in your letter, the provisions of the Bill "have been tested in the light of local experience and existing facts," deem it necessary to recommend a modification of the "principles" of the Bill, we trust His Honor will allow us, who are more interested in this subject than the landlords, and equally as much as the raiyats, an opportunity of again submitting our views on it.

BEHAR INDIGO PLANTERS' ASSOCIATION.

Proceedings at a General Committee Meeting held at the Planters' Club, Mozufferpore, on Saturday, the 26th of July 1884.

PRESENT:

The Hon'ble T. M. Gibbon, C. I. E.
Dr. J. H. G. Hill, of Turkaulia Concern.
Mr. E. Macnaghten, of Begumserai Concern.
" W. O. MacGregor, of Arba Concern.
" W. B. Hudson, General Secretary.

The above members met at the appointed hour, 8 A.M. After having waited till 9 o'clock, and a quorum of General Committee members not having been formed, it was proposed—That the meeting be made a general one for discussion of the notified points of the Tenancy Bill (carried).

The following then formed the meeting:—

The Hon'ble T. M. Gibbon, C. I. E.

Dr. J. H. G. Hill.	Mr. A. MacRae.
Mr. E. Macnaghten.	" M. Mackenzie.
" T. J. Fraser.	" A. H. Rennie.
" W. O. MacGregor.	" B. Hudson.
" H. Collingridge.	" W. B. Hudson.

Read—Letters from General Committee members apologizing for non-attendance.

- BUSINESS.—1. Transfer. Sections 3, 10, 11, 23, 28, 31F, 31H, 77, 97.
2. Registration. Sections 15 to 22 inclusive.
3. Pre-emption. Sections 32 to 36 inclusive.
4. Incumbrances. Sections 175 to 192.
5. Contract. Section 210.

MR. GIBBON'S NOTE.

Section 3 (10).—Transfer covers mortgage.

Not only usufructuary mortgage—mortgage with possession, foreclosure on mortgage, but also a "lien."

It is difficult to draw the line between an usufructuary mortgage, a zarpeshgi mortgage, and a transfer in the wide sense of the word.

If transfer did not cover mortgage, the effect might be to prevent the raiyat raising money on a mortgage or simple lien. The fact is that the landlord may, by exercising the right to pre-empt given him under the Bill, interfere with legitimate trade.

I myself think the pre-emption clauses have been so framed that the landlord can only pre-empt on a foreclosure and on voluntary transfer.

It should be remembered that the Calcutta Rent Law Commission wished to allow transferability, but to prohibit mortgage; also sale by a decree of court other than a sale under a decree for arrears of rent.

Transfer of permanent tenures, such as (istamrati mokarrari tenures, &c.), occupancy holdings at fixed rates of rent, and tenures by reason of raiyat having sublet more than half his holding under section 31, are subject to one law: the transfer of ordinary occupancy holdings are made subject to another. The first are made subject to the provisions of Chapter on Registration: the second to provisions of part of the landlord.

Section 16.—When a permanent tenure or a holding at fixed rates is to be sold up under a decree of court for a debt other than a decree for an arrear of rent, the court will serve notice of transfer on the landlord.

Section 33.—A landlord cannot pre-empt after sale under a decree of a competent court, but the bid of a landlord and a bid of a third party being the same, the landlord's bid will receive the preference.

Section 18.—Until a transfer is registered by the landlord, the transferer and transferee are jointly liable to the landlord for the rents of the tenure.

Section 19.—When the tenure is sold up at the instance of the landlord, the landlord is bound to register without any fee.

Section 19 (1).—Landlords refusing to register can be compelled to register under an order of court [section 23 (2)], and may be fined for refusing, unless [section 19 (2)] they can show sufficient cause for doing so.

My objection to the above is that section 23 should be confined to actual *mokarrari* tenures or holdings that have been declared by a competent court to be held at fixed rates; if this is not done, every person who wishes to evade the provisions of the pre-emption clauses will plead protection under section 23.

Every landlord who would not otherwise wish to pre-empt may be obliged to exercise his right in order to set aside a claim to hold at fixed rates for ever after.

The landlord will be obliged to contest the claim for fear any "laohes" on his part may enable the transferee to acquire rights he otherwise would not possess.

Every raiyat who is sold up under decree of court for arrears of rent may contest the legality of the sale by declaring it incorrectly described under 178 and 179 (the sale sections having also been made applicable to holdings at fixed rates under section 182). It is to our interest to lessen litigation, not to encourage it.

Section 32.—The transfer of an ordinary occupancy holding is placed under restriction, it is made subject to pre-emption on the part of the landlord.

Section 32 (2).—To enable the landlord to come to a decision as to whether he will exercise his right or not, the would-be transferer must give the landlord intimation six weeks in advance of his intention to sell with all particulars of sale in order to permit of his valuing the holding, &c.

I presume that the landlord would, if he pre-empted without the assistance of the court under section 32 (4), have to take his chance of any claims on the property being made after transfer, and of which the raiyat had failed to inform him previous to sale. If the landlord claims the land at a valuation placed upon it by the court, the raiyat may elect to retain the land and not sell.

If the raiyat does conform to the law and sells without allowing the landlord the option of taking, the sale is void as against the landlord.

What the effect of this would be I do not quite realize; a lawyer must decide. I believe it would allow him to pre-empt at his convenience, or he might, after a certain time, more particularly if the transferer left the estate or ceased to reside on it, treat the holding as abandoned. Although the Bill does not and cannot provide for the would-be purchaser, seeing that the intention to transfer is properly notified to the landlord, intending purchasers would act wisely in seeing such notices served, or they may find the land in possession of others and themselves minus their money.

Section 56.—Allows a proprietor who collects his rents direct from his raiyats without the aid of middlemen to pre-empt. It allows permanent tenure-holders who collect from their raiyats to pre-empt. It allows middlemen who hold the written sanction of their proprietors to pre-empt.

But it does not allow *thikadars* or *ijaradars* to pre-empt without the written consent of the proprietor, and it does not allow the proprietor to pre-empt where his *ijaradar* refuses to act for him.

Sections 11-23-31F.—All holdings, whether permanent tenures, holdings at fixed rates, or ordinary occupancy holdings, may be transferred in the same manner, and to the same extent, as other immovable property, but nothing in the Act will entitle a tenant, whose holding is transferable, to transfer his holding, without the consent of his landlord, a portion only of the holding, so that it may be held by the transferee as a separate holding.

The landlord's interests are in so much protected that he may, if his rents fall into arrears, sell up the whole holding and decline to divide it. He may also, if he likes, take a *salami* and allow the portion sold to be held as a separate holding, but there is nothing to prevent a raiyat mortgaging first one field and then another, and registering each such mortgage as an incumbrance under 177 and following sections, or selling his lands piecemeal. Each such act would be legal as against the transferer, and against any third party wishing to purchase or lend money on the whole holding, and such would to a certain extent in some instances hold good as against the landlord in his capacity of transferee.

Section 31 (h).—In case the tenant dies intestate, the property would descend to his heir in the same way as other immoveable property. Although the Bill does not make direct mention of it, I presume the land might be divided among the heirs.

INCUMBRANCES.

Sections 175 to 192.—When discussing transferability, we must not lose sight of the very important chapter on sale for arrears under decree, and the extent to which our interests will be affected by its provisions. All interest in land is in this chapter (section 75) divided into three classes, viz.—“Protected interests,” “Registered and notified incumbrances,” and “Voidable incumbrances.”

Section 176. “Protected interests” go with the land, whoever the purchaser may be. It means shortly that be the title what it may on which the defaulter holds his land from his landlord, the fact of the holding being sold for arrears of rent shall not set aside the title: the purchaser shall hold the land under the same title and with the same rights the defaulter held it on.

Section 177 (a).—Incumbrance means any lien, sub-tenancy, easement, or any other right or interest created by the tenant on his holding, or in limitation of his own interest therein, and not being a protected interest as defined in section 176.

A registered and notified incumbrance means an incumbrance created by an instrument registered under the Indian Registration Act of 1877, and of which a copy has not less than 3 months before the accrual of the arrear been served on the landlord in the manner provided.

Sections 179 (a) and 180.—All permanent tenures, all holdings at fixed rates of rent (section 182), must first be sold for arrears of rent subject to their registered and notified incumbrances.

Section 181.—If the price offered is not sufficient to cover the arrears, the landlord may elect to hold a re-sale of the tenure with power to void all incumbrances.

An incumbrance not registered and notified is voidable. All transfers of tenures after the passing of the Act must be registered under Chapter III of the Bill.

Section 177 (b).—All incumbrances already registered before passing of the Act may be notified 3 months before arrear becomes due.

Sections 192 and 198.—All incumbrances created, but not registered, may, provided their registration is not compulsory under section 17 of the Registration Act, be registered and notified within one year from the passing of the Act.

Section 183.—An ordinary occupancy holding may be sold free of incumbrances for arrears of rent.

The only protection given to an incumbrance in a sale of an ordinary occupancy holding for arrears of rent is—

Section 186A, 1st.—If there is any surplus after satisfying decree, the surplus shall remain 3 months in court to allow creditors to bring forward their claims.

Sections 188 and 189, 2ndly.—A person having a voidable interest in the land may pay the amount of the decree into court, and such payment shall entitle him to possession of the holding until the debt is discharged.

Section 185.—The Local Government may, by notification in the Gazette, apply the same rule to occupancy holdings as apply to permanent tenures.

Sections 190 and 191.—A decree-holder may bid at a sale for arrears of rents, the judgment-debtor may not.

Sections 318 to 326.—Of C. P. C., providing for the setting aside of the sale on the application of the purchaser, is excluded from the operation of this chapter.

Under Chapter XVII, section 327.

A raiyat with transferable occupancy rights cannot get himself out of the right to transfer. Tenure-holders “may” do so if they wish. Many raiyats hold at fixed rates? In reference to the provisions regarding incumbrances, I would only say that I would like to see no distinction made between permanent tenure-holders and occupancy raiyats: all should have their holdings sold up subject to notified incumbrances. There is to be a distinction, a raiyat whose right to hold at a fixed rate has not been decided by a competent court, should be subject to the same law in this respect as the ordinary occupancy raiyat. It must be remembered that raiyats who sublet more than half their holdings will not require the benefit of the notified incumbrance clauses after the passing of the proposed Bill.

I need not say that I strongly approve of the power to contract themselves out of their right to transfer being withheld from raiyats with occupancy rights.

T. M. GRANT.

Much discussion ensued, more especially on the point of zarpaishgi mortgages being deemed by law Deeds of Transfer. By far the largest "dealings with raiyats" for land are now conducted on this basis, and any interference with transfer, or any restrictions on it as they now stand in the Bill, would have a most injurious effect on our business, and make the reiterate advice of officials, and even of the Bengal Government itself, that we should deal only with the raiyat for land for indigo cultivation, a mockery.

On the other hand, it would be most injurious to the raiyat. His only way of getting money at fair interest will be closed, and the present universal custom of raising money to pay off arrears of rent or other debts by giving over a small portion of his holding on zarpaishgi mortgage will be subverted, and the consequences be that he will fall entirely into the hands of the mahajans.

We have never looked on a zarpaishgi mortgage as a regular transfer. For instance, a raiyat owes Rs. 40 to his mahajan, or for arrear of rent. He comes to us, complains that he is paying 36 per cent. interest and offers one bigha of his land for 8 years at an annual rent of Rs. 5, the rent to go as a set-off against the loan. At the end of the period the land reverts to the raiyat. This is the cheapest way any raiyat can get out of a difficulty. It is fast becoming the universal custom of North Behar, and by fostering it it will do more for the raiyat and less harm to the zemindar than any system of takavi advances that Government can organize.

The following points were noted by the General Secretary for reference to counsel for opinion, viz. :—

- (a) What effect has the word "void" in section 32 (5) as against a transferee?
- (b) What would the landlord's remedy be?

On section 23.—The meeting was of opinion that the permission to raiyats holding at fixed rates to use their holding in such way as to render it unfit for agricultural purposes should be limited to raiyats whose right to hold at fixed rates has been decided by court.

Sections 175 to 192.—In reference to the above, the meeting considered it advisable that occupancy holdings should be placed on the same footing as tenures, viz., they should be first subject to incumbrances.

(a) If it be necessary to give the landlord any consideration to induce him to sanction transfer, his power of veto or pre-emption should be taken from him, and a registration fee on all transfers allowed him in place of it.

(b) If the landlord's right of pre-emption is to be retained in the Bill, all occupancy holdings other than those at fixed rates by virtue of a decree of court should be subject to pre-emption the same as ordinary holdings.

(c) If it be necessary to place any restriction on transfer with a view to prevent land jobbery and rack-renting, it would be better to forbid the transferee sub-letting or re-transferring within a given time, say three years, than to provide restrictions that will affect others than transferees.

After discussion Mr. Gibbon proposed as above (c).

Mr. MacGregor proposed as an amendment—

That if the entire holding only is to be transferable, the transferee should be allowed to sublet, but not to enhance, i.e., demand more rent than he pays himself to his landlord.

On these being put to the meeting, the votes for each were found to be equal.

On the Secretary asking the opinion of the meeting as to whether the transfer of a portion of a holding should be allowed, or only the whole as it stands on the rent-roll, the question was discussed freely. Mr. MacGregor urged strongly that as planters we did not want to purchase raiyats' jotes, but only a few kottas probably of each when the land was high and fit for indigo; consequently that, unless a portion of a holding were transferable, planters would not avail themselves of transfer to any large extent. Most of those present disagreed with him as to the advisability of permitting transfer of a portion of a holding as being unfair to landlords.

On the question of what our general proposition should be as to transfer—

Twelve different modes of treating transferability were cited by Mr. Gibbon, viz. :—

1. As it stands in the Bill.
2. Transferability with right reserved to landlord to pre-empt on all transfer—transfers of tenures as well as on transfer of occupancy holdings.
3. Transfer with right reserved to landlord to pre-empt on transfer of all occupancy holdings other than occupancy holdings at fixed rates decreed by a court of law.
4. Any of the above with power reserved to the raiyat to contract themselves out of their rights.
5. Any of the above with additional restrictions on sub-letting or other restrictions to prevent land jobbing.
6. Transfer of the "whole" of the holding without restriction, but with prohibition of a transfer of a portion, giving the landlord a remedy in case of transfer of a portion without his consent.

7. Free transfer.

8. Transfer to resident cultivators to be alone permitted.

9. Transfer with restriction by landlord on receipt of fee.

10. Absolute prohibition of transfer.

11. Make no mention of transfer.

12. Transfer permitted by voluntary sale or by decree of court for arrears of rent; in no other case mortgage prohibited.

Of these No. 7, free transfer of the whole holding was decided by the meeting to be most desirable.

Mr. Gibbon said he would propose that transfer of the whole holding be unrestricted, but subject to a registration fee to the landlord as above, and that transfer of a portion be prohibited, giving the landlord a remedy.

The meeting adopted his view.

Section 210. Contract.—Power of raiyat to contract himself out of his rights objected to by zemindar.

Read letter from Supreme Government of Bengal, dated 5th of April 1884 (paragraph 28), referring to a suggestion on the part of the zemindar, that raiyats should be allowed to contract themselves out of their rights to transfer and sublet.

The meeting was of opinion that the raiyat should not be allowed to contract himself out of his right, as his ignorance and apathy would most certainly be traded on by Mr. Gibbon's remarks.

But if Government are prepared to make provision in the Bill to see that the raiyat, or has acted, as a free agent, receiving a fair equivalent in surrendering his undoubted right, the meeting would be prepared to support the zemindar's proposal.

W. B. HUDSON,

General Secretary, B. I. P. Association.

N. B.—The date of the next meeting was fixed on the third Saturday in August, i.e., 16th of August 1884.

INDIGO-PLANTERS' ASSOCIATION.

Proceedings of the General Committee Meeting held at Messrs. Gibbon's, Messingpore, on Saturday, the 16th of August 1884.

Present:

The Hon. Mr. T. Gibbon, C.I.E.,
 Messrs. H. G. Hill,
 Messrs. J. G. Hill,
 M. Macleod,
 T. J. Fraser,
 Robt. Wilson,
 H. C. Spry,
 W. B. Hudson,

Members of the General Committee.

Many other planters were also present watching the proceedings.

Dr. Hill was requested to take the chair.

Business.—The proceedings of last meeting confirmed.

II.—The General Secretary requested the Chairman to put the question to the meeting whether the proceedings of this day should conclude the discussion of the Tenancy Bill for the present, until the proceedings of the official conference have been published.

The Meeting decided that another meeting should be held next month, on the 16th of September or other date to be decided by the Secretary, whom he had applied to Government for a copy of the proceedings of the official conference.

In accordance with the notice of the Subjects for discussion at the next meeting Mr. Gibbon was requested by the Chairman to commence with—

(A)—Subletting and its incidence in the Bill.

(B)—Restrictions, sections 31 (3), 37, 38.

(C)—Restriction to under-raiyats, sections 62 and 63.

(D)—Surrender and abandonment, Chapter XIII, Distraint, more especially sections 154, 155, 156.

(E)—Incumbrances, Chapter XV, particularly sections 177, 178, 183, 185(1), 189.

(F)—Contract, section 210.

Sections 37 and 38 containing restrictions on sub-letting were first discussed by several members who had not been present at the last meeting. The several discussions on this point at former meetings were gone through.

It was strongly urged by several members that the period allowed by the Bill was insufficient and contrary to the present custom of these districts of Behar, and on reference by the Secretary to the proceedings of our last meeting [remark (C)] he was requested to record the opinion of the meeting that Mr. Gibbon's proposal should be adopted, viz.—

"That if Government deem it necessary to restrict subletting of occupancy-holdings with a view to discourage land-jobbing, such restriction should be made applicable only to holdings that are sublet within a given time of a transfer or purchase."

Mr. Robert Wilson proposed that we should go further on this point, and that to prevent all land-jobbing and rack-renting no enhancement should be allowed by transferees.

It was pointed out that this was substantially the same as Mr. Macgregor's proposal at our last meeting, and also that the votes for and against that proposal were equal. On being put to the vote the Chairman declared it carried that the proposal as it stood in last meeting's proceedings be adopted by this meeting, viz.—

"If it be necessary to place any restriction on transfer with a view to prevent land-jobbing and rack-renting it would be better to forbid the transferee subletting or transferring within a given time, say, three years, than to provide restrictions that will affect others than transferees."

It was pointed out by Mr. Gibbon that to give effect to Mr. Wilson's proposal it would be necessary to enact that a transferee subletting the land should not recover from his sub-tenant more rent than he pays his landlord, and that he agreed with Messrs. Wilson, Macgregor and others that this was desirable in every way, but that, however stringent the law might be, it could always be evaded by the transferee demanding a bonus and letting the land from year to year—a bonus at the commencement of each year and the usual rent at the end of it.

Surrender and abandonment.—Section 95.—Messrs. Fraser and Spry pointed out to the meeting the position a sub-tenant was placed in where an occupancy-raiyat in collusion with his landlord resigned or abandoned his holding for the purpose of voiding a sub-lease. This was discussed at much length and various remedies suggested, but all were open to the objection that any recommendation made by planters would be looked on as an attempt to secure their own interests to the detriment of the zamindars. The broad fact is well-known to the officers of Government that tenants-at-will, and much more sub-tenants, are at mercy of their zamindar unless in the latter case full protection is afforded then in cases of collusion between superior and inferior landlords. Where planters are sub-tenants they must take their chance with the rest of the class.

Distrait and incidence on sub-tenants. Sections 139, 139 (2) and (3), 154, 155, 156.

The above were read and discussed, and the opinion of the meeting taken on each.

Mr. Gibbon reminded the meeting of the recommendation of the Behar Rent Committee of 1878 concurred in by the planter members.

Note.—On reference to those proceedings it is noted that it was then proposed by Mr. Gibbon "that the Law of Distrait be entirely abolished, and that the summary procedure suggested in the Bengal Bill (1878) for the more speedy realization of rents be adopted in its place," and that the following members of the Behar Rent Committee voted in favour of that proposal, viz.—

Mr. F. M. Halliday, Commissioner of Patna.	Mr. D. N. Reid, Planter.
" C. F. Worsley, Collector of Mozufferpore.	" G. Toyne, Collector, Patna.
" G. Anderson, Planter and Zemindar.	" M. Finucane, Settlement Officer (Secretary).
" T. M. Gibbon "	" Baboo Bimala Ch. Bhattacharya, District Magistrate.
" W. B. Hudson, Planter.	
" J. F. Browne, Judge, Patna.	

This recommendation not having been acted on, that is, Government not having provided a summary procedure to facilitate the recovery of disputed amounts of rents, we are not in a position to urge the total abolition of distrait with all its attendant abuses. But with free transfer the value of occupancy holdings in the market will be so increased that there should be no real difficulty in recovering any rent due by decree and sale of holdings, and the abolition of distrait be merely a question of time.

Protection afforded to sub-raiyat by sections 143 (2), 154, 154 (3), 155 (1), 156 noted.

Under the circumstances the meeting did not desire to record any opinion on the subject.

Incumbrances.—Chapter IV, more specially in reference to subletting, sections 177, 178 (b), 183, 183 (1), 189.

These were discussed and many questions put to Mr. Gibbon as to the intention of the framers of the Bill on several points.

It was ultimately decided that the following point should be put to Counsel for opinion, viz.—

Query.—Reading section 177 with 27—

Whether a mortgage of a portion of a holding by any occupancy-raiyat would be considered an incumbrance under section 177 and receive the same protection as is afforded to mortgages of whole holdings under the Bill?

Contract.—Section 210. The meeting was unanimously of opinion that if this section is not upheld in its entirety, the Bill will afford no real protection to the raiyat under the

present state of matters in Behar, and that Mr. Gibbon should urge strenuously the maintenance of this section in its entirety.

With a vote of thanks to the Chairman, the meeting concluded.

W. B. HUDSON,
General Secretary, B. I. P. Association.

Memorial of Committee of Orissa People's Association, dated 21st October 1884.

To His Excellency the Viceroy and Governor-General of India.

The humble memorial of the Committee of the Orissa People's Association, in attack,—

MOST RESPECTFULLY SHEWETH,—That your Excellency's memorialists have come to learn with regret that the bloodthirsty zamindars, knowing that the new Tenancy Bill is sure to be passed, have been inciting the tenants of Government khas mahals to introduce the provisions of the Bill in the khas mahals.

2. The motive of this conspiracy with the tenants is that Government will at least give to the zemindars the same rights which it reserves to itself in these estates.

3. Your memorialists have also learnt with regret that the zamindars have conspired to induce some ignorant raiyats (completely under their thumb) to make some agitation against the Bill, with a view to serve their own ends, when the next Viceroy comes to Your Excellency's place, and thus delay the passing of the Bill.

4. Your memorialists beg to state that the *Statesmen* newspaper has now become an organ of the zemindars, and has particular connection with the big zemindar family of Paikpara near Calcutta. The opinions of this paper should be taken to be those of zemindars only.

Your memorialists therefore pray that the Bill in question may be passed by Your Excellency in Council without delay, and that the huge conspiracy of the zemindars, got up at great expense, be put down.

And your memorialists, as in duty bound, shall ever pray.

To His Excellency the Viceroy and Governor-General of India in Council.

The humble memorial of the middle tenancy holders of the district of Jajpur, in attack,—

MOST HUMBLY SHEWETH,—That your Excellency's memorialists, as belonging to an important class interested in the Rent Law of the land, have put their humble case before Your Excellency in Council, in order that the Tenancy Bill now pending before the Legislative Council may be so modified as to render justice to Your Excellency's memorialists as regards their rights and status.

That the holding of land by the middleman is an ancient institution of the country. That as an indispensable incident of the social constitution of the nation, this system of tenures has always been recognised by the common law of the country.

That the Code of Manu clearly indicates the origin and status of the middlemen holders by recognising the fact that between the village community and the lord of hundred villages, there was the lord of ten villages. That in the time of Mahomedan Government, the zamindar of a whole pergunnah stood in the place of the lord of hundred villages, and the dependent zamindars filled the place of the lord of ten villages.

That, unfortunately, the British Government has in no case so completely misunderstood the status and position of a class as in the case of middlemen. That the British Government has deemed the idea of a middle holding incompatible with any system of rural tenantry rights more or less as an anomaly, and has often attempted to bring it to the farming system as in England.

That it was not until 1805 that generous and noble-minded Lord Cornwallis found the position of the holding in the most flourishing state, and their rights and status such as to make it necessary to recognise them as actual proprietors in many cases, just in the year 1805 A. D. a Regulation was passed by which the further growth of the system was arbitrarily prohibited, by which in fact a class was given to the middlemen as a class.

That to complain to Your Excellency of old acts of injustice only that Your Excellency's memorialists now approach Your Excellency. That such is the force of natural justice and deep-rooted customs that the Legislature found it necessary in the years 1805, 1812, 1819 to retrace their steps from the above-mentioned unjust and arbitrary direction and to take away the bar under which the middlemen as a class had been placed by prohibitory provisions such as of Regulation XLIV of 1794.

That notwithstanding whatever injustice the Legislature may have at times done to the middlemen class, the assurance by Government to enact such regulations in future as the Government may think necessary for the protection and welfare of the dependent talukdars, yet stands in the Statute Book, *viz.*, in section 8 of Regulation I of 1793.

That Your Excellency's memorialists will now enumerate the particulars in respect of which Your Excellency's memorialists feel aggrieved with reference to the provisions of the Bengal Tenancy Bill.

(a) Section 51 of Regulation 1793 provides that, except in certain cases, the rent of a middle tenure shall not be enhanced. By this the onus was thrown on the zemindar to make out any case in which he claimed the right of enhancing the rent of a middle tenure, that the case came within any of the exceptions.

The Bill, however, reproduces the above section by limiting its operation to tenures held from the time of the Permanent Settlement. Your Excellency's memorialists humbly say that this would seriously prejudice the interests of the class to which your memorialists belong.

(b) The precedents of the High Court make it open to a tenant to plead limitation in cases in which the landlord denies the rights of the tenants. Besides, it is only just that if a man can acquire absolute proprietary rights by virtue of his possessing any land for 12 years, a middleman who has held lands for 12 years should have at best the right of continuing to hold them on his paying a fair and equitable rent. In the case of a cultivating ryot, such a right is recognised. Your Excellency's memorialists pray that the Bill should have in it a clause inserted to the effect that when an intermediate tenure has been held for more than 12 years, the holder shall not be liable to ejectment if he is willing to pay a fair and equitable rent.

(c) Where the rent of an intermediate tenure is enhanceable, neither the present law nor the Bill provides for any reasonable and just rule to regulate the mode and extent of the enhancement. Your Excellency's memorialists pray that the Legislature should lay down a rule to the effect that the rent of an intermediate tenure shall not be enhanced on a higher ratio than that in which the nett assets of the tenure have increased as compared with the former assets.

(d) The minimum of profits to be left to the middlemen holders is fixed at 10 per cent. of the nett proceeds. This is too low a minimum and is by no means just and fair. Your Excellency's memorialists pray that the minimum should be fixed at 25 per cent. of the nett proceeds, and that in the exceptional cases mentioned in the Bill the minimum should be 50 per cent. of the nett proceeds.

Your Excellency's memorialists would, in conclusion, humbly say that they may have again to approach Your Excellency with further representations. They earnestly pray that Your Excellency's Government will listen to their grievances as above, and will graciously amend the Bill so as to give effect to Your Excellency's memorialists' prayer.

No. 749—9-35R., dated 31st October, 1884.

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department.

Transferred to the Legislative Department for disposal, in continuation of the endorsement from this Office, No. 491, dated 23rd July 1884.

No. 283M., dated 8th September, 1884.

From—N. S. ALEXANDER, Esq., Commissioner, Dacca Division,
To—The Secretary to the Government of Bengal.

With reference to your memorandum No. 902T.—R., dated 24th June last, forwarding for report a petition from the disaffected raiyats of the estate of the late Babu Dwarkanath Roy Chaudhri, complaining of the oppressions committed upon them, I have the honor to submit herewith copy of a letter No. 26T., dated 19th ultimo, from the Collector of Mymensingh, and to refer you to paragraphs 5 and 6 of my letter No. 51M., dated 28th April last, on which the Government Resolution of 21st June 1884 was passed.

2. It appears to me that, unless Bindu Bashini Chaudhrani agrees to the terms settled by Mr. Glazier, it will be best for the Court of Wards to take charge of the estate in the interests of the minor proprietors. Little else can be done until some such law as the new Tenancy Bill is passed. Such cases as these and that of pargana Mymensingh clearly show the necessity for the early passing of some enactment to enable the authorities to deal satisfactorily with them.

3. With reference to the petition of the raiyats of pargana Attia, zillah Mymensingh, received with your memorandum, one exactly similar was received with your No. 550-237L.—R., dated 9th February 1884, and replied to by me in this office letter No. 616M., dated 6th March last.

4. The papers received with your memorandum under reply are herewith returned.

No. 26T., dated 19th August, 1884.

From—E. G. GLAZIER, Esq., Collector, Mymensingh,
To—The Commissioner, Dacca Division.

In reply to your No. 235M., dated 9th instant, I have the honour to report on the subject of the petition of the raiyats of Bindu Bashini Chaudhrani.

2. Mr. Waller, in his letter No. 114, dated 16th April last, has already referred to the circumstances of this estate in paragraphs 22 to 26, and it is not necessary for me to repeat what he has said. In his 25th paragraph he has shown how, by excessive enhancement, the rents have been raised from Rs. 40,000 to Rs. 1,50,000, or nearly fourfold in the course of a few years.

3. On leaving the Rent Bill Conference at Dacca, I went round by Tangail with a view to effect, if possible, a settlement between the zemindar and her raiyats. I visited the lady at Sontosh, and talked with her about the matter, and she agreed to abide by any decision I might come to with the raiyats. On the 11th instant I held a mass meeting of the raiyats at Pingnah; they came from all the disaffected villages, and there must have been about 3,000 present. They told me that the rents of the kabuliyaats of 1286 had not been collected in full; that the late zemindar had taken these documents on the understanding that the full rates were not to be enforced, and he had not done so; but that, on his death, the widow tried to collect rents at the further enhanced rates of the kabuliyaats of 1289, and that consequently the last instalment of the rents of 1288, and the whole of those of 1289, 1290, and the current year remained unpaid. They said they were willing to pay at the rates of 1285, or at the rates of neighbouring villages belonging to other zemindars. After some discussion they agreed to pay an increase of eight annas in the rupee on the rates of 1285 to cover all the cesses they had been in the habit of paying. They also agreed to pay all the arrears in instalments extending over three years. They gave me a written statement containing these terms, signed by a number of their chief men representing all their villages. As this enhancement would, according to Mr. Waller's calculation, give a rental of Rs. 1,05,000, I consider the settlement would be an equitable one.

4. Mr. Donough, the nominal manager of the zemindar and the chief amla were present and agreed to the conditions on behalf of their employer; but afterwards they said they must go and consult her again, as the reduction was more than she had anticipated. I have heard from Mr. Donough since that he had not been able to see the Chaudhrani, as her children were ill, and the matter remains at present in abeyance.

5. I have looked carefully into the criminal cases between Bindu Bashini and the raiyats, as already reported in my No. 13, dated 9th instant. The latter have complained chiefly of being carried off by the zemindars' *lathials* and confined. One man, Hari Nath Chong, said to have been carried off in March 1883, has never been found. The police reported the case false; but it was, after an enquiry by a Magistrate, declared to be true. No one has yet been tried for the original abduction, and I have now ordered this to be done. The police reported another case of confinement (of May last) to be false. The District Superintendent, who re-investigated it locally, reported it to be true, and it will now come under judicial enquiry. In still a third case of confinement, which occurred in March last, one man was convicted by the Deputy Magistrate of Tangail on the 30th July, and sentenced to three months' imprisonment.

6. The only serious case against the raiyats was tried at Jamalpore, as the occurrence took place on the borders of the two sub-divisions. The special police entertained at the cost of the zemindar and some of the thana force tried to arrest a body of raiyats who were assembled to make a levy for the expenses of their combination. The police were driven off and hustled, and one of the zemindar's men was hit. The case was a good deal exaggerated. Over a hundred were identified as having taken part in the riot; 43 were sent up for trial; the Sub-divisional Officer convicted 25, and the Judge on appeal sustained the conviction in the case of ten. The sentences were from eight months' to one year's imprisonment. I have looked through the records in concert with the present Sub-divisional Officer of Jamalpore, and there is probably a case against two others still at large.

7. The special police—three head-constables and 12 constables—entertained since last January at the cost of the zemindar, and distributed through the villages, have doubtless been a constant source of irritation to the raiyats, and have clearly not prevented oppression by the zemindar. I removed them when at the spot on the 11th instant, as the District Superintendent reported that he did not anticipate any further breach of the peace. The thana police should be able to cope with anything that occurs, and the presence of small dribblets of police in the villages seems rather provocative of breaches of the peace than otherwise.

8. This case would be one to be brought under the operations of the settlement rules of the new law if it had been in force, and, I may add, shows the necessity of the provision which we adopted at the Dacca Conference, to the effect that when a settlement of rents is in progress the Collector should have power to take over the management of the estate and to retain it as long as he judged necessary. The zemindar might otherwise ignore the whole proceeding. It is one thing to make a settlement and quite another to ensure its working. But if the Collector

had charge of the estate for a time, not only would his work of settlement be easier, but the arrangements made would have some chance of permanency.

9. Whether the estate should be brought under the Court of Wards is the subject of separate correspondence. I need only add that if the agreement I have striven to bring about can be carried out, there seems no immediate necessity for doing so, but if it fails, there are only two alternatives—either to bring the estate under the court at once, or to wait for the new law.

No. 2234T—R., dated 11th October, 1884.

Endorsement by Officiating Under-Secretary to Government of Bengal.

Copy, with copy of the enclosure, submitted to the Secretary to the Government of India in the Revenue and Agricultural Department for information, in continuation of Mr. MacDonnell's letter No. 866T.—R., dated 21st June 1884.

No. 2759, dated Calcutta, the 3rd November 1884.

From—C. S. BAYLEY, Esq., Officiating Registrar, High Court,

To—The Secretary to the Government of India, Legislative Department.

In continuation of my letter No. 2611, dated the 15th September, 1884, I am directed to forward, for the consideration and orders of His Excellency the Governor General in Council the enclosed printed minute by the Hon'ble Mr. Justice Tottenham on the Bengal Tenancy Bill.

2. Seventy-nine spare copies of the minute are forwarded separately.

Minute by the Hon'ble Mr. Justice L. R. Tottenham, dated 18th October 1884.

Until the vacation I was unable to find time for the study of the provisions of this Bill with a view to offering the Government of India any remarks upon the subject in answer to the invitation contained in the Secretary's letter No. 785 of the 5th of May last. At this late period I should hesitate to trouble the Government with any observations, none of which probably will be new to the Council, were it not that I feel that as many as possible of the Judges of this Court should express their opinions, whether held in common with numerous other persons or peculiar to themselves individually.

2. The only Judge who, as far as I am aware, has submitted to Government any detailed criticism of the Bill is Mr. Justice Field in his minute dated the 11th of September. As I entirely agree in many of his comments on particular sections of the Bill, while not assenting to others, I propose for the sake of brevity, and to avoid repetition, to state in order the paragraphs of his minute dealing with sections of the Bill in which I concur. As to some of the other sections I think his remarks are based on misconception of what the Bill intends, and as to others, while not considering it necessary to express assent to his observations, it does not follow that I dissent from them.

3. I would endorse Mr. Justice Field's remarks in following portions of his minute:—

The first 54 lines of para. 2.

The last 3 lines of para. 4.

The substance of para. 5, as to the imperfect definition of "Tenure-holder."

Paras. 19 and 20.

Para. 23 as to clauses (a) (d) of Section 31, and as to clause (f) in regard the limit proposed to be put upon the right of transfer of a right of occupancy. But I should prefer to have the right made non-transferable at all at the pleasure of the raiyat.

Para. 25 as to allowing the zemindar a right of pre-emption in the case of a gift to a person other than the donor's heir, and as to sub-section 6 of section 31.

Para. 28.

" 29.

" 30.

" 33 as to the substitution of staple "food-crops" for "staple crops" in clause (b), section 43.

" 36.

" 39.

" 40.

" 43.

" 46.

" 51.

" 59.

" 64.

" 80.

" 88.

" 90.

" 92 I would have no presumption on either one side or the other.

" 96.

" 107 First part.

" 113.

4. The criticisms in these paragraphs are chiefly directed to the wording of the Bill; and I think they usefully indicate particulars in which that wording may be improved, while they do not generally question the principles of the Bill. Assuming for the present these principles to be correct, I would offer one or two other suggestions which I think might usefully be adopted.

5. I do not understand, as seems to be apprehended by Sir R. Garth and Mr. Justice Field, that it is intended to exclude from the operation of the proposed Act tenants on lands belonging to, or under the management of, the Government, so far at least as their legal status is concerned. I gather indeed from the contemplated repeal of Act VIII of 1879 of the Bengal Council that it is intended, as regards the important subject of enhancement, to place Government in the same position as other landlords: but if there is, as Mr. Justice Field opines, anything in the definition of "Estate" in section 3, which makes it doubtful whether the Bill is intended to apply to Government estates, this doubt should be removed by the amendment of the definition. The Government still retains to itself a far more advantageous position than that of other landlords in respect of realising rents by means of the Public Demands Act, VII (B. C.) of 1880.

6. It seems obvious from what both Sir R. Garth and Mr. Justice Field have written that some better definition of tenure-holder must be devised; and I hope that in so doing the Council will see its way to laying down some clear distinction between a tenure-holder and a raiyat. I admit the difficulty of framing satisfactory definitions; but it is one which should be dealt with by the Legislature, and not merely shifted on to the Courts by referring them to supposed "local customs," the present existence of which is undefined; but the future invention of which will be as multitudinous and various as the exigencies which demand them.

7. In section 7 and many others throughout the Bill there occurs the expression "fair and equitable." The two epithets surely mean the same thing in all these sections: but if the two words are enacted together we shall have acute Pleaders and Munsifs proving that what is "fair" is not "equitable" and *vice versa*.

8. Amongst the incidents of permanent tenures referred to in Section 11, I should like one to be that they may be relinquished; and that the Bill should contain provision for their holders giving them up, if so minded. It would be a new incident certainly, but the Bill contemplates so many innovations that novelty can hardly be regarded by the Council as an objection.

9. Section 13 appears to me to be superfluous, the very nature of a patni tenure implying the power to let the land comprised in it.

10. In the last line of sub-section 2, section 16, the sense seems to require that after the word "cause" should be inserted "to the contrary," or words to that effect.

11. I do not understand the principle upon which the penalty of fine is imposed under section 22 (2). By whom is it to be adjudged and levied? and for whose benefit?

12. A raiyat holding at a fixed rent is really what has hitherto been known as an istamrari mocruridar. Would it not be as well to recognize him as a tenure-holder in all respects, and not have to enquire after local custom in determining whether those who hold under him can acquire a right of occupancy.

13. As regards the right of occupancy, I think it should be incapable of being acquired in respect of land in regard to which the tenant has a right only to the natural produce of it, *e. g.*, the right to cut grass or to turn in cattle to graze. A case recently came before me in which a Munsiff and a Subordinate Judge had both held that a person to whom this grass right had been let for more than 12 years had acquired a right of occupancy in the land, notwithstanding that by the terms of his written agreement it was clear that he had no right at all in the land itself.

14. I am very strongly impressed with the injustice exposed by Sir R. Garth and Mr. Justice Field of the presumption created by section 26 (2).

15. I think too that the right of occupancy as to land held by a raiyat should not be presumed to extend to all land held by him in the same estate, which may comprise several pergunnahs. If he be given a right of occupancy in all that he may hold in one village, there is no reason for granting him further indulgence at the expense of the proprietor.

16. As to the transferability of the right of occupancy, I entirely agree with those who are opposed to its recognition by the Bill. It was not an incident of the right, as far as I can make out, at the time of the permanent settlement: and I am convinced that it is a boon that is likely to do more harm than good to the raiyat, while its recognition may work great mischief and annoyance to the zemindar. Its justification seems to rest chiefly upon the principle, which this Bill very largely assumes, that the right of the raiyat is equal or superior to that of the zemindar; and that consequently he has as good a right as the zemindar to alienate the land of the estate. It seems to me that this principle is not a true one, and that the right

of the raiyat is limited to holding it as a tenant so long as he pays his rent and uses the land in a proper manner.

17. On the other hand, I think the occupancy ryot should be subject to ejectment for non-payment of rent. It should only be by suit, and such conditions should be attached to the incident as would protect the raiyat from undeserved hardship. But there are many cases in which the fear of ejectment should, I think, be retained. Most officers who have served in Lower Bengal are familiar with combinations of ryots to withhold their rents though well able to pay them, and in such cases I think the penalty of ejectment is fully deserved, and should be left in the hands of the zemindar to be applied through the Court.

18. Another matter which I think should be provided for in the Bill is the repudiation by a tenant of his landlord's title. Judicial decisions have established the tenant's liability to be ejected at the landlord's suit under such circumstances, and it seems to me that the law should either affirm or negative this principle.

19. The only observation which I wish to make on the subject of enhancement of rent is that I do not appreciate the justice of limiting the landlord to a certain percentage of the existing rent by way of enhancement, if the facts which entitle him to enhanced rent entitle him to more than that percentage. Suppose a ryot is paying less than half the prevailing rate, I do not see why the enhancement should not extend to that rate by the progressive steps contemplated in section 49.

20. As to commutation of rent in kind to a money rent, I am of opinion that, unless both landlord and tenant wish for it, the Collector should have no power to make it. Sub-section 6 of section 53 gives the officer power to refuse the application if opposed: but the earlier part of the section makes no provision for informing one party of the application having been made, but simply empowers the officer, upon the application being made, to determine the sum to be paid and to make order accordingly. This is probably an oversight.

21. Referring to section 59, I am of opinion that if it is necessary to interfere with the landlord's right to get rid of a non-occupancy ryot on the expiry of his lease, there is no sufficient ground for requiring him to give six months' notice; three months' notice would be ample. The provision that a suit for ejectment shall not be instituted after six months from the expiration of the term seems to indicate that, should the landlord fail to bring a suit to eject the ryot, who has had, say, a three years' lease, within six months from the expiry of that lease, the raiyat thereby acquires an immediate right of occupancy, for if he cannot be displaced he can stay as long as he likes. The zemindars have, I think, a right to be protected against such a contingency.

22. Sub-section 7 of section 60 unduly facilitates the acquisition of a right of occupancy against the will of the proprietor of the land, and is therefore to my mind objectionable. Indeed the whole Chapter VI goes far to cut away the proprietor's power to do what he likes with his own land.

23. If an under-raiyat, by the operation of some local custom now supposed to exist or hereafter to be invented, acquires a right of occupancy, is it to hold good only as against his immediate lessor or also as against all superior holders, and to be transferable and subject to all the incidents of its parent occupancy right?

24. I deprecate the interference of Government in such a matter as the fixing of rent days as between landlords and tenants, contemplated in section 67. In the absence of specific agreement I would simply direct the court to assume that the rent is payable in quarterly or half-yearly instalments as may seem best to the Legislature.

25. I would strike out sub-section 3 of section 72.

26. It is fair that a raiyat ejected from his holding should receive any compensation to which he is equitably entitled for improvements made by himself, or any person from whom he has inherited the holding; but if he himself acquired the holding by sale in execution of a decree, which will sometimes be the case if the raiyat's right is made transferable, why should he receive compensation for improvements made by his predecessor in title? (section 93).

27. Sub-section 2 of section 94 seems somewhat officious, unless it be intended that, except by special enactment, the landlord and tenant may not settle any question amicably between themselves.

28. Two years seems to me an excessively long period to be allowed to a raiyat who has ostensibly abandoned his holding for bringing a suit to recover possession. I think that a condition precedent to the hearing of any such suit should be the deposit of the rent due for the period during which the raiyat has ceased to pay. On what sort of ground is it intended that he should get a decree for possession?

29. In the chapter on managers, it is provided in section 107 that a manager shall receive remuneration by salary or otherwise. I think this should be dispensed with where a co-owner is appointed manager. He will probably get advantages from the position which will render salary no object.

30. With reference to sections 129 and 130, I should be inclined to make the Commissioner's order final as to the entries in the table of rates, inasmuch as the local officers must possess more knowledge of local rates than will be available in the offices of the Board of Revenue, or of the Bengal Secretariat.

31. As regards the proposed record of a proprietor's private lands, I am of opinion that, unless the proprietor desires to have it made, there should be no authority vested in the Government or the Collector to interfere in the matter.

32. In the chapter on Judicial Procedure I should like to see provision made for the case in which the raiyat pleads that the rent claimed was payable to a third party, and has been paid to him. Section 164 does not meet this case, which will therefore frequently arise.

33. The proviso to section 168 gives the District Judge power now vested in the High Court under section 622 of the Civil Procedure. I think it should be explained that to make a mistake in law is not an illegal act. Applications are constantly being made to the High Court for relief under Section 622 in respect of errors of law in legal decisions.

34. When the Court makes a decree under section 173 declaring the liability of the defendant to pay a fair rent for the land in his possession, is the decree to have retrospective effect, and for how far back? This matter ought to be settled.

35. No provision is made for the realization of rent separately by different co-sharers, nor as to the effect of sales in execution of decrees for shares of the rent. Some Members of the Council must be aware that there are very many properties in Bengal held by two or more co-sharers, who have for a long period peaceably and, with the assent of the tenants, separately collected their undisputed shares of the rent, and have, when necessary, brought suits and obtained decrees for such shares. In such cases the provisions of section 102 as to Managers do not apply, nor do I suppose that the legislature intends to put a stop to long established and unobjectionable practice. Suits therefore will continue to lie in many cases for fractional shares of rent, and provision ought to be made for the execution of decrees to be obtained in such suits.

36. Before concluding I think it right to express very briefly my opinion of some of the leading principles of the Bill. That it goes far beyond the scope of reproducing the relation of landlord and tenant as it existed at the time of the permanent settlement is not to my mind a matter for objection. But I do think it objectionable that the mutual rights of the two should be arbitrarily changed to the advantage of one side and the detriment of the other. I think that the Bill tends in this direction by ignoring to a considerable extent the zemindar's status as proprietor; and by unduly exalting the status of the tenant into what really becomes that of a joint-proprietor with the larger interest. The impossibility of the zemindar's retaining any portion of his lands, except his khamar, free from permanent tenures and occupancy-rights, and the arbitrary restrictions put upon his admitted right to enhance rents under certain circumstances, as well as the multitudinous occasions for interference with his affairs by the Local Government or the Revenue Officers, combine to lower his position very seriously, and I think unnecessarily.

37. I think the power of summary distraint should not be taken from the landlord. In some parts of the country it is the only means of securing the rent, and the plan now proposed to be substituted is more tedious, uncertain, and costly.

38. I am strongly averse to the prohibition of free contract between landlord and tenant unless there can be shown better reason for it than I have yet seen. What is true, or may be true, of Behar is not true of Bengal; and to make one Act apply equally to both is hardly possible. The Bengali raiyat as a rule is fully competent to take care of his own interests, and he is less likely now to be victimized than he was in former days when there was less education and fewer local lawyers.

39. Finally I would say that, while there is much in the Bill that promises to be useful, it appears to me to be in other respects unpractical, as tending to complicate, instead of simplify and secure the relation between landlord and tenant; to foster litigation and bring down the interference of the authorities, rather than promote peace and mutual confidence between the two classes, while impartially maintaining the respective rights of each.

No. 2943, dated 20th November 1884.

From—The Officiating Registrar, High Court, Calcutta.

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

In continuation of my letter No: 2759, dated the 3rd instant, I am directed to forward, for the consideration and orders of His Excellency the Governor General in Council, the enclosed printed Minute recorded by the Honourable Mr. Justice Cunningham on the Bengal Tenancy Bill.

2. Seventy-nine spare copies of the Minute are also forwarded herewith.

Minute by the Hon'ble Mr. Justice CUNNINGHAM.

Concurrence of Secretary of State and the Government of India as to principles of the Bill.—The facts which necessitate legislation on the law of landlord and tenant in Bengal, the principles by which legislation on the subject must be governed, and the general lines in which it should be framed, were, as long ago as December 1882, agreed upon by the Secretary of State and the Government of India.* Accordingly, in inviting an expression of opinion as to the Bill framed on the lines thus laid down, the Government of India cannot be understood as intending to re-open controverted points, upon which, after years of enquiry and elaborate discussion, an agreement had been arrived at, but rather as inviting consideration as to the degree in which the Bill is calculated to effect the objects which the Legislature admittedly had in view.

* The Government of India, to Secretary of State, 21st March 1882.
Secretary of State to Government of India, 17th August 1882.
Secretary of State to Government of India, 11th January 1883.

2. Opposition still to be encountered.—But it is obvious that a strenuous effort will still be made by those who consider their interests endangered, and by the advocates of those interests, to obstruct the passing of any measure which, in any degree, embodies the principles which these high authorities have, concurrently, sanctioned for the forthcoming legislation. The opposition is fortified by high authority; the Bill is denounced, not only by interested partisans, but by officials of eminent position, as unjust, impolitic, inconsistent with the good faith which the British Government is bound to maintain, as involving ruin to the zemindars, and scarcely less serious injury to the ryots. A powerful organization of resistance has been formed, and is actively at work in India and England. Numerous meetings have been held all over the Province. Numerous petitions have been submitted from influential quarters to the Government, the Secretary of State, and to Parliament. A controversy, so ardent and so prolonged, is necessarily unfavourable to calm thought or temperate language. Free recourse is had to every topic which can excite odium or appeal to prejudice. In the heat of argument assertions of the most unfounded character are confidently made; facts, for which the most unquestionable evidence exists, are recklessly denied; principles on which every political economist and every civilized Government have been long agreed are either tacitly ignored or boldly called in question. It is obvious that those who believe a measure of the character of the one in question to be expedient, and even necessary, must be prepared to defend it, *ab initio*, and for this purpose to reproduce facts and arguments which, it might have been supposed, had long ago done their work and been relegated, as historical curiosities, to the armoury of obsolete disputes. It may be worth while, accordingly, to recapitulate, in as concise a manner as may be, the problem with which we are confronted in Bengal, the facts which appear to be satisfactorily established with reference to it, and the principles which, unless the Government of India is to abandon not only its own carefully considered policy, but the precedent of every civilized Government and the axioms of every system of political economy, must govern its solution.

3. Report of the Government of Bengal, 15th September 1884.—In speaking of the Bill, I shall, as a rule, speak of the measure as modified by the proposals of the Bengal Government in its Report of 15th September 1884. That letter represents the conclusions at which the Lieutenant-Governor of the Province has, after a consideration of the opinions of the local officers best acquainted with the subject, arrived. Much stress has been laid by some of the opponents of the Bill on the circumstance that though there were repeated controversies as to matters of fact, no witnesses were examined before the Select Committee. It is worth while, accordingly, to notice the procedure which has been adopted on the present occasion for obtaining a knowledge of the facts of the case and an expression of opinion from all classes concerned. The Bill was first published in the *Calcutta* and vernacular Gazettes, and translations were made available to the public at a nominal price. The Board of Revenue, Commissioners, District Officers, such Judicial Officers as had special acquaintance with the subject, were then addressed, as also were the various public bodies who are concerned in the discussion. A circular letter was then issued, directing the attention of the officers consulted to the chief points for enquiry and report. The District Officers were directed to make enquiries on all obscure points, to consult all those interested in the subject and willing to give advice, and then to meet their Commissioners and discuss with them the clauses of the Bill in the light of actual facts prevailing in each district. These instructions were carried out, and "conferences" were held in the various divisions, at which the local officials discussed the topics of the Bill from their own point of view. The Government of Bengal, with good reason as it would seem, regards the evidence and opinions thus collected as of the greatest value. Such a course appears to be in every way superior to the examination of witnesses before a Select Committee in Calcutta. Instead of a single inquiry, conducted by a Committee, the majority of whom entertained and had already avowed a decided opinion on one side of the controversy, the procedure followed provided for a number of local inquiries, conducted by officers whose views were, presumably, as favourable to the one side as the other; who knew the people whom they questioned and the quarters in which valuable information was most likely to be got; who had the advantage of comparing their own knowledge with that of neighbouring officials, and who could collate and discuss the evidence at leisure. No such body of weighty and well considered evidence could be got together by a Select Committee without an expenditure of time, money and labour, and a derangement of the administrative

machinery of the country, which would be quite inadmissible. The Government has, in its executive district officers an excellent machine for collecting information, and I believe the examination of witnesses before a Select Committee would be in every way less effectual in getting at really trustworthy facts or really well-considered opinions. The Government of Bengal says that the evidence "reflected impartially every shade of opinion," and that it is remarkable for the proof it affords of the necessity, not only of legislation, but of legislation in the general direction of the Bill, inasmuch as even those officers who are most opposed to the measure admit by their comments the necessity for improvement in the law. Now, which is more convincing, the opinion thus arrived at by the Lieutenant-Governor of the Province, or the vague and violent language of those who assure us that no change is expedient, and that the proposed law will be the ruin of the country? When the Government is solemnly warned against the proposed legislation as unjust, unnecessary and dangerous, and urged either to withdraw or materially modify it, the answer appears to be that an overwhelming majority of responsible witnesses agree that some change is imperatively necessary; that the necessity for change was felt almost immediately after the passing of Act X of 1859; that that Act has in many important particulars produced results the very opposite to those contemplated by its framers as regards the well-being of the ryot;* and that the evils thus produced can be met only by the exercise of the Government's right of interference on his behalf.

* "The Bill is a real and earnest attempt to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence, which they have not hitherto enjoyed, by clearly defining their rights, and by placing restrictions on the power of the zemindars such as ought long ago to have been provided. This being so, I think that the Bill ought to pass into law." (Lord Canning in assenting to Act X of 1859, 29th April 1859.)

Since the affairs and troubles in Pubna in 1873, the necessity has been admitted to be urgent.

4. Sir A. Eden's letter of 27th July 1881.—All these conclusions were formally stated in the Report of the Rent Commission appointed by Lord Lytton in 1879, and in Sir A. Eden's letter of 27th July 1881, which it is greatly to be desired that those who deprecate legislation should consult. Have the general conclusions there set forth been confirmed or shaken by the information elicited during the last three years? It appears to me that it is impossible, having regard to the concurrent opinions of the persons most qualified to judge with information and insight, to doubt that some change is essential, and that the State is not only at liberty, but bound to interfere with the object of protecting the agricultural tenantry of Bengal from the natural and inevitable results which, in the absence of legislative protection, the circumstances of the Province must inevitably entail upon them.

5. Secretary of State's letter to Government of India, 17th August 1882.—This, as already observed, is no longer, so far as Indian officials are concerned, a mere matter of opinion, inasmuch as the Secretary of State has pronounced an authoritative decision that, "whatever may have been the former intentions of Lord Cornwallis, it is fully established that the reservations made at the time of the Permanent Settlement give the Government of India the full right of interposition for the amelioration of the condition of the Bengal peasantry," and that legislative interference is justified by the present circumstances of the country. We may take it, moreover, as laid down by the same high authority on the same occasion, that the object of the present legislation is "to settle the land-law of Bengal on a firmer, juster and more satisfactory basis; to keep the cultivation of the soil in the hands of a substantial peasantry, able to withstand the vicissitudes of seasons; and to promote the accumulation of wealth, the sound growth of credit and the progress of agricultural improvement."

6. Circumstances of Bengal which justify legislation.—This decision, however, is vehemently contested. The landlords and their advocates boldly assert their right "to do as they will with their own" as regards all tenants not at present enjoying legislative or customary protection, and denounce the proposal to increase that protection, or to afford it to any other class, as grossly unjust, a breach of faith, and revolutionary. It may be well, therefore, to glance at the facts necessary to support the propositions, *first*, that the special circumstances of large portions of Bengal are such as, if uncounteracted, to ensure the degradation and misery incidental to a redundant agricultural population crowding on the soil; and, *secondly*, that the Government has the right to interfere for their protection, and is bound to exercise that right.

7. Local Extent of Bill.—It should be premised that the Bill does not, unless hereafter specially extended, apply to the Orissa Division or to those portions of the Province known as the "Scheduled Districts," *viz.*, the Julpigori and Darjeeling districts, the Hill Tracts of Chittagong, the Sonthal Pergunnahs, the Chota Nagpore Division, and some other localities. Two only of the four Provinces which constitute the Lieutenant-Governorship of Bengal are affected, *viz.*, Bengal and Behar, and from these must further be excluded the wild district, lying between the two, known as the Sonthal Pergunnahs, the wild and mountainous Chittagong Hill Tracts on the extreme east of the Province, and the two East Himalayan districts. Bengal Proper contains 70,000 square miles, exclusive of 5,000 or 6,000 miles of unsurveyed and unreclaimed land in the Sunderbuns. Behar contains 44,000 square miles. The districts in these two Provinces to which the Act will not apply aggregate about 15,000 square miles, and contain a population of rather more than 2½ millions. Orissa contains 9,000 square miles and Chota Nagpore 26,000. The result is that of the 150,000 square miles in Bengal, the Bill will apply to 140,000, and will not, unless specially extended, apply to 50,000.

The inhabitants of Bengal and Behar number 58½ millions, or 84 per cent. of the entire population of the Province. The population immediately affected by the Bill will, accordingly, be about 16 millions.

8. Dense population of Bengal.—These two provinces constituting, as they do, the valleys and delta of several magnificent rivers, and enjoying a rich alluvial soil, a plentiful rainfall, an easily-raised crop, and a tropical climate, present conditions highly favourable to the multiplication of the human race, and the population is denser than any known in the agricultural districts of Europe. Bengal has a ratio of 505 to the square mile and Behar of 527. This ratio, however, is greatly exceeded in particular localities. In Behar, for instance, the Patna, Mozuffpore and Sarun districts show a ratio over 800 to the square mile, and the Durbhunga district 789. In Bengal, the Hooghly district shows 737 to the square mile; Howrah 1,130; the Jessore district has 682, and the 24-Pergunnahs 679; the Poona district has 710, and Rajshahye 566. Two districts in the Dacca Division show over 700 inhabitants. When we compare these figures with other agricultural countries, the contrast is remarkable. Ireland has 181 inhabitants to the square mile, France 180, Italy 238, Prussia 185, Austria 175, Belgium and England, with their huge and urban populations and enormous non-agricultural resources, 486 and 485 respectively.

9. Exclusively agricultural character of the population.—The first fact, then, with which we are confronted is that we have to deal with a population of unexampled density. But this is not the only circumstance which has to be considered in the case of the inhabitants of Bengal, or which renders it, *a priori*, probable that interference on the part of the ruling power would be necessary in past times and will be necessary in future. There is, first, the character of the population, which may be said to be, as regards large portions of the Province, exclusively agricultural. There are no great manufacturing cities—indeed no cities at all in the European sense of the word—except Calcutta, Patna, Gya, Bhagulpore, Dacca, and two or three more. In the whole Province there are only 11 cities with more than 50,000 inhabitants, and only 33 with more than 20,000. More than half of all towns and villages contain less than 200 inhabitants, while 87 per cent. are “little hamlets with less than 500 inhabitants.” The entire urban population is 3½ millions, about 5½ per cent. of the whole, an exceptionally low proportion, as compared with 66 per cent. in England and Wales, 31 per cent. in France, 22 per cent. in America, and even 17 per cent. in Bombay, 9 per cent. in Madras and the North-Western Provinces, and 11 per cent. in the Punjab. Of 34½ millions of male, 15½ millions were recorded in the census of 1882 as “agricultural,” against 2½ millions “manufacturing and industrial,” and it is certain that the class designated “indefinite and non-productive,” which numbers 15½ millions, contains large numbers who, in one way or another, look to the soil for support. There is no great manufacturing industry. The exports of Bengal are all either raw produce or agricultural produce, very slightly manipulated by the producing agriculturists. Again, there is the greatest reluctance to a change of residence: while in some parts of the province the population is 869 to the square mile, and there is practically no waste land, so that the competition for agricultural holdings is intense; in others there are still great tracts untitled simply for want of population, and the competition is not of tenants for land, but of landlords for tenants. The increase of railway communication will, no doubt, in course of time, affect this state of things; but it may be doubted whether the aversion of the agricultural classes to leave their abodes will be, for many years to come, modified in any appreciable degree.

10. Increase of population.—The population, notwithstanding a high normal mortality and occasional severe epidemics, shows a steady increase. The 62 millions of inhabitants in 1872 had grown into 69½ millions in 1881, an increase more than 10 per cent. in 9 years. This rate will, no doubt, tend to rather increase than diminish. The absolute peace, the increased power of counteracting the mortality of famines which canals and railways afford, the larger extent to which several of the other great causes of mortality are being brought within control, all tend in the direction of higher ratio of increase. On the other hand, not only are there few of the prudential checks or habits which in some countries tend to arrest the growth of an agricultural population, but the social customs and religious belief of large classes necessitate early marriages, and so encourage reproduction at an age scarcely beyond childhood. The entire female population is married before the 20th year, and more than 10 per cent. before the 10th year. The same causes conduce to the habit of the entire family living on, if possible, on the holding, and in the ancestral dwelling-house, and to the common enjoyment of the holding by all the members.

11. Increasing severity of the struggle for life.—Life, there is good reason to believe, is gradually becoming a harder struggle to large classes of the community. Prices have increased, and are increasing. The price of rice has doubled in the course of the last century; that of wheat has increased in a still higher ratio. At Patna two independent sets of statistics established the result that the price of rice has risen within the last 15 years between 21 and 23 per cent. This state of things suggests increased wealth to those who have produce to sell, increased difficulty of life to those who have to buy. The existence of some pressure is favoured by a calculation made by Sir E. Baring when Financial Member of Council, *viz.*, that the crop yield of Bengal bears a lower proportion to the population than that of any part of India except the North-Western Provinces and Oudh, *viz.*, Rs. 15-9 per head, as against Rs. 21 per head in the

Central Provinces, Rs. 22-4 per head in Bombay, Rs. 19 per head in Madras, and Rs. 18-5 per head in the Punjab. Making all allowance for the considerations that would modify this estimate (as, *e.g.*, that the crop may not mean the entire agricultural outcome, and that there are non-agricultural sources of wealth), the fact does still tend in the direction of proving that there is less agricultural wealth in Bengal than elsewhere, and that the pressure on the soil is greater.

12. Different interests in the soil. First that of the State.—Such being the main economic conditions of the province, we have next to consider the mode in which the proprietors and possessors' interests in the soil are distributed. The first interest is that of the Government, which by the immemorial and unquestioned law of India, is entitled, as the Ruling Power, to a definite portion of the profits of the soil. Considerable changes have, since the declaration of the Permanent Settlement in 1793, from various causes, taken place both in the amount of revenue and the size and number of estates. Many of the large zemindaries were broken up in the years immediately succeeding that declaration, owing to the failure of the zemindars to pay the Government demand. From the same cause a considerable number of estates have subsequently reverted to Government. Another increase in the land revenue has arisen from the transfer to the Government of certain police duties, to which, under the Permanent Settlement, the zemindars were liable. Escheats and the resumption of invalid rent-free tenures have still further enlarged the Government revenue-roll. In 1882-83 the revenue of those portions of the Province, in which the Permanent Settlement was originally carried out, stood at Rs. 3,62,00,000.

13. Owners of Estates. Land Revenue of Bengal.—The owners of the 110,456 estates in Bengal Proper and Behar, by whom the largest portion of this revenue is paid, are classified as follows:—

97,695 small estates under 500 acres.
12,304 estates from 500 to 20,000 acres.
457 estates above 20,000 acres.

In other words, less than ½ per cent. are large properties of over 20,000 acres, 11 per cent. range between 500 and 20,000 acres, and 88½ per cent. are petty properties of less than 500 acres. Among the large estates are some of the size of a small principality; one estate, for instance, in Chumparun consists of 1,187,000 acres, more than half the revenue-paying land of the district. It is noticeable that in Behar (the Patna Division and Bhagulpore) the tendency to sub-division has of late years been very pronounced. The 25,800 estates in the Patna Division of 1862 had grown into 49,000 in 1882. A large increase has also taken place in Bhagulpore. Of the entire number of estates, no less than 2,706, with a revenue of nearly 20 lakhs, are the exclusive property of Government. Of these, some are under the direct management of Government, some are let out on farming leases. Besides these, the Government has under direct management various estates owing to the recusancy of the owners. Altogether there were in 1882-83, 1,061 estates, with a revenue of 26 lakhs, under direct Government control.

14. Rental of Bengal, 17 millions sterling.—The 3½ millions of revenue thus paid to Government is, of course, but a fraction of the entire payments made from the soil. In Bengal there are no agricultural statistics, and nothing accurate is known of the area or crops. The area under cultivation, however, has been estimated at about 54 or 55 millions of acres, of which 48 millions may be regarded as under food-crops, and six or seven millions under non-food-crops. The Famine Commission estimating the average yield to be 11 bushels per acre, the food-crop to be worth £5 per ton, and the non-food acreage at £3 per acre, estimated the crop outcome at 103 millions sterling. In addition to this, there would be the outcome of dairies, gardens, forests, &c., which might perhaps be taken at one-third of the crop value; or, say, 30 millions. The Government* estimate the average yield of rice at 12 to 15 maunds (984 to 1,230 lbs.) of raw grain, or 10 or 12 maunds of husked rice per acre, a somewhat larger outturn than the figures available to the Famine Commission appeared to justify. Assuming the average outcome to be half a ton (1,120 lbs. per acre), this would give a gross outturn of 27 millions of tons, worth, at £5 per ton, 135 millions sterling. Out of this a population of 70 millions has to be supported, the land to be sown for the next year's crop, and the export trade, now very considerable, to be maintained, and the rent to be paid. Assuming the food of 70 millions to exhaust 50,000 tons per diem, this would account for 18 millions of tons in the course of the year, leaving only 9 millions of tons for all the other purposes specified. Suppose 2 millions of tons to be worth 45 millions sterling, and the expenses of agriculture, the wear and tear of life, clothing and luxuries and wastage to cost 6s. 8d. per head of the population, this would account for 23 millions sterling, leaving a margin of 22 millions for rent.

All estimates as to the agricultural outcome are, in the present defective condition of statistics in Bengal, to a large extent conjectural. The estimate above given is, however, not without corroboration. We have some figures which are more or less trustworthy as to the actual rental. The rental of the landlords in almost the whole of Bengal, as calculated from the first Road Cess statistics nearly 10 years ago, was between 13 and 14 millions sterling. The valuations were, in many instances, defective; and re-valuations, now in progress but not yet complete, indicate that the amount paid to landlords of one sort or another in Bengal does

not, at any rate, fall short of 17 millions sterling. There is good reason to believe that the actual payment, direct and indirect, by the occupants of the soil is considerably in excess of this sum. Some authorities have estimated it as high as 25 or 30 millions of sterling.

15. Effect on the Public Revenue.—The effect of this state of things on the public revenue is, of course, very marked. Sir E. Baring calculated that, whereas in a completely ryotwari province, such as Bombay, 88 per cent. of the total payment made from the land finds its way to the treasury; and in a province, where four-fifths are ryotwari, such as Madras, 69 per cent., in Bengal only one-third of the payments from the soil reaches the State. The figures given above appear to show that this calculation fell far short of the truth, and that the rent-receiving class in Bengal pays only about one-sixth of its receipts by way of revenue to the State. This result would not, of course, justify the repudiation of the terms of the Permanent Settlement; but it is sometimes urged on behalf of the land-owners of Bengal that their zealous and generous exertions have earned the gratitude of the State, and constitute a claim to exceptional treatment. To such pleas *ad miseri cordiam*, a pertinent reply is supplied by the fact that, as matters now stand, they receive five-sixths of the net outcome of the soil for doing nothing or next to nothing; while the Government receives one-sixth for all the expenses of administration, defence, maintenance of order, detection and punishment of crime, and general development. Under this last head attention should be called to the fact that more than a million of acres have been protected from famine and enormously increased in value by canal irrigation, and that the Province has now more than 1,200 miles of railway completed, besides a large number of schemes under construction. These improvements have, to a very large extent, been effected out of public resources towards which the land-owners have contributed nothing but the 3½ millions of revenue. Of late years they are liable for half of the local cesses, or, say, 18 lakhs, though cases not unfrequently come up, which show that the practice is for the tenant to pay his landlord's moiety as well as his own. Besides the East Indian and East Bengal lines, which have now been purchased by the State, 4½ millions sterling had, up to the close of 1882-83, been laid out on 570 miles of State Railways, and 6 millions had been spent on 640 miles of canals affording irrigation to 1,200,000 acres, at the expense of the general revenues of the country or the province. The net result of these canals, which, unquestionably, have largely increased the land-owner's rental, is an annual charge to the Province of 21 lakhs. There is a debit against the Railways of nearly 30 millions for guaranteed interest, incurred in the earlier years of railway enterprise, to which the Bengal lines have contributed an appreciable share. This has been paid by the general tax-payer.

16. Position of the land-owning class.—The position of the land-owning interest in Bengal, accordingly, is that the net rental available after payment of land revenue has risen from something between £300,000 and £400,000 (which it is estimated to have been at the time of the Permanent Settlement to something over 13½ millions sterling); that a large portion of this increase is due to the maintenance of peace and public order and the general prosperity of the Empire, and especially to the rise in the value of agricultural produce produced by increased facilities for trade—roads, railways, canals,—towards which improvements the zemindars must be deemed to have contributed nothing, because the yearly revenue fixed at the Permanent Settlement must be regarded as their contribution—a very inadequate one—towards the cost of the general expenses of the Empire and Province, irrespective of these undertakings. If, therefore, the State finds it necessary to exercise the power—which, under the Permanent Settlement, it is admitted by all to possess,—of interfering between landlord and tenant for the protection of the latter; and if this interference involves some restriction of the landlord's immediate profits, it may tend to allay the alarm, indignation and sympathy occasioned by the process if it is remembered that we are dealing with a class whose income has increased from causes to which it has but in a very small degree contributed, so as to be more than fifty times as large as it was when it was first settled by Government. It may also be serviceable, for the same purpose, to recall the undoubted historical fact that, whatever may have been the privileges accorded by the Mohammadan conqueror to the Bengal zemindars during the century and a half of efficient Moghul rule, those privileges at all times rested on the precarious tenure of the pleasure of an absolute sovereign, and were subject to the unquestioned right of the ruling power to demand whatever portion of the proceeds of the soil it pleased. For the last quarter of a century previous to the accession of the British, this absolute power had been used in the most violent, rapacious and oppressive manner by a series of Viceroys, with whom plunder was the chief and almost sole function of government. The land-owners were among the most conspicuous sufferers, and Warren Hastings' summary procedure fell far short of the precedents established by his predecessors. At the time of the Permanent Settlement, whatever claims to hereditary succession the zemindar may have established, his position was much more that of the official of an arbitrary Government than of a land-owner in the English sense of the word. His remuneration was the one-tenth of the revenue which it was his business to collect for the State: he was liable to fine, imprisonment, even corporal punishment. He could not enhance or eject. His duty was to "conciliate and encourage the ryots." This duty, in the disturbed years of the expiring Moghul Empire, he very imperfectly performed, as the British speedily discovered. In 1769 the President of Bengal appointed a commission for the purpose of ascertaining and fixing the amount which the zemindar received from the ryot "as his income or emolument." The Regulation of that year declared that "he had taken advantage of his position, had imposed illegal taxes, and had thus extended his claim and availed

himself of opportunities to lay his hands on the revenues of Government and the property of the ryot, where he had no foundation of right or color of pretence." This "property of the ryot," the Regulation announced, the Government intended to protect from further invasion. Nor was this view lost sight of in subsequent legislation. In 1790

Minute, 3rd February 1790.
Sections 61 to 63.

Lord Cornwallis pointed out that, "while the zemindar's claim to a certain percentage of the rents of their estates had been admitted, the right of Government to fix the amount of those rents at its own discretion had never been denied or disputed;" and that, as zemindars had in numberless cases been dismissed for non-compliance with Government requirements, "a more nugatory or delusive species of property could hardly exist." The view taken by the author of the Permanent Settlement was re-asserted 30 years later by the Board of Directors in the well-known passage of their despatch of 15th June 1819, pointing out the injurious consequences which had arisen to individual rights "from describing those, with whom the Permanent Settlement was made, as the actual proprietors of the land," and the payments by the ryots as rent instead of revenue—inaccuracies which, the Board said, had "introduced confusion into the whole system of tenures, and given a specious color to the pretensions of the zemindars in acting as if they were, in the ordinary sense of the word, proprietors, and as if the ryots had no permanent interest in the soil but what they derived from them." One practical proof of the narrow limits within which the zemindar's proprietary rights could be exercised, is that by Regulations of 1793, 1795 and 1803, he was prohibited from granting a lease for more than 10 years, and no lease was valid till it had been submitted to and approved by the revenue authorities. It is, of course, notorious that the view taken by some authorities of the zemindars' position placed their proprietary rights somewhat higher, and that particular phrases may be adduced in which their views found official expression. But the general tenor alike of the Regulations, the despatches of the Government and the Directors, and the Minutes in which Lord Cornwallis and other Indian Statesmen recorded their views is, to my mind, quite incontestably in favour of the view recorded by Lord Moira in 1819, that the Permanent Settlement was "founded on the principle that the ryot's payments were to be regarded, not as the mere payment of rent to an absolute proprietor, but an assessment payable to intermediate managers, possessing an hereditary and transferable property in the incidence of their management."

17. Tenure-holders.—Under the proprietors come a large class of intermediate landlords, or tenure holders, estimated to be more than a million in number. In the majority of instances their income is a very small one. One return gives 620,000 of them as having a rental of less than £10 per annum. This class exemplifies the strong tendency in Bengal of the possessor of any interest in land to sub-let it rather than himself engage in the risks and costs of agriculture. It constitutes a structure built up by a sort of process of sub-infeudation, the possessor of the interest in each instance letting it out to some subordinate holder, who, in turn, lets it to another; this process of sub-letting being repeated often two, three, or four, and in some instances as many as thirteen, times.

18. Ryots.—Under the 150,000 proprietors' estates in Bengal, and 1,000,000 tenure-holders, come 10 millions of holders who are, or are supposed to be, in actual occupation of the soil. The great majority of them, no doubt, are so. Of the 10 millions, 9 millions pay less than Rs. 20 per annum, and of these 9 millions, more than 6 pay less than Rs. 5—a rental which may be taken to represent a holding of about two acres. There are, however, 25,000 ryots whose rental is over Rs. 100, and 120,000 whose rental is between Rs. 50 and Rs. 100. Among them are many who sub-let. In some instances there are ryots who hold many thousands of acres, and are really considerable landlords. At any rate, the tendency which has been at work in the classes above them is also here at work; and the "sub-ryots" constitute a class already numerous and certain to increase, and more in need of protection, probably, than any other.

19. Occupancy ryots.—A large proportion of the ryots, estimated at from 70 to 90 per cent., are in enjoyment of certain privileges as to fixity of tenure and limitation of rent, which vary in some particulars in different parts of the province, but which are known generally as "occupancy rights." The exact process by which these rights came into existence is a matter of dispute. There is no dispute that many of them are the representatives of the "khudkhaat kadimi," or self-cultivating ryots, whose rights were so carefully provided for at the time of the Permanent Settlement. Another portion has acquired these rights by the rule introduced by Act X of 1859, which conferred occupancy rights in land as the result of 12 years' continuous residence as a ryot upon it. Other rights have grown up by local custom, which in some places allows of a still more rapid growth of occupancy right. There is a fierce controversy as to whether the privileges accorded at the Permanent Settlement were intended for all resident tenants, or only for a recognized class already in occupation. This will be considered hereafter; at present the fact with which we have to deal is that—partly from historical causes, partly from the natural desire to secure a tenant, partly from kindness or indifference of landlords—a proportion estimated at from seven-tenths to nine-tenths of the ryots are in the enjoyment of privileges, amounting in some instances to absolute fixity of tenure at a given rent, in others to a rental enhanceable only on certain specified grounds: in all, to a right to remain on the soil, so long as the rent is paid; that these rights, originally not transferable, have become so by local custom in many, if not most, parts of Bengal, but not in Behar; that they descend from the father to the sons in like manner as other immoveable property; and that there is a generally recognized practice of sub-letting ryoti holdings.

20. Condition of agricultural class in Behar.—When we come to examine the condition of the population with more particularity, we find a very pronounced difference between the two provinces concerned. In Behar agrarian troubles have, on several occasions, brought the condition of the agricultural classes in that province under the consideration of the Government.

In 1866-67 disturbances rose in connection with the indigo cultivation in Tirhoot and Chumparun; the Commissioner of the Division reported that oppression and extortion were frequently practised on the ryots, and though it was resolved not to resort, at the moment, to legislation, Lord Lawrence, then Governor General, recorded his conviction that a law was required which would protect the ryot both from planters and zemindars. "I believe," he said—

"that it will be necessary for the Government, sooner or later, to interfere, and to pass a law which shall thoroughly protect the ryot and make him, what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it."

The subject was again brought under consideration in 1873, and in 1875 the Commissioner of the Division, writing of the prevalent scarcity, observed that there had been during 17 years five occasions, besides the present one, when a crop-failure, in some parts of the country, notwithstanding an excellent harvest in others, had resulted in the starvation of a certain part of the population. His explanation was that "not only is the cultivator left with an area barely sufficient to raise the food he requires for his family, but, in time of drought, he is short of food, as the yield is below his requirements." The same result was established by an official enquiry held in the following year. The cause of the inability of the Behar peasant to bear up against any vicissitude of season was, the Commissioners reported, that he had not, and could not by any possibility have any reserve on which to fall back.

"The whole conditions of agricultural industry then are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money or credit. For the whole conditions of life are such as to preclude any sufficient accumulation of the kind. The ryots cannot fall back on any credit fund like the tenant-right in other parts of Bengal, for practically, there is no such right available to offer in pledge. The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry."

21. Views of Sir A. Eden and the Famine Commission as to Behar ryot.—In 1877, Sir A. Eden again brought to the notice of Government the general and widespread prevalence of oppressive, lawless, and high-handed practices, and proposed a project of legislation on the cultivators' behalf. Further discussion and enquiry established the gravity and the extent of the illegalities and oppressions which had reduced the Behar peasantry to their low condition; and the Famine Commission, with whom the condition of Behar was naturally a topic of earnest consideration, concurred with all the other authorities in holding that the great need of the province was a law which should enable the ryot to hold his land subject to fixed conditions of tenure, to maintain his occupancy rights when acquired, to be certified of the amount of his rent, and to have a trustworthy record of payments, and to be able to resist illegal distraint, illegal cesses, and illegal enhancement.

22. General Concurrence of opinion as to necessity of legislation in Behar.—The opinion expressed by Lord Lawrence in 1866 was justified by report presented in 1879 by a Committee, which had been appointed the previous year for special enquiry into the subject. They reported that it was necessary to recast the entire law, and, as this Report coincided with that of the Select Committee, who had charge of the Rent Bill for Bengal, that the time had come for general legislation, the whole subject was referred to the Rent Commission, whose labours ultimately resulted in the first draft of the Bill, now under consideration. The conclusion, therefore, upon which legislation is now proceeding, is one which, having been enunciated by the Viceroy 16 years ago, has been again and again, since then, arrived at by officials who had especial means of judging of the condition of the Province. The accounts are all to the same effect. "It is manifest," the Government of India writes of the Patna Division, "that the majority of the ryots in that large tract of country (23,000 square miles) are rack-rented." The mass of the tenantry are paying now, so the Collector of Patna reported, rents which have doubled within the last 16 years. The great evil complained of by the local officials is arbitrary enhancement at the will of the landlord. The rents of the Patna district are higher than those of any district in Bengal; those of Durbhunga and Sarun higher than any districts except Hooghly and Burdwan, and in the Gya, Shahabad and Mozufferpore districts exceptionally high. Chumparun is the only district of the Division in which the rents are not abnormal—a result to which its large amount of waste land has probably contributed.

23. Destruction of occupancy rights.—A further aggravation of the evil plight of the Behar tenantry is that rights of occupancy, which were at one time, if not universal, at any rate of very general prevalence, are being just obliterated. The following is the account given by the Government of India to the Secretary of State of this branch of the subject:—

"In Behar it is said that not one quarter per cent. of the ryots hold pottahs; and an examination of the *jamabandi* papers (rent-rolls) of Behar estates has shown that while 60 per

cent. of the present ryots have held some land in the village in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Inasmuch as these ryots hold no *pottahs* or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights even where these rights exist beyond all doubt. The Collector of Patna reports that, whenever the zemindar has felt himself strong enough to break occupancy holdings, he has done so, and that the landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. The zemindars of Shahabad, at a meeting held on 30th October 1880 at Arrah, deprecated the concession to resident ryots of rights of occupancy of lands held by them for three years. 'At present,' the zemindars said, 'land-owners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands, or by managing so that a ryot shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the Court find claims to occupancy rights not proved, unless the ryots can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law, the zemindars would not suffer ryots to remain for three years.' 'Interchange of lands,' observes the Officiating Collector of Sarun, Mr. MacDonnell, 'between ryots in a zemindari occasionally occurs, but is the rare exception, not the rule. Manipulation by the *patwaris* of the village *jamabandis* to prevent identification of the plot held this year with the same plot held five years ago, is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a charge in the rates.' The Maharaja of Darbhanga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the raiyat showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy, but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right."

24. Effect of enhancements on the tenantry.—As to the results of these enhancements and other oppressive proceedings on the condition of the people, there is, unhappily, no room for doubt. The evidence laid before the Commission established a decree of general destitution for which it would be difficult to find any parallel in India; certainly not in any locality equally favoured by nature. "The ryots of this Province," wrote Major Hidayat Khan, an important land-owner in Behar, in 1877, "though they labour hard, are yet in a state of almost utter destitution, and that, owing to the heavy assessments laid upon them." Good evidence was given of the exaction of numerous illegal cesses by the landlords, of the enhancement of rents not legally liable to enhancement, of illegal ejectments, and of duress and other illegal methods of enforcing payment of rent. Illegal distraint was so universal that its illegality had begun to be lost sight of. The conclusion, at which the Famine Commission, on the evidence before it, arrived was that the Behar ryot's chronic state was one of abject poverty, close bordering on absolute destitution; that he was, as a rule, rack-rented; that his occupancy rights were being fast destroyed; that he was the victim of much illegality and oppression; and that the condition of the rent law was a very grave hindrance to agricultural prosperity. Exactly to the same effect was Mr. Reynolds' report. "The Behar ryot," he said, "is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living, he has no thought of improving his condition, because, hitherto, the circumstances of his lot have made permanent improvement impossible to him. His best hope has been that the zemindar and the mahajan would leave him a bare sufficiency to support life till his next harvest time comes round."

25. Necessity for protective measures.—We have of late had a succession of prosperous years, and the ryot may have shared in the general prosperity. The judicious arrangements made by Sir A. Eden with the planters and the praiseworthy endeavours of the planters themselves have, I believe, put a stop to many objectionable and oppressive practices. But this was the condition of the province when legislation was taken in hand, and it would be too much to hope that the seven intervening years have worked so substantial a change in the economic condition of the province as to render legislation unnecessary. We must still, I fear, regard the Behar ryot as among those classes whom the Government is, in the language of the Permanent Settlement, especially bound to protect as being the most helpless and most defenceless.

26. Tenantry in East Bengal.—On the other side of the Province we are confronted by a very different state of things. There a robust and determined class of tenants, mostly Mohammedans, have taken full advantage of every opportunity for bettering their position, and, in many cases, resisting the legitimate claims of the landlords. The development of the jute industry has diffused wealth; large tracts of waste land have been acquired on favourable terms, in numerous instances the ryots have purchased "perpetual leases," i.e., the proprietorship of the land subject to a fixed quit-rent. Attempts at exaction have been answered by acts of violence, and the public peace has been, on several occasions, infringed by agrarian disturbance. In 1873 the oppressive manner in which the purchasers of an old zemindari exercised their rights as landlords gave rise to an outbreak, which almost assumed the form of an agrarian league "to hold the rent." The famine of 1874 made it necessary to postpone any systematic

attempt at dealing with the case; but from that time to this the Government has almost continuously had the unsatisfactory relations of the landlord and tenant in the Eastern districts under consideration, the general complaint of the landlords being the indefiniteness in which the law has left, at once, their rights and the procedure for enforcing them, and the practical impossibility of enforcing payments, the legality and propriety of which not even the recalcitrant tenant pretended to dispute. At present the state of things in many parts of the country is scarcely more than a short of truce, pending the settlement of the dispute by legislation. The disputes in Mymensingh may be regarded as a type of the sort of antagonism which generally prevails, and which might, at any moment, lead to a serious breach of the public tranquillity.

27. Hostile relations of Landlord and Tenant in Mymensingh. The papers recently published* throw a vivid light on the friction produced by the hostile relations of zemindar and ryot in that district. The present is the third occasion the Government observes, in answer to a memorial of land-owners praying for special coercive measures, "that enhancements of rents have driven the ryots into open hostility against their landlords:—"

On two previous occasions, in 1868 and 1875, official action was brought to bear upon the ryots, who were persuaded under such influence to agree to their zemindars' terms. "Since then," says the Commissioner, "the zemindars have been increasing their demands for *kabuliyats* at enhanced rates, and there has been more or less friction. This culminated in 1882, when the ryots again, for the third time, combined together and resisted the zemindars. This time the combination has assumed a more serious aspect than on the other occasions, probably because the ryots are becoming more and more aware of their rights, and are determined not to be persuaded to anything against their interests by the local officials. They are perhaps not so much to blame, for I fear it must be recorded that the Maimansingh pargana zemindars, relying on the support formerly given to them by the officials, have been very exacting in their demands, and though I am not prepared to say that the *kabuliyats* got out of the ryots are wholly illegal and unjust, yet it must be allowed that very hard bargains have been driven with the ryots." This is the opinion of a Commissioner who has had a very long experience of this part of Bengal, and it is more than borne out by the following remarks of the Collector of the district:—

"A review of the history of the policy of the zemindars towards their ryots in the Maimansingh pargana shows that, so far as this portion of the Lower Provinces is concerned, there might almost as well have existed no rent-law at all since 1859, for the provisions of that and subsequent Acts passed by the Legislature for the regulation of the relations between landlord and tenant seem to have been entirely ignored. Rents have been capriciously enhanced from time to time, and the objectionable system of farming out portions of the estate to the highest bidder seems to have been the rule. When the ryots, during so many years, quietly submitted to such a state of things, it is an obvious deduction that this could only have occurred among a peasantry incredibly and entirely ignorant that they had any rights at all, or that the rent demandable from them by their landlord could be limited by anything but his will. This probably is to be ascribed to the remoteness of the district and its consequent backwardness. The zemindars, while obliged to admit that this has in fact been the result of their management of their estates, plead that, it having been always the custom of the pargana to revise the rent-roll at short intervals, they were perfectly justified, notwithstanding the provisions of the Rent Acts, in preserving the *status quo ante* 1859, and trying to prevent the accrual of rights of occupancy. They also state that the ryots, for their own interest and quite voluntarily, used frequently to change the lands they held by surrendering some and cultivating others. Where a ryot believed that he was liable to summary ejectment after a short term in the event of his not consenting to the term of a resettlement, it became of course of little moment to him what land he held or what land he surrendered, his great object being to hold that the best lands he could at the least rates. Even at present, so far as I have been able to ascertain, there exists a most complete and incredible ignorance among these ryots of the provisions of the rent-law—a state exposing them, on the one hand, to being deprived of their legal rights without knowing it, and, on the other hand, being duped by designing persons into absurd and impossible ideas as regards what the Government may do for them by the new Bill."

It would be difficult, it appears to me, to conceive a state of things more imperatively calling for legislation. The landlords naturally demand that the law shall not remain a dead-letter as regards the assertion of their claims, and that it shall be modified, if necessary, so as to render the collection of rent more cheap, easy and expeditious than at present. This demand the Government has met by the various Bills which have been for several years past under discussion, and the various official investigations to which the discussion of those Bills have given rise. The result has been in Bengal, as in Behar, that a general revision of the law has been found to be essential.

28. Condition of both parts of the Province necessitates interference.—Neither of the two conditions described above can be regarded as sufficiently tolerable to justify the Government in continued acquiescence. The tenant in East Bengal cannot be allowed to go on defying the law, defending himself against his landlord, whether the claim be legal or illegal, by such rude justice as he chooses to apply. The British Government cannot allow two great classes to stand confronted, the one daring the other to enforce rights, which the courts have ascertained. The landlord is entitled to have his decree for rent executed; but

the Government, which executes it, is surely bound to see that that decree is not unjust or oppressive. On the other hand, the state of things in Behar and portions of Bengal is such as to give rise to the gravest anxiety for the future. Society there seems to have reached, or be fast reaching, the stage described by Mr. Mill, where he says, speaking of Ireland and India, "As the land is a fixed quantity, while population has an unlimited power of increase, unless something checks that increase, the competition for land soon forces up the rent to the highest point consistent with keeping the population alive. The effects, therefore, of a cottier system depend on the extent to which the capacity of the population to increase is controlled either by custom, individual prudence, or by starvation and disease." We have seen that custom, far from checking the increase, in India tends to foster it; that religion enjoins it; that the circumstances of the Behar peasant render prudence impossible. There remains only the other stern remedy for the redundant population competing unrestrictedly for the soil—disease and starvation; and in Behar we have, in my opinion, that terrible remedy already in sight. The inquiries which, for some years, were conducted by the Famine Commission left this conviction, with painful distinctness, on the minds of other members, I know, besides myself; and when people talk, *cœur léger*, about the prosperity and progress of India, the rights of landlords, the hardship of any interference with those rights, and other like topics, the answer seems to me to ask what is to be the future of this teeming, helpless population, and how can Government, with the facts before it, repudiate the obligation, so solemnly enacted at the Permanent Settlement, and so often admitted since, of interfering whenever necessary, on behalf of the agricultural tenant.

29. Necessity for due consideration of interests of each class.—Any measure, accordingly, which attempts to regulate the subject, must deal with the interests of (1) the 110,000 registered owners; (2) the 1,000,000 tenure-holders; (3) the occupancy ryot, himself often a landlord; (4) the non-occupancy ryot; (5) the ryot's tenant or sub-ryot. As the rights of each of these classes are in almost every instance, in some respect or other, indistinct, vague and undetermined; as local custom has varied them in a hundred different particulars; and as the vast majority of the persons concerned are unacquainted with writing, and attach more importance to tradition and local sentiment than to any document, however formal in its terms or solemnly executed, it is no matter of surprise that those who entered upon the present controversy, with decided views and strong pre-dispositions and prejudices, have found plenty of material for strengthening their opinions as the discussion proceeded, and that there should have been on either side much warm feeling and exaggerated, inaccurate and violent language. The task for the legislator is to consider all these conflicting views with absolute dispassionateness, and to devise the plan by which, with least shock to society, least disruption of existing relations, least loss or pain to any class, the general interests of the community may be most effectually promoted.

30. Proprietary rights must be reconciled with public weal.—On the one hand, it must be remembered, as to the proprietors and tenure-holders, that "the sacredness of property" is a State axiom of the deepest import; that any interference with existing rights of property by the State is a most serious and dangerous order of remedy, never to be resorted to without the gravest cause or beyond the limit at which it becomes unnecessary. On the other hand, it is necessary to insist, as a fundamental axiom of political economy, and of our policy as the ruling power, on the right and duty of the State to interfere with property whenever the well-being of any class in the community demands interference. It is not too much, I suppose, to say that in all the chief European communities—notably Russia, France, Austria, Germany—it has been found necessary to interfere, to a most serious extent, with rights of the land-owning classes, which, though resting on unquestionably good legal and historical basis, had become incompatible with the modern conditions of society. In Ireland the same remedy has been found necessary. In England the diversion of a great portion of the population to manufacture, and the relief afforded by the development of other industries than agriculture, has rendered the relations of the owner and occupier of the soil a matter of less national importance than elsewhere; but even in England, Parliament has considered it expedient to interfere in some particulars with the free right of contract between the owner of land and its occupant. All the great political economists have justified such interference.

31. Statutory right and duty of State to interfere.—In India, moreover, there is this special circumstance, that the right and duty of the State to interfere, its determination to interfere whenever expedient, and the obligation of the land-owners to acquiesce in such interference without attempting to make it a ground for abatement of the payments due by them to the State, are doctrines which have been solemnly and repeatedly enacted as part of the Statute law of the country, and which form part of the title-deeds of every land-owner in India. The Permanent Settlement Regulation was framed on instructions from the Court of Directors to this effect:—

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced * * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the ryots and subordinate landlords, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our Government."

These instructions were carried out by the Government in Article 8 of Regulation I of 1793, which is as follows:—

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "the Governor General in Council thinks it necessary to make the following declarations to the zemindars, independent talukdars, and other actual proprietors of land:—*First*, it being the duty of the ruling power to protect *all classes of people, and more particularly those who, from their situation, are most helpless*, the Governor General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent taluqdars, ryots, and other cultivators of the soil; and no zemindar, independent taluqdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

To the like effect was rule 9 in the kabuliyat, by which section 67 of Regulation VIII of 1793 declared that proprietors should be bound, *viz.*, that "implicit obedience should be shown to all regulations which have been, or may be, prescribed by Government concerning the rents of the ryots, and the collections from under-tenants and agents of every description, as well as from all other persons whatever."

It is difficult to understand how, with these explicit and emphatic expressions before them, there should be some advocates of the zemindars' interests who appeal to the Permanent Settlement as the foundation of the right on the part of the landlords to hold their estates free from legislative interference, and "to make what they can" out of the non-occupancy tenants, and who denounce any proposed restriction of this right as a wholly unjustifiable interference with the rights of private property and even a breach of faith.

32. Different theories of the State's right to interfere.—The difficulty is met in different ways. Some writers get over it by denying the constitutional right of Government to interfere at all with the owners of the soil in the matter of rent. "I unhesitatingly assert," writes the author of a pamphlet entitled, by way, I suppose, of announcing its impartiality, calmness and freedom from class-feeling, *The Ilbert Bill No. II*, "that there never was a time when the zemindar could not make what terms he pleased with his ryots, and that the pergunnah rates, or the established rates of which we hear so much, were the rates which the zemindar himself established." The learned author had no doubt satisfied himself as to the sufficiency of the grounds on which this unhesitating assertion is based; but I find it irreconcilable with the language alike of Lord Cornwallis, the Board of Directors and contemporaneous legislation,—with Lord Cornwallis' statement that, while the zemindar's "claim to a percentage upon the rents of their estates had been admitted, *the right of the Government to fix the amount of those rents at its own discretion had never been denied or disputed*," or with the language in which the Board gave its sanction to Lord Cornwallis' arrangements: "We expressly reserve the right," they wrote, "which belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to *prevent ryots being improperly disturbed in their possessions, or loaded with unwarrantable exactions* . . . Our interference, where it is necessary, seems also to be clearly consistent with the practice of the Moghul Government under which it appeared to be a general maxim that the immediate cultivator of the soil paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindars. In point of fact the original amount seems to have been annually ascertained and fixed by the Sovereign."

33. A pergunnah rate was in some cases actually fixed.—The most conclusive refutation, however, of the assertion is afforded by a despatch of the Court of Directors to the Government of India, June 15th, 1819, in which the causes of the omission of the authorities to interfere for the purpose of enforcing a pergunnah rate were discussed. "We conclude," they say, "that the supposed difficulty of the operation was the cause of this non-interference. We find, however, that antecedently to the Permanent Settlement, the power was successfully exercised in several parts of the territory under your Government, and that the advantages of this policy are still felt in those districts, although the general system of your administration has been unfavourable to the preservation and improvement of the advantages thus obtained. We particularly refer to the 24 Pergunnahs, and to part of Dinagepore, when it was under the management of the late Mr. Hatch. In the vicinity of Calcutta also the ryots, as Mr. Colebrook understood, have been supported by the decision of the Adalat in their pretensions to hold their lands upon the rents payable by them, or those whose representatives they are according to the best (last?) general measurement which was undertaken by the authority of Government before the Permanent Settlement, and of which the record is understood to be preserved in the office of the Collector."

The Directors go on to quote Mr. Colebrook's statement that "the Regulations of Benares have maintained the tables of rates of Fasly 1817, and that the canoongoe office yet exists in that province for its preservation." Recurring to Dinagepore, the Directors mention that Mr. Hatch had ascertained, by local investigation, the varieties of rate and pottah, the proportion borne by the illegal cesses to the recorded rental, the quality of various classes of soil, the average gross produce, and "5thly, that he determined, reference being had to the present and former rates of rent, what proportion of the average produce should, in each class, be retained by the

ryot and what proportion of a fixed money valuation should be received by the zemindar." The pergunnah rate thus determined by Mr. Hatch in 1790 is reported by an officer well acquainted with the district to be still held in "universal respect." The same thing is the case, I am informed, in Jessore.

It is needless to add that the whole series of Regulations, which constitute the Permanent Settlement, proceed on the basis that the Government had the right to restrict the rents to a certain specified rate, and was exercising that right in the most explicit manner.

34. Compensation to landowners for restrictive legislation.—Another view put forward by the same writer is that, though the Regulation does empower the Government to interfere, whenever it thinks necessary, for the protection of the ryots and other cultivators of the soil, such interference must be accompanied by adequate compensation to those whose interests it may curtail. To this contention there are several answers. In the first place, it is in direct contravention of the Regulation, which expressly provides that "no zemindar, independent talookdar or other actual proprietor of land shall be entitled on this account (*i.e.*, on account of interference by the State for the protection of the ryot) to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay." In the next place, such compensation would be merely, in another form, to lessen the contribution of the land-owners of Bengal to the general revenues, a contribution at present extremely disproportionate to that which every other class pays for the public defence, administration and development of the country. In the third place, any scheme of compensation, short of completely buying out the whole of the landlords' interest in the soil, would be impracticable; and lastly, those who advocate the present reforms do not admit that they are in the long run, and, even in many instances, at the present moment, to the detriment of the landlord. It is for the real interest of the landowner, just as much as of the Government, to have a prosperous, contented and substantial tenantry. Many instances of excellent landlords show the extent to which this fact is realized in Bengal. The object of the present measure is to generalize, as far as possible, the mutual advantages to landlord and tenant of such a state of things, and to guard against the departures from it which negligence or greed on the one hand and lawless impatience of a just claim on the other, are likely to produce. Such a reform does not call for or admit of compensation to any particular class.

35. Did the protection of the Permanent Settlement extend to non-occupancy ryot?—Another, and more plausible, contention is that, whatever be the position of the occupancy ryot, the privileges and protection provided by the Regulation did not extend to the non-occupancy ryots. With these, at any rate, it is urged, the landlords were left free to deal "in whatever manner they thought proper." Arguments have been adduced with great acumen and research on either side of this question. I do not propose to recapitulate those arguments. What was the exact position of the pykast ryot—whether he was more favoured or less favoured than the occupancy ryot—how far any distinct line between pykast and khudkhast ryots was, in practice, drawn, the general object being to induce the non-resident ryot to settle, and the non-resident ryot having always at hand the easy remedy of migration to the next estate—are points, as every one who has followed the controversy knows, on which those who have studied the subject with most care are unable to agree; they must be left, I suppose, as unascertainable. There is evidence, however, that the non-resident ryot could not be forced, any more than the occupancy ryot, to pay more than the pergunnah rate, and that he was exempt from arbitrary eviction; and it has been contended, not without forcible grounds, that the only practical difference between the two classes was that the auction-purchaser of the estate was able to cancel the lease in the one case and not in the other. The doubt existed in 1819, when we find the Court of Directors writing to the Government that they were not satisfied as to the nature of the interest possessed by the landlords in the waste lands of permanently-settled districts, and adding, with reference to the view expressed by the Government, that "it is the opinion of many considerable authorities that in leases of waste, as well as of other lands, the pergunnah rates form a standard of payment not to be exceeded." The doubt which existed in 1819 is little likely to be cleared up after the lapse of more than half a century; but we shall see immediately what was the view, taken by the Legislature in 1859, of the law of the country as to each class of ryot. The Government of India, with a

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view to keep clear of debateable ground, bases its proposed legislation, not on the historical question as to the precise legal limits of the zemindars' powers, but on the necessity of finding "a thorough remedy for a practical evil. We aim at a determination of the case which shall be broadly just to interests which must at some point conflict." The right and duty of Government to apply such a remedy in both classes of ryots cannot reasonably be contested. Its denial would involve the monstrous assumption that the Government, while making the most solemn announcements of its care for every class of tenant, and its resolution to interfere for their protection whenever necessary, and placing the assurance of the ryot's position on the same legal basis as that of the zemindars, arbitrarily excluded from the scope of this beneficent arrangement all the tenantry not then in the enjoyment of occupancy rights, and all the future tenantry of the portion (believed to be between one-third and two-thirds) of the province which was at that time unreclaimed. The mere statement of such a result seems to demonstrate the unsoundness of the assumption which involves it.

36. Previous legislation.—To complete the sketch of the facts of the case, it is necessary to refer to the legislation which has taken place upon it. Of these measures, it is necessary

only to consider Act X of 1859. I have shown, in paragraph 3, what was Lord Canning's view of that Act, viz., that it was an earnest attempt to improve the position of the Bengal ryot and to give him a prospect of freedom and independence by clearly defining his rights, and placing restrictions on the power of the zemindars, which ought, long ago, to have been provided. Its original object was to amend the law as to one particular—the recovery of rent; but it was thought expedient, as the mover of the Bill explained, “to re-enact in a distinct and clear form the provisions of the existing law connected with land rents; and sections 3, 4, and 5, accordingly, set forth what had been the law since the time of the Permanent Settlement.” Section 3 provided that hereditary ryots at fixed rates were entitled to pottahs at those rates; “all other ryots and cultivators” were entitled to pottahs at the rates established in the pergunnah for similar lands, or, if no rent rate could be discovered, at the customary rates for similar lands in the vicinity. Section 4 provided that every resident ryot and cultivator has a right of occupancy, except in the case (1) of sir lands leased for a term, and (2) of sub-ryots. Section 5 provided that resident ryots cultivating lands not previously in their possession, without a pottah, should not acquire a right of occupancy till they had paid rent for three years. This is what the mover of the Bill considered to be a statement of the law in force since the time of the Permanent Settlement. What can we infer from it but that the “resident ryot,” as opposed

to the ryot with a right of occupancy, had certain definite rights, and that the right of occupancy was one to which a short residence, viz., of three years, gave rise. The causes which gave rise to modifications in the Bill as passed are well known. The Committee reported that the pergunnah rates, at which ryots were entitled to hold, were admitted to mean “customary and fair rents; and, with regard to the ryot with a right of occupancy, that it had been pointed out that “residence is not always a condition of occupancy,” and that, as 12 years had in 1856 been prescribed in the North-Western Provinces as giving rise to a right of occupancy, they had, following this precedent, prescribed the same period in the Act.

37. Unexpected results of Act X of 1859.—The consequences of this rule were little foreseen by its framers. The admitted law was that all resident ryots had rights of occupancy; but it was found that some non-resident ryots had such rights, and it was proposed to meet these cases by a rule borrowed from the North-Western Provinces that an ousted tenant could recover possession by showing 12 years' occupation. It is matter of history how this provision came to be understood, not as supplementary rule, but as an exclusive definition—how, consequently, many undoubtedly resident ryots were ousted on account of their inability to prove 12 years' continuous occupation—and how, in the language of the Lieutenant-Governor, speaking of the Act a few years subsequently, its results had been “wholesale enhancement of rents and ejectment of ryots, who had a customary claim to occupancy, and who, under the law as it previously stood, would probably never have been molested.” This view of the unexpected effects of Act X of 1859 has been repeatedly put forward; it was prominently enforced by the Rent Commission; it was adopted by the Government in its despatch in March 1882; and I am not aware that any one has ever contested its accuracy. But if it be accurate, what becomes of the protests, lamentations and oburgations showered so plentifully on the proposal of Government to amend a law which, owing to technical defects, has miscarried in so signal and fundamental a manner, and which produces results the very opposite of those which its authors had in view? The Bill started with the view that all resident ryots had rights of occupancy, that all other ryots were entitled to sit at the settled pergunnah rates, and that rights of occupancy could be acquired by those who had them not by three years' residence. The effect of the Act, as interpreted in our Courts, has been that a ryot, who, and his ancestors for 100 years before him, have resided in the village, may find himself ejected from his holding because he may have been shifted from one plot to another, or may, from some other cause, be unable to prove 12 years' continuous occupation. How can any Government, with any pretensions to a consistent policy, refuse to remedy such a legislative miscarriage?

38. Provisions of the Bill.—Such, in general terms, is the problem which the present Bill is intended to solve; such are the different interests which it has to consider and adjust; and such the policy by which legislation must be guided. We will now see what solution in each case is proposed.

The Bill recognises and maintains the existing divisions of those interested in the soil into proprietors, tenure-holders, occupancy raiyats (at fixed rents and at enhanceable rents), non-occupancy raiyats, and sub-raiyats. In order to understand the effect of the proposed legislation, it is necessary to examine with minuteness its provisions as to each class, and to see in what respects they differ from the law as it was laid down in 1859 and has been for the last 25 years, and from that which was in force previous to that enactment.

39. Tenure-holders.—And first as to the tenure-holders, in which term is included every interest between the proprietor and the raiyat, and, presumably, the tenant of every holding over 100 bigahs (or 33 acres) who sub-lets any portion of it. The Bill provides that, if a tenure-holder has held, otherwise than as a tenant-at-will or for a term of years, at a rent which has not been changed for 20 years immediately preceding the suit, he is presumed to have held from the Permanent Settlement; and if he has held from the Permanent Settlement, his rent can be enhanced only on proof, either (1) that the

landlord is entitled to enhance by the conditions of the tenure or local custom; or (2) that the tenant has, by receiving a reduction of rent (other than on account of diluvion or the acquisition of the land for public purposes), rendered himself liable to enhancement, and that

S. 66.

S. 7.

the tenant is capable of affording it. His rent may also be increased or diminished on the ground of an increase or diminution of the area for which rent has been previously paid. When a tenureholder's rent is enhanceable, the enhancement will be governed, in the first instance, by any contract between the parties; in the absence of contract, the enhancement may be to the limit of the customary rate payable by similar tenureholders in the vicinity; or, where there is no such customary rate, to such limit as the Court thinks “fair and equitable;” but in deciding what is “fair and equitable” the Court is to leave the tenure-holder with not less than 10 per cent. of the net collections, and is to take into account the circumstances under which the tenure was created, the improve-

S. 8.

S. 10.

S. 9.

ments effected by the tenureholder or his predecessors; and the cost and risk of collection. The enhanced rent must not be more than double the previous rent, and cannot be re-enhanced for 10 years. The enhancement may, if the Court directs, be extended over a period of five years.

A permanent tenure is transferable and may be devised as other immoveable property,

S. 11.

S. 97.

S. 98.

S. 12.

S. 170.

except that the holding cannot be broken up without the consent of the landlord. A tenure-holder can be ejected only in execution of decree grounded on breach of a condition, consistent with the provisions of the Act, which, by the terms of the contract, renders him liable to ejectment; and no such suit can be entertained unless the landlord has requested the tenant, if the breach is remediable, to remedy it; if it cannot be remedied, to pay reasonable compensation. The Court, in decreeing ejectment, shall fix a time within which the breach may be remedied or a reasonable compensation be paid, in which case no ejectment will take place. Only on default of the tenureholder to comply with this order ejectment will follow.

40. Effect of sale for arrears on subordinate holdings: Projected interests.—When a transferable tenure is sold in execution of a decree for arrears of rent, the purchaser will take,

S. 175.

subject to certain interests which are termed “protected,” viz., (a) an under-tenure which has existed since the Permanent Settlement; (b) an undertenure recognized in current settlement proceedings as a tenure at rent fixed for the term of the settlement; (c) a lease of land on which buildings have been erected, or gardens, orchards, &c., made; (d) a right of occupancy; (e) a right conferred on an occupancy tenant to hold at a fair rent; (f) any right or interest which the landlord, at whose instance the holding is sold, has expressly, in writing, authorised the tenant to create.

41. “Registered and notified incumbrances.”—As to all other subordinate interests in,

S. 180.

or incumbrances upon, the tenure sold for arrears of rent, they will, if registered and notified to the landlord three months before the accrual of the arrear, be termed “registered and notified incumbrances;” and the tenure will, in the first instance, be sold subject to them; and only if the sum bid is insufficient to discharge the arrear will they be sold with power to the purchaser to annul. The purchaser can in such case, by application to the Collector within a year, annul.

42. Proposed system of registration.—There are various other provisions in the Bill affecting tenure-holders along with other classes of tenants which need not at present be considered. It is important, however, to notice that the Government anticipates an improvement in the law, VII of 1876, as to registration of title. By this no tenureholder would be able to sue for rent unless both his own title and his landlord's is registered. If this were the law, and a complete system of registration were effected under it, it would be possible to provide for the recovery of rent by a landlord from a tenureholder by summary process, similar to that now in force in the case of the tenures known as “putni talooks.” This would no doubt prove of great advantage to the landlords, and, in fact, is one of the substantial advantages which the Bill proposes to confer upon them. On the other hand there can be little doubt that a complete system of registration would be of first rate importance in the interests of the raiyats.

43. Twenty years' presumption.—The first point which has to be discussed in connection with the status of the tenureholder, as thus defined, is whether the 20 years' presumption should still be retained as raising an inference that the rent has not been altered over the Permanent Settlement, and consequently is exempt from enhancement except in the specified cases.

This rule was enacted in 1859, and has been in force ever since. Strong reasons, and those not of a mere speculative order, must be shown for any change. The reasons urged for its repeal are—(1) that it is an infringement of the rights of the landlord under the Permanent Settlement; and (2) that it works hardship to auction-purchasers at sales for arrears of revenue.

The first of these grounds can hardly be seriously put forward in favour of the repeal of an enactment passed 25 years ago, which, having been in use ever since, must be thoroughly familiar to all parties concerned, and as to the practical advantages of which the mass of official opinion appears to be on the whole agreed.

As to the auction-purchasers, as, out of the 147,942 estates in Bengal with a revenue of 3½ crores, only 647, with an average revenue of 1½ lakhs, are annually sold for arrears, the grievance cannot, at any rate, be one of very serious extent.

44. Proposal of Bengal Government.—The Lieutenant-Governor of Bengal, however, is prepared to meet the landlords' wishes by restricting the presumption, for the future, to cases in which it is shown that there has been no change in the rent from 20 years previous to the passing of the Bill. I confess that, though I am glad of any reasonable concession to the landlords, I do not see any adequate ground for this change in the law as it has now stood for 25 years. The presumption may have worked hardly at first; but it seems difficult to conceive how it should do so now. If a landlord chooses, in defiance of the directions of the Legislature, to keep his accounts in such a way as to be unable to show a change, if change there has been in the course of twenty years preceding the suit, he ought, I think to meet the presumption which the law for the last quarter of a century attached to that state of things; and, surely, if there has, as a fact, been no change for 20 years, it is but reasonable, regard being had to the respective resources of the two parties, that the burthen should be thrown on the landlord of showing that a rent has at some prior date been altered. The balance of local official opinion appears to be decidedly against any change. Alterations in presumptions are always objectionable, and the necessity for alteration grows less every year of their continuance. No such necessity, it appears to me, exists in the present instance.

45. Enhancement.—Next comes the question of the restrictions placed by the Bill on enhancement of the tenureholder's rent. As to the interval of time which must intervene between one enhancement and another, it is suggested that the period of exemption from re-enhancement should be 15 years, so as to correspond to that prescribed in the case of an occupancy ryot. This very reasonable proposal is supported by the Lieutenant-Governor, and is hardly likely to encounter serious opposition.

As to the limit in amount, the Bengal Government recommends a section providing that the proposed limit of 100 per cent. on the existing rental shall not apply in cases in which land has been let at a low rate for purposes of reclamation. At present contracts for the reclamation of waste land are, by section 212, exempted from the Act. This section it is suggested, should be amended so as to apply specifically to the present case.

46. The Ryot.—Coming, next, to the much larger class of ryots, and to the much more difficult and more disputable questions involved in the consideration of their interests, we are met at the outset by the additional difficulty that, while the landlord's interest is united in opposing any proposal which tends to enlarge the amount or the area of protection afforded to the occupancy ryot, those who are most anxious to provide for the ryot's protection are not in accordance as to the limits to which the enlargement should go, or the conditions under which the privilege should accrue. The existing law, enacted in 1859, makes the acquisition of occupancy rights depend on the continuous occupation of the land, as a ryot, for 12 years.

47. Proposals of Rent Commission and Sir A. Eden.—The Rent Commission proposed to retain this rule, but to guard against its failure in future, as it has failed in the past, by imposing a penalty on eviction. Sir A. Eden proposed to describe a ryot, who resided for three years in a village or group of villages, as having "a fixed habitation" therein, and to give rights of occupancy over any land held by a ryot in, or within two miles of, a village in which he had "a fixed habitation."

48. Proposal of Government of India and Secretary of State.—The Government of India* recommended a more extensive change. They proposed to take a classification of lands as the basis of a recognition of occupancy right, and to declare that, except in certain specified cases, the right should attach to the occupancy by a ryot of "ryotee" lands. This proposal was disapproved by the Secretary of State,† *first*, as annulling the familiar distinction between resident and non-resident ryots; *secondly*, as departing from a rule recognised ever since 1859; and, *thirdly*, because the failure of the law had, in the opinion of the Secretary of State, arisen from an error, not in the principle of the Act, but in the provisions for its application. This error, it was observed, enabled a landlord to defeat the accrual of rights to the ryot, notwithstanding continuous residence, either by shifting him from one field to another, or by inducing him to enter into a contract barring the right, or by destroying evidence of continuous possession. The Secretary of State accordingly recommended that the "resident" ryot should be one who had occupied land "in the village or estate" for 12 years, and that such ryots should have occupancy rights in the land they occupy and pay rent for.

49. Reply of Government of India.—The Government of India, in reply, pointed out various objections to the Secretary of State's proposal, taking, as the basis of their argument, the distinction between permanent and temporary occupation, and the fact that by the historical law of India, wherever land was permanently cultivated, the tenant held at customary rates, and should not be ejected so long as those rates were paid. They pointed out that the rule proposed by the Secretary of State must tend to a continual increase in the number of unprotected ryots, as occupancy holdings gradually fell in; that it involved a continuance of the evil conflict be-

tween landlord and tenant which it was one object of the Bill to end; that it left the unprotected ryot worse off than before, because it would make it necessary for the landlord, in order to prevent the accrual of occupancy rights, to turn him, not only out of his lands, but out of the village or estate; that its result must necessarily be to lead landlords not to allow resident ryots to acquire fresh lands, but to prefer outsiders, whose position they would be free to dictate at pleasure, and to seize every opportunity of getting rid of the occupancy tenant altogether, and thus to perpetuate antagonism and litigation.

50. Adoption by Government of India of Secretary of State's proposal for definition of "ryot."—The Secretary of State then left the matter to the Government of India, to decide at its own discretion. The Government of India declined to legislate on a basis, which had not the concurrence of the Secretary of State, and determined to act on the lines indicated by the Secretary of State. The result has been the definition of the occupancy ryot's status as given in the Bill. It proceeds on the basis of the view taken by the Secretary of State, that Act X of 1859 had failed, not from defect of principle (the principle being that the permanent cultivator should have occupancy rights), but because it was so worded as to make the accrual of the right depend, not on permanence of cultivation, but on the continuous occupation of the particular plot over which the right was claimed. This defect the Secretary of State proposed to remedy by making residence *in the village or estate* the condition of acquiring the status of a "settled ryot," and by giving the settled ryot occupancy rights. This the Bill does, *totidem verbis*, and so far, if the present controversy is ever to close, we must, I presume, regard the matter as concluded. But the Bill goes on to add an important presumption, *viz.*, that every ryot holding land shall be presumed, as between him and the landlord under whom he holds, to have held the land, or part of it, for 12 years, and thus to have become a "settled ryot" in the village or estate in which the land is situate. To this presumption, as well as to extension of the ryot's rights to the whole of the estate in which he settled, strenuous objection is taken.

51. Objections taken to the definition.—As to the latter of these objections, it is pointed out by the Government of Bengal that there is an inconsistency in allowing the ryot rights in his village and not in the whole estate, because, if the ryot is to have occupancy rights in his own village, he will, perforce, in many cases, have them in different estates, inasmuch as portions of one village often lie in several estates. It is further urged that the extension of the right to the "estate" is very little likely to occasion hardship to the landlord, inasmuch as the greater majority of the ryots are in the humblest circumstances, "barely able to keep body and soul together," and not at all in a position to extend their holdings; that the tenant can acquire new land only by the consent of the landlord, and that if he does acquire it, it is desirable on public grounds that his position should be assured as to the new acquisition no less than as to the rest of his holding.

52. Meaning of "The Estate."—There is considerable conflict of opinion as to what the "estate" is to be, in which the settled ryot is to have occupancy rights, whether the estate as it stood in 1853, all subsequent partitions being disregarded, or some latter date. The Government of Bengal is prepared to agree that the estate shall be that which exists at the passing of the Act. This would greatly narrow the area which the right of occupancy, grounded on the presumption, would affect. As the proposal stands, it does seem a somewhat remarkable result that a right, arising out of a presumption raised by the mere fact of residence in a village, should, as between the tenant and the owner of that village, operate not only in the estate, in which the village is situate, but in the whole of an area which, from 1853, may have constituted two or three perfectly different estates from that in which the occupancy is claimed. If the Bengal Government's proposal is accepted, occupancy right, to which the presumption, while un rebutted, gives rise, will be confined to an area which, at the passing of the Bill, constituted a single estate.

53. Presumption arising from holding land as a ryot.—The presumption that a person who holds land as a ryot, has held it, or some part of it, for 12 years, has been greatly misunderstood. It has been taken as meaning that the mere fact of holding a plot of land is to throw, not only upon the landlord of that particular holding, but upon the owner of any other land in the estate, of which the ryot is in possession, the burthen of proving that the ryot has not for 12 continuous years occupied land in any portion of the estate in which the land is situate, or in any estate of which the estate in question formed a part in 1853. No such extravagant proposal is contained in the section. The presumption applies merely to the land of which the tenant is in occupation, and it operates merely as between him and the landlord of whom he holds. The removal of this misapprehension gets rid of one main objection which has been taken to the section. The proposal simply is that a ryot, holding land, shall, as between him and his landlord, be presumed to have held it or some part for 12 years as a ryot. The justice and propriety of this presumption depend on the principles which govern all presumptions. One of these is that the fact or state of things presumed shall be one of much more general and probable occurrence, in the ordinary course of human affairs, than the fact or state of things presumed against. Another is that the burthen of proving a fact is thrown on the person to whom the means of proof are more available than to the other party in the dispute. Applying these principles, the Select Committee and the Government of Bengal concur in

regarding the present presumption as no more than a recognition of existing facts; and their opinion appears to be justified by the opinion, which, I believe, had the sanction of the late Hon'ble Kristodas Pal, that 90 per cent. of the Bengal ryots are now in the enjoyment of occupancy rights. No one puts the proportion of occupancy ryots at less than 70 per cent; and, this being so, there would seem to be reason, so far, for presuming that what in at least seven-tenths of the cases is admitted to be the fact.

54. Burthen of proof thrown on party best supplied with means of proof.—As to the question of means of proof, there can be little doubt that the landlord, as a rule, is in far better position to prove any fact about a holding on his estate than the tenant. The landlord has his office, his records and books, his accountants. There are besides the public registers, made up on returns which he is bound by law to make. On the other hand, there is an ignorant peasant, with nothing, at the best, but a few scraps of paper, which he cannot read, by way of documentary proof. If there ever was a case in which the burthen of proof may justly be thrown on the stronger and better-equipped party to a dispute, this would seem to be one.

55. Concurrence of opinion as to position of occupancy ryot.—On the whole, the definition and the presumption appear to me to be justified by the history of the case, and by the conclusions at which the Secretary of State and the Government of India have, after an elaborate enquiry, and with all the facts before them, arrived. All parties are agreed that there is a very large class of tenantry in the enjoyment of certain privileges which tend greatly to their prosperity, and so to the well-being of the State. The consolidation of those privileges, and the extension of the area to which they should extend, was one of the chief desiderata recommended by the Famine Commission. The same view has been taken by Sir A. Eden, the present Lieutenant-Governor, the Government of India, and the Secretary of State. It must now be regarded as the acknowledged and deliberately adopted policy of the British Government in India. This being so, how is this policy to be better enforced and these ends to be more effectually attained than by such an expedient as the one in question, which adopts the rule which has been in force for the last 25 years, gives to that rule the effect which the framers of the Act of 1859, in the opinion of the Secretary of State, intended it to have, and supports by presumption, which the facts of the case are shewn fully to justify? There are, no doubt, inconveniences in the definition as it at present stands. One of these is that a landlord would be unable to let a field temporarily to a "settled" ryot without his acquiring an occupancy right in it; and, again, that a person who acquires by purchase an occupancy right would seem thereby to acquire occupancy rights in all lands held by him in the estate. Another result pointed out by Field, J., is that a non-occupancy ryot, who subsequently inherited a fractional share of a single cotta, would, under sub-section (4), become an occupancy tenant of his original holding, despite a contract to the contrary. Another is that, as sub-sections 4 and 5 stand, there might be ryots with some fractional share in the father's occupancy holding, who could not live on it, but still could not hire land in any part of the estate without acquiring an occupancy right in it. But it would, I think, be possible in Committee to devise some provision to counteract these and like inconveniences; and, on the whole, if it is determined to abandon the plan, proposed by the Government of India, of conferring a right of occupancy on the tenant of "ryotee" land, whoever he may be, it is difficult to see what better general definition of the occupancy ryot can be given.

56. Incidents of the occupancy holding: Transferability.—We next come to the incidents of the occupancy right. As to these the most important difference of opinion is as to transferability. This is a very old controversy, and the evils incidental to transferability on the one side and non-transferability on the other have been exhaustively discussed. It is admitted that the occupancy ryot of the Permanent Settlement had no right to transfer, nor was the right recognized by Act X of 1859. On the other hand, there is a marked tendency of usage in the direction of transferability, and the Rent Commission reported that occupancy rights are freely transferred in every district of Bengal except Sarun and Chumparun. The statistics given in the Appendix to the Bengal Report, to a large extent confirm this statement. The Registered transfers of occupancy holdings in 1883-84 were as follows:—

	Number of transfers.	Area in bigahs.	Rental. Rs.
Occupancy holdings at fixed rates	20,000	125,000	1,97,000
Occupancy holdings not at fixed rates	47,000	313,000	3,25,000

The purchase-money was 18½ lakhs in the one case and 32 lakhs in the other, the average area being in both cases about 6·7 bigahs. During the same period occupancy holdings at fixed rates, of the aggregate amount of 3,33,000 bigahs, were sold in execution of decree for Rs. 3,41,000, and other occupancy holdings aggregating 3,74,000 bigahs were sold for 4 lakhs. This gives over a million bigahs transferred in the year, and appears to show that in many parts of Bengal, at any rate, the sale of occupancy rights has grown into a recognised custom, especially as, among the registered sales, a large number were to the landlord of the selling ryot or to other landlords. In 42,000 cases the sale was to other ryots, and in less than 10,000 to mahajuns.

57. Proposal of the Lieutenant-Governor.—Altogether the figures appear to warrant the conclusion arrived at by the Bengal Government that in Bengal Proper, as opposed to

Behar, the practice of transferring has become too generally recognised in practice to be ignored in legislation, and also that the belief that the right of transfer leads necessarily to the land passing wholesale into the hands of mahajuns has no very solid foundation. The Lieutenant-Governor proposes to substitute for the right of pre-emption given to landlords by the Bill (which all parties agree in considering unworkable) a provision giving the landlord the right of vetoing any sale made to other than a cultivating occupant. This would enable the landlord to exclude the mahajuns as a holder, and at the same time place as small a restriction as possible on the ryot's power of turning his interest in the land to the best account.

In Behar, where the practice of transfer can hardly be said to exist (only about 6,000 acres having been transferred in 1883 out of an area of 13½ millions of acres), it is proposed that the matter should be left to be regulated by local custom. The effect of this proposal will be to leave matters as they are in those parts of the country in which the custom of transfer has not yet been established; but to give legislative recognition to it in those parts in which custom is shown to be generally prevalent, at the same time assuring the landlord with an important power to veto, which he does not appear to possess at present.

58. Consequences of introduction of right of transfer.—This proposal certainly cannot be regarded as revolutionary, and it is in general accordance with the recommendation, which after mature consideration, the Famine Commission offered as the best practicable solution of this difficult question. Whichever course is adopted, some evil results will certainly ensue. On the other hand, the denial of the right of transfer admittedly lowers the value of the occupancy rights, and any restriction on it, so far, impairs its usefulness. Where it is now exercised, it would seem a harsh measure to prohibit its exercise. On the other hand, the right of transfer necessarily facilitates the acquisition of land to money-lenders and other non-agriculturists; and its introduction, where it is still unknown, leads inevitably to the wasteful employment by improvident ryots of new-found means of raising or borrowing money. In such a district, for instance, as the Southal Pergunnahs, the recognition of the power of sale would, no doubt, work badly in enabling a rude and improvident population to dispossess themselves of

their lands in favour of a money-lending class. The report for 1883-84 of the Southal Pergunnahs mentions facts which appear to indicate the desirability of not forcing the extension of the power, by premature legislation, on the less advanced portions of the province.

59. Suggested modification of the Lieutenant-Governor's proposal.—It may be necessary to adopt the Lieutenant-Governor's proposal as a compromise between conflicting views; and the opponents of the right of transfer will think the compromise much better than nothing. It is certainly preferable to the proposal to give the landlord a right of pre-emption, which is open to numerous objections, and is generally condemned. There is, however, much to be said in favour of allowing such transfers to be made only to *bona fide* cultivators. As Mr. Justice Field observes, it is difficult to see "the expediency of taking away any portion of the zemindar's proprietary right in order to confer it on another class, which consists of mere receivers of rent and does not create capital by the application of labour to the soil." I should be disposed to place the veto with the Collector instead of the zemindar, whose assent would always be purchasable by a salami and not without one. The parties should, in every case but certain specified exceptions, disability, &c., be obliged to satisfy the Collector that the purchaser was a *bona fide* cultivator, who himself intended personally to cultivate the plot. Without a certificate from the Collector to this effect, no sale should be registered. This would no doubt narrow the area of purchasers and occasion delay; but these results would not be without their solid advantages. The right of transfer is an unhealthy growth upon the occupancy right, and by no means to be encouraged.

60. Other restrictions on right of Transfer.—Supposing His Honour's proposal to be adopted, the landlord would still retain the right of pre-emption at an auction sale under section 33, and his right, under section 34, to foreclose in case of a mortgage decree. It is not clear, however, as the Bill now stands, what would be the position of a landlord who had thus foreclosed. The ryot will not, under section 97, be able to sell a part of his holding without his landlord's consent; and (except in certain specified cases) he can make a gift of it only by registered deed. For this the Lieutenant-Governor would substitute a provision limiting gifts of the occupancy right to the donor's family, and, in that case, doing away altogether with the landlord's right of pre-emption.

61. Subletting.—Another much disputed incident of the occupancy right is the power to sublet. The Bill deals with this by providing, in section 37, that a ryot who sublets more than half his holding may (except in certain cases of disability to cultivate), on registration as tenureholder, be converted into a tenureholder, though he will still remain liable to enhancement as a ryot. The most important effect of this would be to elevate his sub-ryots to the status of ryots capable of acquiring occupancy rights. Another result would be that, in case of the holding being put up for sale in execution of a decree for rent, the property would, in the first instance, be sold subject to existing incumbrances. This section is condemned by official opinion as unworkable, and is abandoned by the Bengal Government. In lieu of this the Lieutenant-Governor proposes, by way of protection to the sub-ryot, to abandon section 62

of the present Bill, and to restore section 119 of the original Bill which limited the money-rent payable by a sub-tenant to five-sixteenths of the gross value of the produce. Section 62, which limits the sub-ryot's rent to a sum not exceeding the lessor's own rent by 50 per cent. where the lease is under a registered deed, and 25 per cent. in any other case, is discarded as calculated to produce hardship in some cases (of which the *guzastadars* of Shahabad are given as an instance), and as certain to be evaded in practice. The protection afforded to the sub-tenant is the least satisfactory portion of the Bill; and if the sub-ryot is to get any real advantage under the Bill, some better means for securing him from oppression and extreme competition must be devised. For my own part I am unable to see why the sub-ryot should not, as against the ryot, enjoy the same privileges, and acquire rights corresponding with those, which the ryot enjoys or acquires against his landlord. This point, however, will be discussed hereafter under the heading "Sub-ryot."

Another restriction of subletting by the ryot provided by the Bill is that the lease shall not, except in certain cases of disability, hold good for more than seven years. It does not seem to me clear how the provision would operate, whether to the advantage of the ryot or sub-tenant, or what the object of it is.

62. Enhancement by contract.—The next point is the occupancy ryot's liability to enhancement. The Bill provides for this by recognizing enhancement of a money rent, first, within certain limits, by contract between the parties, and, secondly, by decree of court on certain specified grounds. As to the first of these modes of enhancement, the conditions prescribed are—(a) that the contract must be registered; (b) that the enhancement shall not be more than 25 per cent. on the existing rental; (c) that the contract must be for a period of at least seven years, and if the enhancement is more than one-eighth, for 15 years; and (d) that the registering officer must, before registering, ascertain the legality of the contract and the competence, willingness, &c., of the ryot.

63. Objections of Bengal Government.—These provisions are objected to on opposite grounds by the two parties to the present controversy. On the one hand it is urged that there is nothing to justify the Legislature in interfering with the freedom of contract between landlord and ryot; and that as the amount of enhancement permitted in cases of contract is less than that obtainable by suit, there is a distinct premium on litigation. On the other hand the Bengal Government views with apprehension the sanction which the Bill will give to enhancements, which it considers would be fatal to the tenantry if realized in practice. It regards, too, with distrust the so-called "amicable arrangements" which are arrived at between landlord and tenants without the intervention of the Court. It fears that the maximum laid down by the Act will become the standard up to which landlords, as a rule, will endeavour to force their rental. The limit of 100 per cent. to the enhancement of a tenureholder's rent in section 8, the limit of 25 per cent. in the present section, and the same limit in the case of an enhancement on account of a rise in prices, seem to the Lieutenant Governor "excessive." The rents in Behar, he says, are already, on unimpeachable evidence, too high. An enhancement of 25 per cent. every 15 years will quadruple the rent in less than a century, a rate of increase which might well be regarded with apprehension. In face of the alarming increase which has taken place in Behar, the Bengal Government presses for the imposition of an ultimate check on enhancement in the form of a provision that in no case shall the rent be more than $\frac{1}{3}$ th of the gross produce of the staple food-crops. The Lieutenant-Governor thinks that there are no insuperable difficulties in the way of ascertaining the gross outcome, and regards the proposed restriction as the only adequate barrier against a tendency to higher rents, which must ultimately impoverish the ryot. The restriction proposed by the Lieutenant-Governor has this in its favour, that the rate of 20 per cent. is that which the landlords of Eastern Bengal, in a memorial presented in 1876, suggested as a proper maximum. One of their prayers was that, "in cases in which there was any doubt as to what the competitive rent was, a ratio 20 per cent. or one-fifth of the money value of the gross produce of the land (taking an average of 3 years) be declared as the rent to be decreed." Besides imposing this, Mr. Rivers Thompson would not give legislative sanction to a higher increase, by means of contract, than $\frac{1}{3}$ th every 15 years. This would double rents in the course of 90 years. In Behar the Lieutenant-Governor would wish the intervals at which enhancement may take place extended to 30 years.

64. Enhancement by decree of Court.—As to the second mode of enhancement the Act VIII of 1869 (B.C.), section 18. grounds prescribed by the Bill, on which, apart from a registered contract, rent may be enhanced, differ in some particulars from the existing law. Under this the grounds are—(a) that the rent is below the prevailing rent for similar holdings; or (b) that there has been a rise in prices; or (c) an increase in the productiveness of the soil, produced otherwise than at the ryot's expense; or (d) that the area which the ryot actually holds is larger than that for which he pays rent. As to the last of these grounds, which is properly treated, not as an enhancement, but as an increase of rent, owing to a rectification of an error as to the area of the holding, there is no dispute.

65. Enhancement on ground of increased productiveness.—As to (c), the Bill superimposes the condition that the increase of the productiveness of the soil must, except in the case of increase arising from fluvial action, have been at the expense of the landlord. The reasons adduced are, first, that the increase of productiveness from natural causes has proved practically impossible to prove, and the provision, as it stands, is unworkable; and, second, that

if a change is necessary, it should be in the direction of giving the tenant, and not the landlord, the benefit of any increased productiveness to which the landlord has not contributed. The only causes, apart from landlords' or tenants' improvements, by which productiveness can be increased, are the introduction of canal irrigation or fluvial action. As to the former, it seems to me imperative to make some adequate provision as to the mode in which the increased value of the soil consequent on the introduction of canals is to be divided between landlord and tenant. As the land tax payable by the landlord is fixed, and as the other taxes which he pays are quite inconsiderable, the result is that, to a large extent, the canals are made at other people's expense than at the landowner's. There is no owner's rate, as in some other parts of India, and consequently the entire burthen is thrown upon the occupier. The consequence has been that in many cases, the immediate consequence of the introduction of canals has been to double or treble the rental, and this rise of rents has been frequently mentioned by the

* Bengal Irrigation Report for 1880-81. irrigation officers as one great impediment to the progress of canal irrigation.* The occupier finds it better worth his

while to go on without canal water than to take it subject to the higher rental which the landlord immediately demands. This subject ought to be expressly provided for.

As to enhancement on the ground of increased productiveness owing to fluvial action, the Bengal Government points out that *chur* or *dearah* lands, i.e., lands liable to improvement or deterioration by fluvial action, are expressly provided for by section 213, the terms of the lease being left, in such cases, to contract, subject to the acquisition of a right of occupancy by twelve years' continuous occupation, and that lands, which have ceased to be *chur* lands, ought not to be enhanced on account of an occasional inundation. The Lieutenant-Governor would, accordingly, omit this ground of enhancement. The Bill provides (section 47) that the increase of productiveness, relied on as a ground of enhancement, must not be "temporary or casual," so that the case contemplated must be such a change in the course of a river as to permanently change the character of the soil by inundation, deposit, &c., or by removing its liability to occasional inundation.

Supposing such a change, it is difficult to see why the landlord should not get a portion at any rate, of the increased value of his land; or why, as provided by section 47, the enhancement should be restricted to 25 per cent. on the previous rental, as well as a moiety of the net value of the increase. The present law seems juster to the landlord than the Bill. If the value of the soil has increased from causes to which neither landlord nor tenant have contributed, the landlord is surely entitled to a share; and if the occupancy tenant got the benefit of half the increase, he would have no reason to complain.

66. Enhancement on the ground of landlord's improvements.—As to enhancement on the ground of increased productiveness caused by the landlord, the Bill requires that the improvement should be registered, and directs regard to be had to the increase likely to be produced by the improvement; to the cost to the tenant of utilizing it; to the existing rent and the resources of the ryot; it also allows the enhancement to be made conditional on its results, and subject to review. There is a further condition provided by section 48, viz., that the enhancement must not be unfair or inequitable. The Bengal Government would further restrict enhancement by providing that in no case should the rent be more than doubled. The doubt would appear to me to be whether all these restrictions will not operate to deter landlords from laying out money in improvements, the fruition of which, in the shape of a higher rental, is circumscribed in so many directions. The matter is not, perhaps, of much practical importance, as it appears not the practice of the Bengal landlords

* Patna Conference, s. 49.

† Report, s. 67.

to invest money in improvements.* Still our legislation ought to encourage the landlord to improve. In the present condition of the law neither landlord nor tenant seem disposed to do so. "It is a fact," the Bengal Government observes,† "that over large areas in these Provinces, dependant on irrigation for a full crop a remarkable decline in the number of improvements has taken place in recent times, except where the landlords have been driven by the *baoli* or *metayer* system to improve. This fact the Lieutenant-Governor attributes to insecurity of title, and liability to enhancement which prevails. The reclaiming cultivators of earlier times, who cleared the country from jungle and built the reservoirs and embankments, which rendered cultivation possible, have been superseded by farmers, holding under short leases, whose interests are so little bound up with the land or the people that they do not find it even worth while to maintain the works which they found in existence. The more secure the ryot's title the greater his improvements."

67. Enhancement on the ground of a rise in prices.—As to (b), enhancement on the ground of a rise in prices, the Bill provides that a rise in the average prices of staple food-crops, in the locality or at the usual markets, shall be a ground of enhancement. The average price is to be ascertained by comparing the average price-lists, published by Government, of the preceding quinquennium with those of such other quinquennium as the Court thinks equitable.

S. 45.

S. 49.

The enhancement must not be more than 25 per cent. on the existing rental; no enhancement is permissible if, under the circumstances, the Court considers it unfair or inequitable; and, subject to these conditions, the enhanced rent shall bear to the former rent the same proportion as the prices of the latter quinquennium to the former.

68. Ought food-crops alone to be considered?—Upon this several questions arise. In the first place, ought the prices of the staple food-crops alone to be considered? The Lieutenant-Governor thinks that a normal rise of prices, which is the point to be considered, is, on the whole, best ascertained by reference to the general price of food staples. On the other hand, he points out cases in which the rule might work unfairly. Supposing, for instance, that food-grains increased in value, no rise taking place in the price of non-food staples, a ryot, whose crop was non-food, would find himself liable to an enhanced rent without any equivalent increase in his receipts. On the other hand, the converse case would act unjustly on the landlord. It is to be observed that, in the case of cultivators who produce only food enough for their own support, the rise in prices operates against them as affecting the cost of any labour they employ and of anything they have to buy; and, in the case of a cultivator who raises a non-food crop and buys his food, a rise in food grains, without a corresponding rise in non-food staples, is so much pure loss. On the whole, there seems no sufficient reason for the restriction of the staple crops, by reference to which prices are to be judged, to food-grains. Some officers* advocate the inclusion of non-food crops on the ground that they are less liable to fluctuations than food crops. The simpler and fairer plan would seem to be to provide that the prices of all staple products should be taken into account, leaving to Government to declare in each locality what the staple crops are.

* Patna Conference, s. 25.

69. Ought increased cost of production to be considered?—Next comes the question whether, in cases of enhancement on the ground of a rise in prices, the increased cost of production ought to be taken into account. The Bengal Government gives cogent reasons for thinking that it ought. It seems pretty obvious that, if what we are looking to is the increased capacity of the tenant to pay rent, no inference, based on the increased value of his produce, can be sound, which does not take into account any increase of the outlay involved in obtaining that produce. Such a ground would probably be taken into account, under section 48, in considering whether the enhancement was "in the circumstances fair and equitable." The Lieutenant-Governor recommends that the increased profit derived from the rise in prices should be divided between the landlord and tenant. Thus, supposing a rise of 25 per cent. in prices, he would allow enhancement to the extent of $12\frac{1}{2}$ per cent., and if this were conceded, he would abandon the restriction to 25 per cent. of the former rent now provided by section 45. This would leave the rule pretty much as it now is, *viz.*, that regard must be had to the net value of the produce.

70. Enhancement on the ground of rent being below the prevailing rate.—Another ground of enhancement provided by the Bill is that the rent is below the prevailing rate payable by occupancy ryots for similar holdings in the vicinity. The retention of this ground, which exists under the present law, is strongly objected to. Mr. Reynolds mentions it in his dissent from the report as "fraught with serious danger," and as tending, in conjunction with other provisions of the Bill (especially the removal of the restriction on the initial rent demandable from a non-occupancy tenant, and the concession of the power to increase a new occupancy ryot's rent by 25 per cent. on that of the outgoing tenant), "to put into the landlord's hand a powerful engine for enhancing rents up to the maximum amount which the tenant will pay rather than give up the land." The Bengal Government concurs in Mr. Reynolds' disapproval of the retention of this ground of enhancement, which, it says, "is condemned by the weight of authoritative opinion as illogical, unnecessary, and mischievous." As this was one of the grounds of enhancement formerly enacted by Act X of 1839, and has been recognised ever since, its abandonment needs very clear justification. The Lieutenant-Governor, after mature consideration of the facts, records his conviction that "there can be no longer any doubt that the retention of the prevailing rate as a ground of enhancement is unjust and fraught with the utmost danger to occupancy ryots who form the vast mass of the peasantry in Bengal." The grounds of this opinion appear to be that the idea of a "prevailing rate" arose from that of the "pergunnah rate," the existence of which, and the possibility of its discovery, all the earlier legislation on the subject assumes; but all recent experience has shown that no such generally prevalent rate can be discovered, nor even (such are the inequalities which from one cause or another have grown up in the same localities) constructed. Assuming, then, that no generally prevalent rate exists, the effect of a rule prescribing reference to such a rate is to provide a vague and shifting standard, which has a constant tendency to rise, according to the eagerness of the landlord to press his interests and the inability of the ryots to defend theirs. As each occupancy holding falls in, or is purchased by the landlord, the landlord will, in the case of non-occupancy ryots, demand whatever rent he pleases; and can claim an initial rent from a new occupancy tenant 25 per cent. in advance of that paid by the old tenant; and he will have, besides, the general powers of enhancement on the grounds already noticed. There will, accordingly, it is urged, be a general tendency to a rise of rentals; and the rule which allows the landlord to enhance occupancy rents with reference to other rentals which have risen in obedience to this tendency "places the rights of the vast body of cultivators at the mercy of the feeblest, the stupidest, the most venal of the class."

The Lieutenant-Governor is prepared to accept, in lieu of the present rule, a provision that enhancement may be allowed wherever the rent is shown to be unduly low with reference to the rates which prevail in the village or estate for occupancy ryots with the same advant-

ages, &c., provided that the rate has been framed and promulgated by Government under the provisions of the Bill (Chapter XI) for the framing of a table of rates.

If this suggestion is adopted, it will no doubt have the effect of freeing the reference to the prevailing rate, as a ground of enhancement, from many of the evil consequences now attributed to it, and of rendering landlords much more eager than they would otherwise be likely to be to have a table of rates drawn up. The compromise seems reasonable; and those who, with the Lieutenant-Governor and Mr. Reynolds, view with alarm the tendency to enhanced rents, will, no doubt, gladly accept it as a substantial modification of the existing law in the ryot's favour.

71. Difficulty occasioned by difference between nominal and actual rental.—With regard to the entire question of enhancement, we are met, at the outset, with a difficulty of the gravest kind. There is reason to believe that the rent actually paid, or of the payment of which there is any reasonable expectation, differs materially, in most cases, from that shown as due in the zemindars' books. Of this we have a striking instance in the experience of the Court of Wards. The estates, which, from one cause or another, come under the management of the Court of Wards, are, it must be supposed, a fair specimen of the generality. The following is the account, given in the Report for 1883-84, in explanation of the fact that, though the arrear due on the 206 estates under the Court's management during the year was 53½ lakhs, and the current demand over 54 lakhs, the actual collections were only 50½ lakhs. "This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years; but, as a rule, a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand shown as a balance against the ryot, or, in some cases, it is kept alive by instalment-bonds executed by the ryot. Almost every estate under the Court of Wards comes under its management, with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections from Wards' estates is less than the current demand. The result has generally been considered unsatisfactory; but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent. of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent." It is obvious that such a state of things, in which the tenant has always an arrear of rent against him, which it is impossible for him to clear away, while the landlord has a nominal rental which he can at any moment enforce, but which, it is understood, will not be enforced except in some exceptionally prosperous year, or unless the tenant makes himself obnoxious—leaves the tenantry really at the mercy of the landlord, destroys every incentive to improvement and every germ of independence, and may, at any moment, become, in the hands of a grasping or unscrupulous landlord a most potent instrument of oppression. It may not incorrectly be described as the precise antipodes of the position in which it was the object of the Permanent Settlement to place the ryot.

72. Acquisition of ryots' rights by landlord, and vice versa.—One of the most important considerations connected with the status of the occupancy ryot is the effect—(1) of purchase or acquisition by the landlord of the ryot's interest; and (2) of the acquisition by the ryot of the landlord's interest, or of the fact that, during the occupancy, the same person has represented at once the occupying ryot and the landlord, either solely or conjointly with others.

As to (1) it is obvious that, if the landlord is able to buy out the occupancy tenant, and either to hold the land as khamar, or to let it to unprotected tenants, a great facility is afforded for the increase of an unprotected class of tenantry and for the curtailment of the area occupied by settled ryots.

As to the second, where, as is often the case, land belongs to several coparceners, and is held by one of their number as tenant of himself and the rest, there seems to be no reason why occupancy rights should not accrue; though, I believe, the present law is against the accrual. Sections 28 and 29 deal with this subject, but not very satisfactorily. It is not enough to provide, as section 28 does, that the acquisition by the landlord of an occupancy tenant's rights shall not injuriously affect a third person. What is wanted is a provision that the change shall not have the effect of replacing a protected ryot by a wholly dependent one. It is, besides, by no means desirable to encourage the purchase of ryots' rights by the landlord. I would meet the case by providing that, as against the ryot, the sub-ryot shall have all the rights which the ryot has against his landlord; that, if he has resided in the village, or estate for 12 years, or otherwise comes within the definition of a "settled ryot," he shall be deemed to have, as against the ryot, and subject to the landlord's rights, occupancy rights; and then, on the sale of the occupancy right, the landlord would merely stand in the ryot's shoes, and the sub-ryots would become his ryots with the same rights against him that they had against the ryot. In the case of no rights having accrued to the sub-ryot, the right of imposing an initial rent and enhancement should be strictly limited to the rates and enhancement permissible in the case of occupancy tenants, so as, in effect, to place the sub-ryot in the position of the occupancy tenant whom he will replace.

As to the second case, I see no reason why the tenant, who has a share in the landlord's interest, and who, with the consent of the co-sharers, has occupied the land as tenant, should not acquire occupancy rights; but where, as in the case of a tenure-holder, the landlords' interest is subject to a higher proprietary interest, the tenure-holder ought not, as the Bengal Government points out, to be able to fortify his title against the superior holder by rights acquired by himself as occupant against himself as tenure-holder. The proposal, accordingly, to strike out the words "or tenure-holder" in section 29 appears to be reasonable.

(a) Sub-section 2 of section 29 might be worded "shall not, by occupation of land within the area of his tenure, during its continuance, acquire a right of occupancy therein."

(b) A person who has a right of occupancy in land shall not lose it by subsequently holding the same land in farm.

(c) If a person who has a right of occupancy in land in which he is joint-proprietor, subsequently, on partition, becomes sole owner of the land, such land shall become "khamar or zerat."

73. Restriction of occupancy ryot's power to contract.—One important aspect of the occupancy ryot's position, as defined by the Bill, is that presented by section 210, which enacts that no contract shall override the provisions of the Bill as to the status of the occupancy ryot, the acquisition of occupancy rights, its incidents, the occupancy ryot's right to demand a diminution of rent on the ground of deterioration of soil, fall in prices or diminution of area, his right to demand a commutation of a produce rent into a money rent, his right to make improvements and claim compensation for them, and his immunity from ejectment except in execution of decree. The removal of these important matters from the sphere of contract has naturally excited much hostile criticism, all the more so that both Act X of 1859 and Act VIII of 1869, which re-enacted it for Bengal, expressly provided that their provisions should be subject to a written contract between the parties. The propriety of excluding certain contracts of ryots from the ordinary law of contracts was much discussed, when the Indian Contract Act was passed in 1872. Sir George Campbell, who was then Lieutenant-Governor, was strongly in favour of making express provision to meet the case of contracts by ryots, and I think drafted a section or an illustration to carry out this object. His proposal was overruled, if I remember right, on the ground that the Bill, as it stood, provided sufficiently for all the grounds—fraud, misunderstanding, ignorance, undue influence, coercion, &c.—on which the legality of a contract could be impugned; and that it was better to leave the law in this form than to declare any particular class of persons incompetent to contract, or any particular class of contracts invalid. Grave reason ought to be shown for so important a change, as that now proposed, not only in the general law of contract, but in the special provisions of the rent law on the subject. But the grounds of the proposed change have, I think, been somewhat misunderstood. Act X of 1859 introduced for the first time the ryot's power of contracting himself out of the rights which the Regulation conferred upon him. The results of this provision, as of most others in that deplorably ill-considered enactment, were unforeseen by its authors. They believed themselves to be confirming the resident ryot in his rights, and opening the door to other ryots to acquire such rights. They were, in reality, putting several most formidable weapons into the hands of the landlords for the destruction of all rights whatsoever. One of these was the rule which was understood as making occupancy rights depend on 12 years' continuous occupation of the identical plot. Another was the provision allowing contract to defeat the provisions of the law. This latter provision the evidence shows to have been employed with disastrous effect. Whether it be from ignorance, stupidity, inability to look forward, or the habit of submission to a powerful landlord, it is incontestable that the kabuliyats obtained by the landlords from the ryots are, in a large number of instances, such as it is inconceivable that any rational man, with a due knowledge of his rights and an independent will, should be induced to sign. How these documents are obtained, whether by force or fraud, we have no means of knowing; but they must be due to one source or the other. To take one conspicuous instance, the recent Mymensing dispute, I was informed by an official, a strong advocate of the landlord's interest, who had himself carefully examined the entire file of papers, that he was perfectly satisfied that the great mass of kabuliyats, on which the quarrel turned, had not been *bona fide* executed by the ryots, but were either forgeries or in some other way improperly obtained. Now, to tell an illiterate peasant, whose income is perhaps Rs. 20 per annum, who is heavily in arrears to his landlord and the mahajun, that it is open to him to contest such a document on the grounds specified in the Indian Contract Act, appears to me a sort of practical joke, which, unhappily, has been frequently perpetrated by the Indian Legislature, but of which, every one is by this time heartily sick. The reasons for invalidating certain classes of contracts between landlord and tenant in England and Ireland are perfectly familiar, and they apply with still greater force in India. Speaking generally, the tenant and the landlord in this country are not sufficiently on the same level of knowledge or resources to make it possible for them to contract with that full understanding and independent will that are the essential ingredients in a valid contract. In the absence of these, any form of contract is a farce, and the law should prohibit farces wherever it is possible to do so. The section does not specify whether the intention is to invalidate all contracts within its scope, or only those made subsequent to the Act. In the latter case, effect will be given to a large number of contracts which, during the last two or three years, have been effected by the landlords in contemplation of the Act. On the whole, I am satisfied that, if all the provisions of the Act are not

to be rendered nugatory, a most stringent restriction on the power of contract is necessary. It seems questionable, however, whether the rule might not be relaxed so as to meet cases, such as those of indigo-planters or wealthy ryots, in which the facts negative the possibility of oppression or undue influence, and the inability to contract would be found highly inconvenient. In such a case a proceeding before the Collector might be had to certify the competence of the parties. The relaxation, however, should, in my opinion, be kept within very narrow limits.

74. The non-occupancy ryot.—We next come to the case of the "non-occupancy" ryot. It is admitted that his position under the Bill will be far stronger than it is at present. Every non-occupancy tenant in possession will be exempt from enhancement except by a registered agreement or an agreement tendered to him through the Court under the provisions of section 60. If the ryot accepts the rent so tendered, or a rent which the court considers fair and equitable, he is safe from enhancement or eviction for five years. The court, in considering what is "fair and equitable" will have regard to the rents paid by similar tenants in the vicinity; but in no case must the rent be enhanced by more than 50 per cent.

75. Grounds of ejectment.—The non-occupancy ryot in possession can be ejected only by a decree given on the ground either—(a) that he failed to pay an arrear, or (b) that he has used the land in a manner to unfit it for the purposes of the tenancy, or broken a contract which by the contract involved liability to ejectment—and then only subject to the provisions for remedy or damages, in lieu of ejectment, contained in section 170; or (c) on the expiry of the term specified in a registered lease, if notice to quit has been served not less than six months before the expiry of the term; or (d) that he has refused to agree to a rent determined to be fair and equitable under section 60.

76. Improved position of non-occupancy ryot.—These sections give, and are obviously intended to give, a considerable degree of fixity to all existing tenancies. All grounds of ejectment, except the four specified, are taken away, and no one of these four affords the landlord the liberty of dealing in any degree as he will with the land. With a new tenant he can indeed fix what rent he pleases, but there his freedom ends. Unless in the case of a registered lease, he can, practically, never get rid of the tenant so long as the tenant either conforms to the terms of the lease, or pays the damages decreed for its breach, and submits to such enhancement as is found by the Court to be "fair and equitable" with reference to existing rents in the neighbourhood. And the provision as to the registered lease will not apply to cases where the lease is executed with a tenant already in occupation, because there is an express provision that he is not to be deemed to be "admitted to occupation by the lease, although that may be its purport."

There can be no doubt that these provisions will be felt to work extremely harshly by the class whose existing rights they curtail. They will give a fixity of status to a large class of tenants, who do not at present enjoy it, and who in many cases certainly did not contemplate it when the tenancy commenced. It is, probably, the most violent interference with private rights which the Bill contains. The question is, can it be justified? The answer must depend on the view taken of the contention now advanced by extreme advocates of the landlord interest, viz., that, whatever may be the position of the occupancy ryot, as regards non-occupancy ryots, the landlord's rights are absolute, and interference in any shape is unjustifiable. The general considerations which must govern this point, and which show such a contention to be unsustainable, have already been considered.

77. Proposal of the Rent Commission and original Bill.—The Rent Commission dealt with the case by restricting the landlord's power to evict tenants of more than three years' standing. They recommended that the evicting landlord in such a case should be bound to pay the ejected tenant a year's improved rent, besides compensation for improvements. This proposal was not generally approved, and the Bill, proposed by Sir A. Eden, put no restriction on the landlord in his dealing with non-occupancy ryots, save one, which was a provision limiting the rent in every case to $\frac{1}{4}$ th of the gross produce. The Bill, as introduced into the Legislative Council, reverting to the proposal of the Rent Commission, affixed a practically prohibitive penalty—ten years' rental, to eviction by a landlord who refused to let his tenant sit at a fair rental. The proposal of the Bill as amended by the Select Committee, is to leave the initial rent to the agreement of the parties, but to give all tenants, except those whose tenancy commences with a registered lease, a status falling little short of occupancy rights.

78. Proposal of the Bengal Government.—The proposal of the Bengal Government is somewhat different from the Bill. The Lieutenant-Governor regards all initial limitations on the rent and all direct attempts to restrict enhancement as vain, and the action of a lease, such as that contemplated in section 60 (7) as likely to be injurious, as stopping the accrual of occupancy rights. It appears to me, however, that it is the intention of section 60 (7) that, when a ryot gets the right to stay in for five years under that section, occupancy rights may meanwhile accrue. The only method in which, in the Bengal Government's opinion, the non-occupancy tenant can be benefited is by providing adequate compensation to the tenant who is evicted though ready to pay what the court regards as a "fair and equitable rent."

regard being had to all the circumstances of the case, the capacity of the land and the condition of the ryot." If he refuses to pay this "judicial" rent, he should be ejected; if he agrees to pay it, he should, if his landlord insists on ejecting him, receive as compensation one-fourth of the judicial rent for each year in which he has been in occupation up to a maximum of five years' purchase. This proposal proceeds on the simple basis that a ryot who is in occupation of the soil, and is ready to pay a fair rent, has a right to stay there, and that from the historical point of view non-occupancy rents ought not to be higher than occupancy rents. The Lieutenant-Governor holds it to be established that while "the pergunnah rates existed, no class of tenant paid a higher rent than that allowed by it, and even now in parts of the country where ryots are strong, it is often the non-occupancy ryot who pays the lower rent. It is an accordance with the general feeling of the community which condemns capricious evictions as unjust and oppressive; and it would operate, not in the case of the real zemindars of the province, who do not, as a rule, evict, but in the case of subordinate landlords, newly enriched purchasers and middlemen, whose severe dealings with the cultivator are not sanctioned by public opinion or general usage. It is urged, moreover, that as the landlords gain under the Bill considerable facilities for enhancing the rent of the great majority of their tenants, they may reasonably consent, in the case of the other portion, to a curtailment, which will not in fact, interfere with what is the usual course of dealing on well-managed estates.

79. Bengal Government's proposal considered.—It is in vain to hope that this proposal will meet with acceptance at the hands of those who regard the landlord's ownership as legally absolute so far as non-occupancy ryots are concerned, and who denounce any attempt to interfere with it as an indefensible invasion of private rights. It is only to those who adopt the view that the resident ryot has, by the law of India, rights of some sort, though they have been too often obscured in practice, and that it is essential, in the interests of the community, to rehabilitate him in those rights, that the present proposal will seem even open to discussion. I have already considered the grounds which seem to me to prove that such rights exist, and must, if we are to escape general agricultural destitution, be preserved. The danger towards which India seems to me to be drifting is that of the country becoming a huge *officina*, in which millions of human beings will be competing ineffectually in a desperate struggle of existence, living chronically at the lowest point compatible with continuance of life and sinking, at the first additional pressure, below it. To avert this consummation, it seems to me essential to take every step to keep the standard of life and comfort as high as possible, and, where occasion offers, to raise it. With this object I would interfere—even at the cost of checking that immense desideratum, the growth of Indian manufactures—in order to prevent manufactures being carried on in a way to involve suffering and degradation to the operatives and, with a like view I think the Government should say—as according to the law of India, I believe that it always has said to the landowners—"You have been constituted by Government the nominal owners of that which is to the many millions of India the exclusive material of existence; but your ownership is not absolute: we will not allow those millions to be at your mercy; we will not leave the cultivator of the soil, defenceless as he is, to fight his battle with you on the ordinary ground of contract. In such a battle he is certain to suffer; unrestricted competition will drag him down into degradation and ruin, which will, eventually, be your ruin too. In your interest, no less than his, we exercise the duty and right, solemnly recorded in our written law, to interfere for his protection." Assuming this to be the attitude of Government is the provision that the actual occupant of the soil shall be entitled to sit at fair rents and unreasonable concession? We have seen what the position of the resident ryot was before Act VIII of 1859, and how it has deteriorated owing to the unfortunate language of that enactment. Can the present proposal be said to do more than establish the state of things which the authors of that Act believed to be the law of the land, and intended to preserve? I think it cannot; and believing this I sincerely trust that the proposal may commend itself to the judgment of those by whom this all-important question will have to be decided.

80. The Sub-ryot.—The case of the sub-ryot is, for several reasons, the most difficult of any with which the Bill deals. On the one hand he has no historical status whatever, being the outcome of the beneficial rents at which various classes have been allowed to sit during the last century. On the other, if, in the beneficent language of the Permanent Settlement Regulation, the Government is most bound to protect those who, as being most defenceless, most need its protection, there can be no doubt that it is here that we come on an agricultural residuum, the class without resource and ready to accept from a landlord, who is often himself in straitened circumstances, any terms which he hopes (and too often hopes wrongly) may prove compatible with his earning of the barest livelihood.

The inveterate tendency of the Bengali to sublet, which has exhibited itself in every other class, makes it quite certain that this class will increase as time goes on. Nothing is known about its numbers but that it is already large, and that in some parts, so acknowledged is the position of the sub-ryot, that his holding has a marketable value. The Bill has been criticized, and I think justly, for the practical abandonment of this class to its fate, and for leaving the solution of a difficulty and danger, which must every year become more serious, to be attempted by some subsequent Government. No Bill will be in any way satisfactory that does not look the existing, or immediately imminent, state of things fairly in the face, and provide the best means which can be devised for meeting it.

81. Provisions of the Bill for Sub-ryot.—The main provisions in the Bill, affecting the status of the under-ryot, are (1) that any person, who holds more than 100 bigas and sublets any part of it, shall be presumed to be a tenure-holder (section 5); and that any ryot who, except in cases of disability, sublets more than half his holding, shall on registration as a tenure-holder, be deemed to be one, except that his liability to enhancement of rent will remain as before.

The object of these provisions is that, on the ryot thus becoming a tenure-holder, his sub-ryots may move up into the status of ryots, and enjoy whatever privileges the law confers on them as such, and be in a position to acquire whatever rights of occupancy could be acquired from an owner or tenure holder. I will not discuss them, because the Bengal Government, on grounds which seem very cogent, regards them as impracticable. It remains to consider whether the same object might not be attained in a more direct manner. The other safeguards provided by the Bill are—

- (1) That the landlord of an under-ryot cannot demand from him a rent exceeding his own rent by more than 50 per cent. in the case where there is a registered lease, or 25 per cent. in other cases.
- (2) That the under-ryot cannot be ejected except on decree and at the end of the agricultural year, and on a written notice served six months before the end of the year.

(3) That his rent will be payable in instalments, not more than four, prescribed by the Local Government, and will be subject to the same rules as to alterations of amount on alteration of area, payments and appropriation, receipts, deposit, decree for ejectment for arrears, illegal cesses, damages for unreasonable suit, and distraint, relief against forfeiture, and measurement, as are provided for other tenants. He is excluded, apparently, from the provisions as to compensation for improvements, surrender and abandonment. He will thus be generally in the position of a non-occupancy ryot, except that his landlord cannot demand more rent than 50 per cent. or 25 per cent., as the case may be, in excess of his own rent, that, subject to this, there is no restriction on enhancement; that he cannot claim compensation for improvements, and that he cannot acquire occupancy rights by continuous residence.

82. Proposal of Bengal Government.—The Lieutenant-Governor does not approve the restriction of the under-ryot's rent to a specified fraction of the ryot's own rent. Such a restriction, he says, would be easily evaded, and might, in some instances, produce hardship. In substitution he recommends a rule that in no case shall the rent of the under-tenant be more than $\frac{1}{4}$ th, or $31\frac{1}{4}$ per cent. of the value of the gross produce calculated in staple food-crops. As His Honour also recommends the maximum of 20 per cent. on gross produce for the ryot's rent, the result would be that, supposing ryot and under-ryot to be rack-rented the ryot would be left with $11\frac{1}{4}$ per cent. of the gross produce.

83. Desirability of not deferring legislation as to Sub-ryot.—This protection seems most inadequate, and, difficult as it is to devise any better means of protection, I cannot help hoping that it may be possible to do so. The authors of the Bill recognise the possibility that the powers of transfer and sub-letting, which it confers "may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy ryots, but under-ryots, with but little protection from the law;" but they say, "if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it." This appears to me a most lame and impotent conclusion of the enormous labour which has been, for several years past, bestowed on the subject. The policy of leaving to posterity to dispose of difficulties, the way through which is not apparent to ourselves, is surely one which the experience of this subject, if any in the history of Indian administration, condemns. We are now endeavouring, with the utmost difficulty, at the cost of much antagonism, class-feeling, animosity, alarm, and, I fear, of giving sore offence to the great body of proprietors in Bengal, to repair the mischief occasioned by the incomplete character of Lord Cornwallis' legislation. The reforms which cost such a struggle now might have been carried then without an effort, in fact, were believed by him to have been carried. Certain points were known to be obscure, and Mr. Shore urged that legislation should be postponed till the measure could be rendered more complete. Lord Cornwallis, however, resolved to go on, resting no doubt in the comfortable assurance that, if the protection afforded by the Regulation proved, in any case, insufficient, "the Government of the day would know how to deal with it." But has that assurance been justified? Did the authors of Act X of 1859 know how efficiently to remedy the defects of the law? or does any one now, after several years of enquiry and discussion, feel any real confidence as to the efficacy of the remedy proposed for a state of things, which is agreed on all hands to be full of danger and anxiety? The history of the case seems to me to point strongly in the direction of the desirability of dealing with the subject in a thorough, far-seeing manner, taking into account the tendencies which we know to be at work, and the results that the measure is likely eventually to bring about. Any measure which leaves the actual occupant of the soil to make the best fight he can, will, in my opinion, be a failure from the first, and will become a more signal failure every year it lasts, because the class, which it fails to protect will, year by year, become larger, its need of protection more pressing, and the consequences of the absence of protection more conspicuously disastrous. If our object is to have a substantial peasantry in occupation of the soil, how do we promote it by conferring, at

the cost of the zemindars, all sorts of privileges on a class of persons, who are themselves often considerable landlords, and not at all likely to use these rights as landlords more sparingly than the zemindars? I agree with Mr. Justice Field when he says: "I can see no reason why the proprietary interest of the zemindar should be injuriously affected by legislation for the benefit of a middleman, while the corresponding interest of the same middleman is protected, to the detriment of the actual cultivator of the soil under him. On what principle could it be contended that the portion of a Rungpore jotedar, who holds 1,000 beegahs of land, 50 or 100 of which he cultivates himself, while he sublets the remaining 900, should be protected as against the zemindar, while the tenants of the 900 beegahs, who are the actual cultivators of the soil, and who are as much deserving of care and protection, as the jotedar himself, are left more at his mercy than he is left as regards the zemindar?" The necessity of protection is, indeed, often greater, because the middleman is a smaller, and, therefore, a more grasping and tyrannical landlord. The question is, how can this protection be afforded?

84. Proposals as to sub-ryot considered.—One proposal is to allow of occupancy rights being acquired only over an area sufficient to maintain the ryot himself and his family; another is to provide that, with respect to any portion which the ryot sublets, the tenant shall acquire, as against him, the same rights which he would against a proprietor, subject, of course, to the proprietor's superior right. This latter proposal seems, at any rate, in harmony with the general spirit of customary law in India, which has always tended to give the actual occupant of the soil something less precarious than a mere tenancy at will. It is, obviously, a historical accident that the ryot be the one landlord whom the law leaves unfettered in his dealing with his tenants, while it imposes every sort of restriction on the zemindar and tenure-holder. It is an anomaly, that ought not to be allowed to remain. On the other hand, we need feel no scruple in imposing restrictions on the ryot, because, in his case at any rate, there are no vested interests; his power of subletting will be now, for the first time, recognized by the Legislature. The object in protecting the occupancy ryot is to make a substantial tenant, not to make a new class of landlords, less unfettered, less respectable, and, presumably, less considerate than those already in existence. I would, therefore, instead of section 37, substitute a provision that, immediately the ryot sublets, he should become liable, as regards his tenant, to whatever restrictions the tenure-holder is liable to as against his. This would give the under-ryot, in addition to what the Bill now gives him, the benefit of the restrictions on enhancement, the right to compensation for improvements, and the power of acquiring occupancy rights. I should be inclined to cut down still farther the margin between the rent which the ryot pays, and that which he may demand. A man who can get 10 per cent. of the gross produce of land by simply subletting it, is likely to regard that as the best thing he can do with it. This is just what we want to discourage. The object is to prevent middlemen from buying occupancy rights for the purpose of subletting them at a profit. Why should this object not be effected directly by providing that, except in cases of disability, the ryot cannot demand a higher rate than he pays? This would put an end to the middleman's business, and replace the occupancy right on its original proper footing as a protection to the occupant of the soil, not the creation of a fresh and unrestricted class of landlords.

85. Codification of the entire subject desirable.—To pass from matters of substantive law to questions of form and structure, I would venture to suggest that the Bill, though, for the most part, accurately drawn, is susceptible of improvement in scope, language and arrangement. In the first place, the determination not to follow the Rent Commission in its attempt to make the Bill a Code, mentioned in clause 10 of the Statement of Objects and Reasons, is, in my opinion, much to be regretted. The new Act ought, I think, with all deference to the contrary view expressed by the Select Committee, to be "a complete and self-contained statement of the whole law" on the subject; nor do I see why, because attention is mainly directed to certain important amendments of the existing law, the opportunity should not be taken for codifying the entire law on the subject. When is it probable that the law will be better known and more thoroughly and generally understood than at present, when so many officials have been studying and considering it for several years, and when the numerous excellent reports and memoranda, issued by the Government, Commissions, or individual officials have thrown so much light on every portion of it,—when the Government of India has formally placed before the Secretary of State an elaborate statement of its view of the whole subject, and the Secretary of State has expressed his opinion on that statement? All the cogent reasons, which have determined the Government to persevere with the codification of other branches of

Indian law, are at least as applicable to this part of the law as to any other. The Government of India* is fully alive to the serious evils which have arisen from the misapprehensions occasioned by the incomplete form of Act X of 1859, and from that enactment, intended by its authors to be an additional enactment, being understood by the courts as an exclusive enactment. It is, moreover, a matter of real administrative importance that the law as to landlord and tenant should be so clearly and concisely stated as to enable the officials, who are called to deal with it, to get a clear and comprehensive view of it. It is in the interests of all that ambiguities and obscurities should not be left for suitors and advocates to wrangle over, and the courts to spend precious hours in endeavouring to elucidate.

86. Amendments in the drafting of the Bill: Preamble.—I regret the omission of the preamble which appeared in the draft No. 437 of 17th January 1883. Considering the perti-

nacity with which the opponents of the Bill have denied all the main legal grounds on which the right of Government to legislate depends, and have taken their stand on the assertion of absolute proprietorship conferred on the zemindars by the terms of the Permanent Settlement, it seems to me well worth while to assert those grounds in an unmistakeable manner, to show, at the outset of the Bill, that the Government takes its stand, too, on the Permanent Settlement, and is acting unquestionably well within the letter and spirit of the regulations when it legislates in any way it thinks right for the benefit of the ryots. I should be disposed to add words to the effect that, from the time of the Moghul Government, it has been a recognised maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies, and that the amount of this rent should not be left to the arbitrary determination of the zemindar, but should be ascertained and fixed by the Sovereign Power.

87. Illegal exactions.—I should have thought also that more prominence, emphasis and exactness should be given to the provision contained in section 85 as to abwabs and other illegal imposition. In one sense it is the key-stone of the Bill. The framers of the Permanent Settlement Regulations were fully alive to the fact that all precautions, by way of limiting rent and otherwise protecting the tenant, were vain unless collateral exactions were prohibited, and the landlord rigidly bound down to the rent reserved in the pottah. This section refers to certain impositions known as abwab, mahtut, &c., but is it clear that it forbids the landlord to levy a fine on admission, to contract with the tenant to pay cesses, &c.? I observe from his speech in Council that Sir S. Bayley seems to contemplate that the landlord will levy a fine on admitting an occupancy tenant; but if he can, what difference is there between paying the additional rental in a lump sum, or paying it year by year, except that the former is the more oppressive to the tenant, and the more fatal to the chance of his being able to do justice to the land? The suit provided in section 96 is a very old contrivance, the uselessness of which experience has conclusively established. It would be far better to empower the Magistrate to impose a fine in any case in which he becomes aware of such an exaction. The section should, in my opinion, provide that, wherever a maximum rent is specified, any attempt to evade that restriction by an initial payment, and, in every case, the exaction of any payment beyond that specified in the lease, or recorded at the registrar's office should constitute a criminal offence, and that the criminal court trying the case, should order re-delivery of the payment so made.

88. Arrangement and language of the Bill.—To pass to minor questions of drafting, the Bill ought to state, at the outset, the limits of its application; but it is not till we get to its concluding sections that we learn what those limits are. Chapter XVII, for instance, it seems to me, ought to come as part of section 2. It provides for the cases in which contract shall not override the Bill, and for various cases in which the Act shall not apply, and for various cases in which custom is to govern the case. The same observation applies to section 228, which defines the limits, within which the Government, in its capacity of landlord, will be subject to the Bill. The language of the Bill, in many instances, moreover, leaves much to be desired. The definitions of "tenure-holder" and "ryot" are not exact; that of "tenure-holder" would include a mortgagee in possession or an agent—and omits, as several critics have pointed out, the fact that the tenure-holder often has more than a mere right to collect rents. Section 64 is inconsistent with section 6. Such phrases as "contracts for the reclamation of waste land" in section 212 will, I fear, prove to be a mine of litigation. So will section 213 as to "chur" land, and section 215 as to service tenures. Section 216, as to homestead land, disposes of a most important branch of the subject in five lines, and, as might be expected, in a wholly inadequate manner. Sections 225 and 226 provide important modifications of the rights of enhancement which ought not to figure in a "supplemental chapter" along with "penalties," "power to make rules," and other like topics. Section 227, again, appears to imply that "anything payable or deliverable in respect of rights of pasturage, forest rights, fisheries, &c., is not rent." Section 228 leaves in some obscurity the extent to which the Government intends to exempt its own proceedings, in the capacity of landlord, from the operation of the Act. Clause (b) of that section is inconsistent with the repealing section and Schedule I. The Bengal Government says that the result of the definition of "estate," and the other provisions of the Act, is that the only advantage which Government intends to retain over the ordinary zemindar is that afforded by the "Certificate" Procedure. If that is so, it would be well to make it clear at the outset. Few people reading section 228 would suppose this to be the intention. Section 228 provides that nothing in the Act shall affect certain enactments, some which section 3 repeals. Section 210 leaves doubtful the question, whether it is intended to affect all contracts of the classes, or only those made since the commencement of the Act. These and other like points will, doubtless, be considered and remedied when the Bill is re-committed to the Select Committee. I refer to them as indicating that, in my opinion, such reconsideration is indispensable.

89. Recapitulation.—In the foregoing paragraphs, I have endeavoured to consider with care, and to state with some approach to exactness, the main outlines of the problem, of which the present Bill is the attempted solution. It may be convenient to recapitulate the principal conclusions which it has been my object to establish. They may be summarized as follows:—The physical, social, and economical conditions of Bengal are such as to render inevitable the growth of a dense agricultural population, whose increasing numbers must continually add to

the difficulty of existence. That difficulty does, in fact, in many parts of the Province, already exist in a somewhat acute form. The profits of the soil, to a share of which, specified by itself, the State was, by the immemorial law and custom of the country, entitled, are now divided between the Government, which receives $3\frac{1}{2}$ millions sterling, 150,000 proprietors, and a million tenure-holders, who receive something over 17 millions, and 10 millions of ryots, who are the tillers of the soil and live on its products. The rights of each of the three latter classes were, at the time of the Permanent Settlement, defined with accuracy, and placed, as the framers of that measure believed, on an equally secure footing, the object being that all alike should enjoy, with equal assurance, the advantages resulting from the surrender of its own rights then made by the State. The Government, at the same time, solemnly announced that this surrender in no way impaired its constitutional right of interfering, whenever it deemed necessary, for the protection of every class of agricultural tenant or its intention of doing so. While the rights of the landowners, under this settlement, have been preserved with exactitude and completeness, the privileges accorded to the ryots have, from various causes, become obscured, and, in many cases, have fallen into abeyance. A large proportion of the tenantry, however, estimated at between 70 and 90 per cent., enjoy occupancy rights. The position of the rest, as well as of the tenants to whom these occupancy tenants' sublet, is unsecured by legislation, and shows a dangerous tendency to the consequences of unrestricted competition. Legislation, which was undertaken in 1859 with a view of affirming the privileges of the resident ryot, and of enlarging the definition of occupancy rights, has subserved an altogether opposite purpose, and proved a powerful instrument for the destruction of occupancy rights. The Act has been, and is being, extensively employed for this purpose: in parts of the Province occupancy rights are on the high road to extinction. As competition increases, and the value of land rises, this tendency is likely to intensify. General poverty in one part of the Province and agrarian troubles in another attest the presence of unhealthy relations between landlord and tenant and the necessity for legislation. The facts of the case and the opinions of the best-informed advisers as to the remedies for which they call, have been made, for several years past, the subject of a research more prolonged, more patient, exact and thorough than any known in the annals of Indian Administration. In the course of the investigation certain conclusions have been arrived at, and certain principles have been agreed upon, by the Secretary of State and the Government of India, as shaping the course of the forthcoming legislation. Those conclusions and principles are supported by as weighty a body of official opinion as was ever brought to bear upon a great administrative question. They are in general accordance with the recommendations offered by the Famine Commission, after two years' elaborate enquiry into the condition of the agricultural classes, and with the deliberately recorded opinion of successive Lieutenant-Governors of the Province. The proposed course of action has given surprise and annoyance to landlords, who were fast losing sight of the constitutional and legal restrictions by which the ownership of land in India is surrounded. The natural resentment at an unwelcome curtailment of rights, believed to be absolute, has unfortunately been fostered, alike by contemporaneous political events and the unhesitating advocacy of allies to whose co-operation and sympathy great importance was, with good reason, attached. This state of things, while it enhances the difficulty of a peaceable solution, renders it imperative on those who disapprove of that advocacy, as founded on an incorrect historical view and an unsound economical theory, to explain explicitly the reason of their dissent. With this conviction I have felt it my duty to lay before the Government, I fear, at wearisome length, the grounds on which I believe the proposed enactment to be perfectly within the legislative powers of the State, and to be calculated to promote the true interests of the classes whom it concerns.

Dated 27th October, 1884.

From—Honorary Secretary, Bihar Landholders Association,
To—Secretary to Government of India, Legislative Department.

With reference to the Bengal Tenancy Bill as amended by the Select Committee of the Legislative Council, I have the honour to submit the following remarks:—

The survey clause is one of the most important clauses of the Bill, and, though alleged to have been drafted in the interest of the raiyats, it is about the only clause in the Bill which the raiyats as a body consider to be most objectionable.

The idea of a general survey-cess is totally repugnant to their feelings. Nor is this difficult to understand. They have been told that the survey-cess is going to be levied, but they are kept in the dark as to the mode in which this cess is to be levied; and it is perfectly clear that they will continue to object to the survey-cess till such time as they are furnished with the details. Is this cess to be levied throughout the whole of Bengal or only in those villages that will be surveyed? Is it to be made a permanent cess, or is it only temporary? These are the questions that are naturally raised by the raiyats. They for the first time hear that it is proposed to increase the taxation further for paying the expenses of the Revenue officer's establishment in each district. This leads them to think that the survey-cess is proposed to be introduced chiefly to meet this heavy extra expense. Hence they think that it is likely to become a permanent tax.

It need hardly be stated here that the zemindars take objection to this clause on precisely the same grounds as the raiyats. Some years ago Sir Ashley Eden appointed a commission to enquire into the rent question in Behar. It was composed of civilians, lawyers and zemindars, all of whom had great practical experience of the manner in which the present rent law had worked.

But the Bihar Rent Commission never proposed the idea of having a general survey. This in itself is a conclusive argument against this most objectionable chapter.

It might here be mentioned that the raiyats do not need Revenue officers to protect their interests, nor have they made any such request to Government. If this survey is legalised, it will inevitably lead to immense litigation. Act VII of 1876 was passed to compel the zemindars to register their rights in the Collectorate. Eight years have passed since then, and there are still some *dakhil kharij* cases remaining undecided, though the Act has been in operation for years. The zemindars, however, represent only a very small proportion of the community, and if a period of eight years is not sufficient to procure the record of their rights, even one hundred years would be insufficient to record the rights of raiyats who form nearly the whole population of Bihar.

As an instance we might cite the instance of many partition cases. In these cases every field in the estate has to be measured and assessed, but we find that, even with special Batwara Deputy Collectors in each district, it sometimes takes as much as twenty years to get an estate partitioned. How much more difficult would it then be to measure a whole district in a short space of time? As a case in point I would refer you to the Batwara of Darbhanga which seems likely to last as long as a Chancery suit under Lord Eldon.

The zemindars and raiyats are both content with the present state of things. In those cases, where there is a dispute about the area of a holding or the classification of its land, the Civil Court has the power to depute an officer to measure and classify the holding. The interested parties should be made to pay the expenses. Nothing beyond this is needed. Why should those raiyats who are not likely to derive the slightest benefit from the measurement be made to pay for the possible benefit of others?

Is this survey cess to be collected by the zemindars, as in the case of the road and public works cesses, or by the Government? In the first case, are the zemindars whose powers of realizing rent practically crippled by the proposed Bill, to be compelled to suffer on account of the non-realization of this cess from the tenants?

Is it fair to make the zemindars responsible for the collection of any cess from the raiyats? Is it fair for the Government to appoint any one as a tax-collector without his wishing to act in that capacity, and is it just to make the property of the tax-collector liable to summary sale for the arrears of the tax-payer?

Surely these are not the principles by which the English Government is supposed to be guided in its administration of the Indian Empire?

If, on the other hand, Government wishes to collect the tax direct from the raiyats, through its own agency, it should let the raiyats know the procedure it wishes to follow in realizing this cess. Does it wish to make the properties of raiyats liable to summary sale, or simply to work with the same agency as the zemindars, namely, that of the Civil Courts only? All these questions ought to be answered and put before the raiyats in a clear and categorical manner.

Taking the Bill as a whole, it appears to the Association to be an unnecessary and mischievous measure. The objections to it have been most ably stated by Mr. Henry Bell in his pamphlet "the Restoration of the ancient Land Law, or the Ilbert Bill No. II." I have no desire to go over the ground which has already been traversed by a gentleman so thoroughly acquainted with this important subject, but I would refer you to the events which have taken place since Mr. Bell's pamphlet was published. The Chief Justice of Bengal has issued an able minute condemning the Bill in most unqualified terms. He is followed by Mr. Justice Field, an able and learned jurist, who has made the rent law his special study. In a calm and judicial minute, Mr. Justice Field simply tears the Bill to pieces. I would refer you to his concluding paragraph, in which he briefly sums up his reasons for considering that the Bill ought to be thrown out.

Going from the region of theory into that of practice, I would ask you to note the following points: It has been asked by more than one writer on the subject why, if this Bill is such a beneficial measure, Government do not extend its benefits to the raiyats in the khas mahals and estates under Court of Wards? This is a fact which in itself speaks volumes; but, when we find (as has recently been shown in the Mednipur rent cases) Government enhancing its raiyats' rent in some cases as much as 800 per cent. and passing an Act with retrospective effect to legalise and enforce this enhancement, zemindars are tempted to wonder why such heavy restrictions are placed on them.

It is notorious that the effect of the mere agitation caused by this Bill has been to unsettle the minds of raiyats, and to make them withhold payment of their rents under the vague notion that Government will soon transfer their *jotes* to them in absolute ownership. The result of this is that many zemindars, who were formerly well-to-do, are now reduced to utter distress. On the one hand, they find their incomes suddenly cut off; on the other hand, they must somehow find the money to pay Government revenue before sunset of the appointed day on pain of having their ancestral estates summarily sold by auction.

If the Bill become law, the evils which I have endeavoured to point out would be increased twenty-fold. Abolish all freedom of contract and existing contracts, and give occupancy-

raiylats absolute freedom of sale, and the very class whom it is sought to benefit would in a very few years become the bondsmen of the *malhajan* and the *mokhtar*. They will be egged on to engage in litigation with the zemindar who has befriended them in seasons of want or distress: their natural extravagance and thriftlessness will be encouraged to the uttermost, until they will be compelled to mortgage or sell the *jotes* which they and their forefathers have held for generations past, and they will ultimately become mere serfs on the land which they once tilled. That this is not a fanciful picture is shown by the Resolution passed by the Lieutenant-Governor, Mr. Rivers Thompson (himself an advocate for the Bill) on the Annual Report on the Sonthal Parganas for 1883, published in the supplement to the *Calcutta Gazette* of 23rd July last. The privileges of free transfer were bestowed upon the Sonthal Parganas with the exception of the Damun-i-koh. In 1878 Mr. John Boxwell (another advocate for the Bill) reported that "instead of borrowing money, which I presume was repaid when their crops were reaped and sold, the cultivators were selling their holdings." In 1881 and 1882 it became known that these sales had largely taken place, and that in many cases the Sonthals were working as labourers on lands in which they had formerly held rights. Moreover these changes had all occurred "in the years since 1876, all distinguished, not only by good harvest, but by prices most favourable to the producers." These words speak volumes. Now mark the result. Mr. Oldham, the Deputy Commissioner, writes:—"I was followed by crowds clamouring for the restoration of their lands and complaining that they could get no advances. Were the buyers fellow-tenants or even proprietors intent on merging tenancies, there would be nothing to be said. But they are not. They are all either Bengali traders and money-lenders from Birbhum and Burdwan, or the far more dangerous class, Bhagut traders from Bujpur.

Though Mr. Rivers Thompson attempts to combat this latter assertion, he is compelled to admit that the figures for 1883-84 are 691 sales to money-lenders and 1,932 to raiylats. The purchases of holdings by the zemindars themselves are very few. His Honor goes on to remark:—"It is of the utmost importance to the civil administration of the Sonthal Parganas that the Sonthals should retain possession of their lands. The growth of a large class of Sonthali labourers working for interlopers on lands once their own must be checked by every legitimate means as being dangerous to the peace of the country, and of benefit only to a few individuals who are actuated in their dealings with the people by mere mercenary motives, and who consequently are the greatest obstacles to the prosperity of the country."

These are wise and true words. Here we have an instance of the disastrous effects resulting from "free transfer" being established in a small part of the provinces administered by the Lieutenant-Governor, and in the face of this it is proposed to establish this mischievous principle throughout the length and breadth of these provinces. On the subject of subletting, one of the members of the late Rent Commission said:—"The utmost rackrenting is to be found when the right of occupancy falls into the hands of mahajans (money-lenders) or other persons who do not cultivate themselves, but sublet to *korja* raiylats (actual cultivators). The Famine Commission refer to the same subject in the following terms:—"The question of subletting seems to us of even greater importance. The more valuable the occupancy-right becomes by reason of such measures of protection as we have advocated, the more need there will be of guarding against a custom, which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman subletting the land, and living on the difference between the rack rent and the privileged rate secured to him by the law. The occupancy-right can only be beneficial to the community when enjoyed by a *bona fide* cultivator, and the object of the law should be to prevent any one who is not a *bona fide* cultivator from acquiring or retaining such right."

The custom of subletting is not so generally prevalent as it is assumed in the above extract; but the provision of the Bengal Tenancy Bill, if passed into law, will intensify the evil tenfold.

Mr. Tobin, in his enquiry, found that where subletting was allowed by custom, as amongst the *guzastha* raiylats of Shahabad district, the raiylats sublet their rights at from twice to ten times the rates of rent they do pay.

On the subject of commutation of produce-rent, I have simply to draw your attention to the opinion of one of the most experienced officials of this Division. Mr. Halliday, the commissioner of the Division, says:—"On the question of commutation of *bhaoli* rents in Bihar, it would be most inexpedient to adopt more active legislative measures for the commutation of these tenures. I not only believe that great mischief could be done if commutation were hastily or rashly carried out, but I think further that in this respect we should leave matters alone. I am sure that it is a right acceptance that lands on which a money-rent has once been introduced are not likely to be held *bhaoli* again. Our experience in the settlement of the Gya escheated lands, recently undertaken, shows that the raiylats almost invariably opposed the commutation of the system of *bhaoli*, notwithstanding the specially favourable terms proposed, and my belief is that in these cases an offer of re-commutation would certainly be accepted. * * * I would not confer by direct legislation any power in the zemindar to force commutation on the raiylats, but neither would I give the raiyat the exclusive right to force commutation on the zemindar."

Mr. Halliday continues:—"The special condition in the Bill, that the raiyat's application for commutation must include all the *bhaoli* lands of his holding, will not be looked upon by the raiyat as an unmixed blessing to himself. The restriction which is considered necessary in the

interest of the zemindar will as a matter of fact make the provision of the law a dead letter, and things will in reality remain much as they now are. The raiyat would probably only require commutation for the best land in his holding, while the zemindar would strive for the reverse, and the condition in the present Bill will not satisfy either party. But supposing the commutation principle of the present Bill be adopted, the deductions proposed in the last clause of section 90 will not be altogether fair upon the zemindars. The conversion of one or two or even of several holdings of raiylats in an estate will not relieve the landlord from the expense and responsibility of maintaining the village irrigation-works to the same extent as before, if he did not wish to lose all prospect of profits from the remaining *bhaoli* tenures. The irrigation works then being maintained by the zemindar as before, it would not be difficult for the raiylats whose *bhaoli* tenures had been changed to money-rents to avail themselves surreptitiously or by force of the benefits of the zemindar's irrigation works. These holdings should be scattered all over the village amidst other holdings not so converted, and it would be simply impossible for the zemindar to prevent the one set of raiylats from reaping the advantage of irrigation designed for the other set. All this must certainly be taken into consideration from the zemindar's point of view. I used above the expression *by force*, because it must be remembered that the zemindar of Behar has not to deal invariably with only the unresisting helpless raiyat, the so-represented typical cultivator of Behar. There are Brahmins, Babhans, Rajputs and Muhammadans, who as raiylats are perfectly capable of maintaining their own interests, being thoroughly acquainted with the rights they possess under the law, and are also equally capable of combining powerfully against the zemindar in the exercise of supposed rights which they may not possess under the law. These do not form by any means a small class, and must be taken into the calculation in determining the question of the commutation system."

For the reasons above stated, and for those so ably stated by the gentlemen to whom I referred, the Association desire me to record their protest against the Bill.

No. 2201T.—R., dated 9th October, 1884.

From—The Officiating Under-Secretary to the Government of Bengal,

To—The Assistant in Charge, Legislative Department.

1. Letter No. A., dated 22nd September, 1884, from the Munsif of Mozufferpur.
2. Letter No. 1672G., dated 23rd September, 1884, from the Officiating Collector of Shahabad.
3. Letter, dated 22nd September, 1884, from the Honorary Secretary, Orissa Association.
4. Letter, dated 16th September, 1884, from the General Secretary to the Behar Indigo Planters' Association.*

* Not printed. Already circulated as papers No. 54.

In compliance with the request made in a telegram, dated 1st October 1884, from Mr. Fitzpatrick, I am directed to forward copies of the papers noted on the margin, relating to the Bengal Tenancy Bill.

No. A., dated 22nd September, 1884.

From—The Munsif of Mozufferpore,

To—The Secretary to the Government of Bengal.

With reference to your circular No. 9T.—R., with enclosure, I have the honour to submit that the procedure sections of the Bill require no modifications just at present. They seem to be workable, and the finality given to judgments in petty cases meets with approval. In my humble opinion the filing of boundary with the plaints should not be made compulsory. Petty suits to recover arrears of rent (in which the *jamá* is not disputed) should not be made complicated by questions about correctness or otherwise of boundaries of the lands the rent whereof is sought to be recovered. In such cases only the number of Government survey will suffice.

On enquiry from old-standing pleaders I learn that there is no local custom here recognizing any right in a raiyat to his holding occupied for less than twelve years. In my experience also I did not find the existence of any such custom. If the payment of rent is withheld, such raiylats are ejected by the zemindar. But not so in the case of homestead or *gharri* and *darri* land, as it is called here. Such lands are generally rent-free, no ground-rent or *katchari* being paid for it, especially in the case of high-caste men, such as Brahmins, Rajputs, and Kayests. The low-caste people render some sort of service in lieu of payment of rent. But in cases in which homestead lands are rent-paying, the *malik* has not the power to turn out the recusant assamees without the aid of a Court of law. He has to sue them for arrears, and in execution of his decree to sell their houses, though this is seldom done. The *bastu* land is generally exempted when the occupancy-right in the *kashi* is put up for sale. But I do not think there is any well-established custom of the sort.

2. The Tenancy Bill has undergone material alterations, and the present Bill as re-cast and revised by the Select Committee is decidedly an improvement upon its predecessors. Throughout the Bill a desire to do even-handed justice to both the zemindar and the raiyat is apparent, and every possible restriction to guard the poor raiylats from the oppression of their rich landlords seem to have been imposed. The provisions generally appear to be good and beneficial, but there are certain matters which call for comment.

First.—Clause (3) of section 5 seems to be defective. It does not include those raiyats who cultivate and hold lands in rent-free maháls under settlement from lákhirájdár, jagírdár, &c., as also the tenants of those máliks who did not possess entire estates at the time of the Permanent Settlement, and whose maháls therefore were made subordinate to the parent estate or zemíndári in respect to the payment of Government revenue.

Section 5, clause 5, is open to objection. Thikádárs, mahájans, and land-jobbers can in collusion with refractory raiyats attain to this position of taluqdárs without any great difficulty, to the detriment of both the málik and the raiyat. That part of the definition of a "settled raiyat" which confers on a raiyat holding land (how infinitesimal soever it may be) continuously for 12 years the status of settled raiyat in regard to other lands of larger areas held for a shorter time, under a pattá even providing against the accrual of a right of occupancy, is objectionable.

Second.—Further restrictions should be imposed upon the raiyats' power of transfer. As a class of people, they are most improvident and thoughtless, and a marriage or a *saradh* will in no time convey wholesale all their lands either to the mahajan or land-jobber, and reduce them to the position of day-labourers. Again, the provisions of the Bill alone will not sufficiently protect the interests of the landlords against the refractory tenantry colluding with the málik's bitterest enemy solely for the purpose of annoying and harassing him. The pre-emption clause may, with advantage, be made applicable to all kinds of raiyats and tenure-holders.

Third.—The position and status of the *khudkás* raiyats and of the tenants of málik's *zeráts*, *sár* and *khamar* lands should be more clearly defined.

Fourth.—The rules laid down for enhancement of rent of occupancy-raiyats are rather intricate, and it is doubtful how far they will prove workable.

Fifth.—A long-felt want is attempted to be removed by the introduction of the chapter on "Record-of-rights," but at the same time the contemplated work is sure to take a long time to accomplish. Moreover, it is feared that, like the Land Registration Act of 1876, it will prove a fruitful source of litigation for years to come, and to a great extent be the indirect cause of disturbing the friendly relations existing between the zemíndár and his tenantry.

Sixth.—The position of the patwári should undergo some change. He should be either made entirely subordinate to the zemíndárs whom he serves, or be treated as a Government servant to all intents and purposes. Much mischief is done by his anomalous position. He should be made personally liable at least for preparing false and incorrect village-papers and granting false rent-receipts, and a zemíndár should not be made to suffer unless it is proved that it was done with his direct knowledge. The introduction of printed receipt-books with counterfoils and of compulsory pattás and kabulyats should be insisted upon.

Memorandum by Officiating Collector, Shahabad, No. 1672G., dated 26th September 1884.

Copy forwarded to A. P. MacDonnell, Esq., with Mr. Nolan's compliments, with reference to Commissioner of Patna's memorandum No. 70R., dated 3rd instant.

No. 1662G., dated 23rd September, 1884.

From—The Officiating Collector of Shahabad,

To—The Commissioner of Patna Division.

I perceive from your memorandum No. 70R., dated 3rd instant, that Mr. Forbes' proposal to introduce provisions in the Bengal Tenancy Bill for legalising underletting to indigo-planters is receiving special attention, and I request permission to record a few observations on the subject, the report of what I said at the Conference not correctly expressing my view.

2. I quite agree with Mr. Forbes that it is desirable to permit planters to obtain from raiyats with the least possible trouble land required for indigo cultivation. It appears to me that sufficient facilities are afforded for this by the Bill as it stands, the restrictions imposed by that measure on underletting not being apparently of a nature to affect indigo-planters. The limit of the period of sub-leases to seven years is of little importance to them, as the same land cannot be cultivated with indigo for a longer period, while the provision against excessive rents being realised through the Courts is of no importance practically, as planters obtain land not by giving high rents but considerable premiums. I should say that the planters would not attach any value to the proposal made in their supposed interests. If, however, it prove otherwise, and the planters press the point, I see no objection to the removal of restrictions on sub-letting for *bona fide* indigo cultivation, except the general objection to all class legislation, and it must give way to any economical necessity.

3. I also agree with Mr. Forbes and Mr. Norman in considering it undesirable that planters should, as under the *kartouli* system, take under-leases of lands they do not require for indigo merely to sublet them again to the original holders. It seems to me that the under-tenant of an occupancy-raiyat should not be allowed himself to underlet. Mr. Forbes, while disapproving of the *kartouli* system, remarks that in nine cases out of ten it is a defensive alliance between the planter and raiyat against the zemíndár; he might have added that the alliance is on such terms as to place the weaker party to it entirely at the mercy of the

stronger. I fear it resembles the fabled alliance of the man and the horse against stag, and would have the same result. *Non equitem dorso, frennen non depulsi are.*

4. What appears to me most objectionable is that restrictions on subletting should be removed all over these provinces merely for the sake of legalising a local practice affecting an area which, by comparison with the country as a whole, is insignificant.

Dated 22nd September, 1884.

From—The Honorary Secretary, Orissa Association,

To—The Secretary to the Government of Bengal.

I am directed by the Orissa Association at Cuttack to submit, for the kind consideration of the Government, their own views and opinions embodied in the following paragraphs on the revised Tenancy Bill. This was originally proposed to have been submitted through the Commissioner along with his own report on the subject, but unavoidable circumstances, the Association regret, prevented it from adopting such a course. The opinions expressed below of the Association as regards the Bill refer mainly to its general principles and not to its details.

2. The Association recognises the necessity for amending the land law of Bengal and Behar with a view (1) to give increased facilities to the landlord for enhancement and easy realisation of arrears of rent, and (2) to give additional security to the actual cultivators of the soil in the enjoyment of the fruits of their own labour.

3. In the opinion of the Association the land law both as regards Government estates and zemindari mahals should be assimilated, especially as regards enhancement and realisation of arrears of rent. It does not see why there should be separate laws for the Government estates and the zemindari mahals to meet the same end. From an assimilation of this kind much good is expected, as it will have the beneficial effect of familiarising the local authorities with the real wants of both the rent-payers and rent-receivers.

4. The Association does not think it desirable to extend the proposed law to Orissa for the present at least, and is of opinion that if hereafter occasion arise for its extension in whole or part thereof, it should be done subject to legislative sanction. For they think it is unsafe to leave to the discretion of the executive Government extension of a law of such a paramount importance, involving the interest of the entire population of a province.

5. The whole of the province of Orissa is temporarily settled, and the next settlement is to come on within a few years hence. It is not therefore, in the opinion of the Association, desirable to make any change in the existing law of the country until that period.

6. The land-tenures of Orissa differ materially from those of Bengal and Behar, so much so that many of the provisions of the law under review, which can so well apply to the latter, may be deemed quite inapplicable to Orissa at present. The Association, however, thinks that if necessity arises hereafter for the introduction of any of the sections of the law into Orissa, they might be introduced under legislative sanction.

7. Taking into consideration the Chapter II with section 37, the Association deprecates the provisions made in the Bill for increasing the already too numerous classes of tenure-holders, who are said to be the most rack-renting of all the landlords existing, and thinks that every effort should be made to diminish rather than increase their number. But what the Association is most afraid of is that if the Bill be passed into law, it may have a disastrous effect on the peasantry. The Association thinks that the conversion of occupancy-rights into tenures under any circumstances will not deter mahajans from purchasing their rights.

8. Registration under section 15 should be made compulsory either by providing a penalty for non-registration within a specified space of time or declaring the transfer invalid if not registered within that time.

9. The Association considers Chapter IV as unnecessary. In all matters, except as to enhancement of rent, raiyats with fixed rent should be treated as raiyats with rights of occupancy.

10. The Association deprecates the provisions laid down in sections 25 and 26, which give to the settled raiyat the right of occupancy, even in land situated within the village or estate belonging to petty jagirdars and other free holders, if he is not allowed to cultivate it for a single season.

11. Sections 28 and 29 provide that if one or more of the several joint-proprietors or tenure-holders acquire the right of occupancy of a raiyat, each of them will retain it. Even a neighbouring zemíndar or a mahajan is allowed to retain that right should he acquire it by purchase or otherwise. But it is only in the case of the landlord acquiring the same by purchase that the occupancy-right shall cease to exist. The distinction is invidious and unnecessary. The Association proposes that either the two sections referred to above be altogether omitted, or that a provision be made to the effect that if the purchaser of an occu-

pancy right lets out the whole or a part thereof, the right of occupancy shall cease to exist with respect to that portion. The Association prefer the latter course, as it thinks that every endeavour ought to be made to give fixity of tenure to the actual cultivator.

12. Referring to section 31, the Association is of opinion that the right of succession should only be transferred to the lineal descendants of the deceased or other member of his family living jointly with him. The Association would altogether omit the right of transfer, or give it only under this condition, that the inheritor would retain that right if he cultivates the land himself. But if he lets it to a third party the right will be transferred to him, i.e., to the actual cultivator.

13. As regards the right of pre-emption, it appears to the Association that under the Bill as it stands, the landlord, if he purchases occupancy-right, will, in the majority of cases, purchase a bag of wind. But if the suggestion of the Association as to the transfer of the right to actual cultivators be adopted, there will be no ground for complaint.

14. The Association deprecates all restriction put by section 41 and other provisions of the Bill under free contract, and does not understand why, when a court of law can enhance rent by 25 or 50 per cent., the parties cannot between themselves agree for the payment of more than 12½ per cent.

15. The Association recommends to take away the restriction put in section 46 (a), and regrets to find that the Bill as a whole has a tendency to increase litigation and to discourage the existence of any sympathy between the landlord and the tenant.

16. The use of the words "staple food-crops" in section 50 will, the Association apprehends, be productive of great hardship. It does not see why no account should be taken of more valuable crops, such as indigo, tobacco, oilseeds, cotton, &c.

17. Commutation under section 53 ought not to be allowed except with the consent of the landlord.

18. The compulsory registrations under section 57 would, in the opinion of the Association, be vexatious, and should therefore be omitted.

19. Section 62, the Association thinks, will encourage subletting which may temporarily be allowed under the exceptional circumstances contemplated in section 37 (a), but in all other cases the law ought to distinctly provide that the lessor cannot receive from the lessee more rent than what he himself pays.

20. The Association approves of the proposition made in sections 70 to 72 regarding the grant of receipts and accounts. But the forms appended are such as it would almost be impossible for the landlord to grant receipts regularly if, as the Association understands, he has to state in each separate receipt for each payment the particulars of the holding and of all previous payments.

21. The Association does not think that the provisions for distraint made in Chapter XIII are necessary. The present law should be allowed to stand.

22. The law should make some provision to facilitate the landlord using lands held by raiyats for making tanks, embankments, or other improvement of the estate.

23. For the realisation of arrears of rent the patni sale law should be adopted in the case of tenures and other transferable holdings.

24. In the case of non-transferable holdings, provision should be made to the effect that when the landlord files a plaint stating the amount of arrear for full one year or more, a notice should be given to the raiyat to pay up the arrears of dispute the zemindar's claim within a month from the date of receipt of notice, and if he does not he should be considered to have forfeited all his claims to the possession of the land. If he does not pay or dispute the zemindar's claim within that period, or in case of dispute he does not pay the amount the court may decree within one month from the date of the decree, he should, on the zemindar's application, be ejected, and his property sold for the amount decreed, provision being at the same time made against fraud on the part of the landlord.

Dated 24th November, 1884.

From—BABU RAJKISSORE MOOKERJEE, Cultivator-raiyat, Utterpara,

To—The Secretary to Government of India, Legislative Department.

I have the honour to submit herewith a memorial on the subject of the Bengal Tenancy Bill, numerous signed by Bengal raiyats and addressed to His Excellency the Viceroy, and I request the favour of your laying it before His Excellency. I also forward 70 spare copies of the memorial.

To His Excellency the Viceroy and Governor-General of India in Council.

The humble Memorial of the undersigned
raiayats of Bengal.

MOST RESPECTFULLY SHEWETH,—That your petitioners have read with great concern the Bill entitled the Bengal Tenancy Bill, now under the consideration of the Legislative Council of India, published in the *Calcutta Gazette* of April 16th, 1884.

2. That your petitioners have noticed with great alarm the provisions in the Bill aforesaid relating to the grounds of enhancement of rent and the limits of enhancement of rent and to the distinction drawn between occupancy and non-occupancy raiyats as to the rates of rent payable by them.

3. That your petitioners entirely agree in the following observations made by the Hon'ble H. J. Reynolds in his memorandum of dissent from the finding of the majority of the Select Committee, published in the *Calcutta Gazette* of April 16th, 1884, Part VI, page 264: "For, as agricultural holdings must from time to time fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry." Your petitioners notice with pleasure that the same view is taken by the Government of Bengal in its Circular No. 3T-R., dated Darjeeling, the 24th May, 1884, addressed to the Commissioners of Divisions. In paragraph 11 of the Circular it is said: "It must be remembered that through the operation of the pre-emption clauses of the Bill (if they are retained) and through the falling in of tenancies owing to ryots' deaths or desertions of their holdings, a very considerable quantity of *raiayati lands* does yearly fall into the hands of landlords, who, under the provisions of this Bill, may deal with it in the first instance under Chapter VI, and let it to non-occupancy raiyats at rates above the prevailing occupancy rate. These lands might subsequently be let to settled ryots of the estate or village at further enhanced rates, and so become occupancy lands, the enhanced rate payable for which would be available as evidence to raise the hitherto prevailing occupancy rate of the village." Your petitioners, therefore, regard section 42, clause (1) of the Bill as dangerous to their interests.

4. That your petitioners feel themselves aggrieved by the provision for enhancement on the ground of a "prevailing rate" [section 43, clause (a)]. Your petitioners need not state at any length the reasons for regarding this provision as a grievance for they are clearly set out by the Government of Bengal in its letter No. 1906 T.-R., dated Darjeeling, the 15th September, 1884, addressed to the Government of India and published in the Extra Supplement to the *Gazette of India*, October 11th, 1884, page 92. The reasons are stated in paragraph 40, page 117 of the Supplement.

5. That your petitioners also regard section 43, clause (b) as unjustly affecting their interests, for it lays down that a rise in the average prices of food crops shall be a ground of enhancement. A rise in prices not occasioned by the skill, industry, or expense of the landlord; and your petitioners do not see what claims the landlords have to any advantage resulting from a rise in prices. A rise in prices may be very often only a very lucky accident to the raiyat, and he is entitled to its full benefit. Where the rise in prices is not distinctly traceable to any action of the landlord's, it is the raiyat alone who, your petitioners submit, is entitled to all the advantages arising out of the fact. Your petitioners do not raise the slightest objection to clause (c) of section 43 which allows enhancement on the ground of improvements effected by the landlord. But a rise in prices is never the result of any step taken by the landlord; and your petitioners submit that the landlord is entitled to no enhancement save such as may be claimed on the ground of his having taken active steps to improve the quality of the land or enhance the value of the produce. Your petitioners notice with regret the fact that the Government regard as indisputable the claim of the landlord to enhance rent on the ground of a rise in prices. In paragraph 13 of the letter addressed by the Government of India to the Government of Bengal, No. 784, dated Simla, the 5th May, 1884, it is said: "In many parts of Bengal the rise in prices of recent years has been very considerable, and the complaints of the zemindars that under the present law they have been unable to obtain a proportionate increase of rent are admitted to be well-founded." Your petitioners crave leave to submit that zemindars have no claim to a proportionate increase of rent. Rise in prices is determined by economic conditions which are not under the control of the zemindar, and he can no more claim an enhancement on this ground than he can if the raiyat gets a large legacy under the will of a stranger. That rise in prices should be no ground of enhancement is a proposition which your petitioners deem to be justified not only by considerations of justice and economy, but by the Permanent Settlement and the usages and traditions which have prevailed in Bengal. In Volume II of the work entitled, "The Zemindary Settlement of Bengal," Appendix XX, the subject of enhancement is discussed at great length, and in page 143 the following observations are made: "Lord Cornwallis distinctly foresaw a rise of prices, yet he fixed the zemindar's assessment for ever; and in enumerating the sources from which the zemindars might increase their rents, he mentioned the substitution of more valuable for cheaper kinds of produce, but omitted mention of increased money-rents from a rise of prices of the old kinds of produce.....The Regulations of 1793 did guard against enhancement by explicitly stating that the amount of customary money-rent to be

entered in the pottahs then to be *immediately granted by the zemindar*, would be the sole amount recoverable thereafter by the zemindar, who was expressly prohibited from increasing it by fresh *abwabs*, i.e., by recourse to the only old ways in which rent in excess of the original *assul* used to be obtained on account of a rise of prices." In page 152 of the same volume it is pointed out that Lord Cornwallis omitted to legalise enhancement of the raiyat's rents on occasion of a rise of prices; and in page 156 where the conclusions of the Chapter are summed up, it is observed that in 1793 by a distinct engagement the faith of the Government was as solemnly pledged to the raiyat as to the zemindar, and that a "breach of that engagement is chargeable on the Legislature that passed Act X of 1859 which—nearly seventy years after the decennial settlement, and for the first time under law—subjected the raiyat's rent to enhancement from a rise of prices." In page 147 of Volume I of the same work it is observed: "Thus an increase of the raiyat's rent from a general rise of prices of the old kinds of produce was not contemplated. The exclusion of this from the possible sources of increased revenue was not inadvertent—it was intentional; for the noble Lord had in a previous paragraph of his minute protected the zemindar from any increase of the rent payable by him to Government on account of any such rise in prices."

6. That your petitioners find to their great surprise and regret that the Bill under consideration recognises no principle for determining the maximum limit of enhancement. Section 75 (d) of the original Bill provided that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest time." This clause, your petitioners find, has been omitted from the present Bill. In paragraph 11 of the letter of the Government of India addressed to the Government of Bengal, it is observed: "The Government of India is also inclined to agree with the Select Committee that failing this test the most feasible check on rack-renting is to limit the percentage of increase obtainable at any one time on existing rents when rent is enhanced either by private agreement or by suit." Your petitioners cannot help remarking that the principle here adopted by the Government of India is in reality no principle at all, and in the second place it provides no means for determining the maximum limit of enhancement that may ever be reached. There is a distinction between the maximum increase obtainable "at any one time" and the maximum rent which may ever be claimed from the raiyat. Furthermore, the method adopted by the Government of India for checking rack-renting seems to assume that no raiyat is already holding under a rack-rent, that some increase of rent may be asked for, and that the only problem for consideration is to limit the percentage of increase obtainable at any one time. Sudden enhancement on a large scale would unquestionably be a great grievance to the raiyats. But an indefinite increase of rent, though slowly and gradually achieved through a long series of years, would be none the less a grievance. In all cases of enhancement the relevant inquiry is not if a slight increase will be bearable, but if any increase is justifiable having regard to the quantity of the produce. To limit the percentage of increase obtainable at any one time is a bar only to sudden enhancement and not to indefinite enhancement. To regulate enhancements by percentages of increase is to follow no principle but to act arbitrarily. The rent already paid is assumed to be below the rack-rent, and an attempt is made to reconcile the raiyat to an enhancement by making the percentage of increase too small to be viewed with alarm. To regulate the maximum limit of enhancement by reference to the rent already paid, in other words, to make the existing rent a sort of unit or standard of measurement, is to follow no principle at all, for the existing rent has been determined on no principle. The mere observance of arithmetical uniformity does not amount to the adoption of a principle. Percentages of increase, however regular, consistent and uniform, furnish no rational method of enhancement, for the original basis of calculation, the rent already paid, is itself determined by no principle. Besides, as your petitioners have already observed, the system of percentages of increase determines no real maximum limit of the rent payable by a raiyat. Your petitioners submit that under no circumstances the rent payable by a raiyat should exceed a certain proportion of the gross produce. The maximum limit of rent in all cases, whether the enhancement be by suit or by private contract, ought to be a certain determinate fraction of the gross produce. Your petitioners, while they are thankful for the provisions against sudden enhancement beyond small percentages on existing rent, are nevertheless anxious that the Legislature should prescribe a definite maximum limit of enhancement by reference to the gross produce. As a matter of fact, the maximum rent that has ever been claimed from the Bengal raiyat or from cultivators in other countries has been far less than one-fifth of the gross produce. Your petitioners have referred to that proportion only because it was mentioned in the original Bill; but your petitioners would most respectfully submit that in their opinion the fairest maximum of rent would be one-sixth of the gross produce. Your petitioners feel bound to admit that the determination of any particular proportion like one-sixth, one-eighth, or one-tenth would be more or less arbitrary; but they are anxious that some maximum limit should be prescribed having relation to the quantity of the gross produce. Such a limit has been recognised not only in India but in various other countries. In "the Zemindary Settlement of Bengal," Volume I, pp. 92—94, authorities are cited to show that in ancient times the land-tax levied in Egypt was one-fifth of the gross produce, in Greece one-tenth, among the Romans one-tenth, in Persia one-tenth, in China one-tenth, among the Hindus one-sixth of the gross produce. In Cochin-China and Siam the amount of the land-tax is estimated at 4 per cent. of the gross produce. In the Burma Empire the Government impost on cultivated land is only a tenth part of the produce. It thus appears that to fix a certain

proportion of the gross produce as the maximum limit of rent is by no means an impracticable idea. The difficulties felt by the Government in adopting such a limit are, first, that the average produce of different lands cannot be ascertained, and second, that the rent payable for lands growing other than staple food-crops cannot be ascertained. Your petitioners submit that the difficulty in ascertaining the average gross produce of particular lands is by no means insuperable. They submit for Your Excellency's consideration a form which is set out in the margin and marked A which should be filled in every year by the zemindar and also by an officer of Government and sent to the Collector for the purpose of determining the rent payable by the raiyat. If the zemindar claims an enhancement, or a raiyat claims an abatement, he must apply to the Collector, and the Collector after looking at these annual returns shall give a certificate stating his opinion. If the Collector allows an enhancement, the raiyat may bring a suit in a Civil Court disputing the zemindar's right to enhance; and if the Collector allows an abatement, the zemindar may bring a suit in a Civil Court disputing the raiyat's right to get an abatement. But where the Collector declines to allow enhancement, it shall not be open to the zemindar to bring a suit in a Civil Court to obtain enhancement; and where the Collector declines to allow abatement, it shall not be open to the raiyat to bring a suit in a Civil Court to obtain abatement. The Collector's certificate ought to be declared to be evidence admissible in a Civil Court. In other words, enhancement and abatement should only be obtained by application to the Collector; the Collector should consult the annual returns, and his certificates shall be final and conclusive evidence as against the party applying; but the other party may have it set aside in the Civil Court. Your petitioners raise no objection to the provisions of the Bill under consideration regarding the intervals of time at which enhancement or abatement can be claimed. With regard to the second difficulty noticed by the Government of India your petitioners venture to state as the result of their experience that crops, like sugarcane, mulberry, potato, &c., ought to be assessed at double the rent payable on staple food-crops, and that this would be a fair and equitable assessment. Sugarcane and such other crops grow on high land alone, and the expenses of their cultivation are very great.

7. That your petitioners submit that though there is and ought to be distinction in the status of the occupancy and the non-occupancy raiyat, there ought to be no distinction as regards the rates of rents payable by each, the grounds of enhancement and the limit of enhancement. Occupancy right is a species of property and has special incidents annexed to it. Those incidents do not, of course, appertain to the holding of the non-occupancy raiyat. But your petitioners are aware of no principle which justifies a distinction in the rates of rent payable by the two classes of raiyats. Zemindars have always taken steps and, if the Bill under consideration be passed into law, will take yet more active steps to prevent the acquisition of occupancy rights; and as the advantages incident to those rights will be out of the reach of the vast majority of the Bengal raiyats, your petitioners submit that there will be no appreciable improvement in the condition of the Bengal peasantry by conferring special privileges on the occupancy raiyats alone. Your petitioners, therefore, heartily concur in the recommendation made by the Government of Bengal that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food grains, and your petitioners are anxious that the same equality should exist as regards rates of rent and grounds of enhancement.

8. That your petitioners have noticed with very great regret the recommendation of the Government of Bengal to modify the presumption as to fixity of rent by requiring proof of such fixity in all future cases from 20 years before passing the Bill. Your petitioners view this recommendation with great surprise when they read the finding of the Lieutenant-Governor on the evidence before him. "On the evidence before him, therefore, Mr. Rivers Thompson feels that he might, with the weight of authority, argument, and fact in his favour, ask for the retention of the presumption contained in the existing law as regards occupancy rights as well as tenures. But on a full review of the Bill as a whole he abstains from taking up that position. Recognising the sincerity of the zemindar's objections to the presumption, and the insistence with which they have urged their views, he is willing to make a concession to their wishes, provided that the interests of the raiyats shall not, in the long run, suffer from the change in what is to them a most valuable provision." Your petitioners need hardly apologise for stating their view that the opinion of the Legislature ought to be based upon the evidence before it and upon no other material. The sincerity of an objection and the vigour with which it is pressed ought not to weigh with the Legislature as against authority, argument, and fact. All objections must, in the absence of any evidence to the contrary, be presumed to be sincere; and it would be a dangerous doctrine to lay down that an objection will be listened to unless it is pressed with vigour. The raiyats object to the modification of the presumption under the existing law, and the objection is thoroughly sincere. If it is not pressed with extraordinary vehemence, the moderation of tone is due not to lack of interest in the subject but to a feeling of respect for the Legislature. The 20 years' presumption has a history of its own, a reference to which alone can throw light on its real nature and significance. The Regulations of 1793 did not contemplate enhancement of rent; the zemindar could not claim more than the established perpetual rate of rent. When enhancement was first legalised by Act X of 1859, the twenty years' presumption was introduced as a sort of compensation to the raiyats for the liability to enhancement newly imposed on them. It

were declared liable to enhancement, and their only protection lay in the presumption which declared that tenants holding lands at a fixed rate for twenty years previously to suit would be presumed to have held the lands at the same rate from the permanent settlement. To modify the presumption is to lessen the protection; and your petitioners submit that the raiyats have done nothing to deserve that penalty.

9. That your petitioners beg leave to submit that enhancement ought not to be regarded as a matter of course, but that it is in reality an anomalous and unjustifiable proceeding. Enhancement is not to be allowed, if it is to be allowed at all, except on grounds of the most obvious considerations of justice. Historically speaking, all enhancements are illegal; and Act X of 1859 in so far as it allowed enhancements was *ultra vires*. Your petitioners do not ask for the removal from the Bill of all provisions relating to enhancement, only because Act X of 1859 has familiarized them with a proceeding which is essentially illegal. Your petitioners beg to invite your Excellency's attention to the following authorities with a view to show that enhancement of rent is, strictly speaking, an innovation introduced in 1859, and that all provisions relating to it must be as far as possible favourable to the raiyat. The Bengal Government, on the 16th August 1769, desired Collectors to impress upon the raiyats that "our object is not increase of rents, or the accumulation of demands, but solely by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorised, not only to redress the raiyat's present grievances, but to secure him from all further invasions of his property." Sir Philip Francis, in a minute written in 1776, "considered that the rate of assessment per beegah should be fixed for ever upon land, no matter who might be the occupant." Warren Hastings wrote in the same strain: "Many other points of inquiry will also be useful to secure to the raiyats the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions." On the 12th April 1786, the Court of Directors wrote: "It is entirely our wish that the natives" (raiayats or subjects) "may be encouraged to pursue the occupations of trade and agriculture by the secure enjoyment of the profits of their industry; and that the zemindars and raiyats may not be harassed by increasing debts, either public or private, occasioned by the increased demands of the Government." Sir John Shore, in the same spirit, observed: "And at present we must give every possible security to the raiyat as well as, or not merely, to the zemindar. This is so essential a point that it ought not to be conceded to any plan." The Court of Directors, on the 19th September 1792, approving of these views recognised it as an object of the permanent settlement that it should "secure to the great body of the raiyats the same equity and certainty as to the amount of their rents and the same undisturbed enjoyment of the fruits of their industry which we mean to give to the zemindars themselves." Twenty-seven years later, the Court, on the 15th January 1819, deliberately re-affirmed: "We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the state is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights as it is to maintain the zemindar in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him." The Regulations of 1793 regarded the old-established pergunnah rates as the maximum rates of rent and prohibited the levy of fresh *adwabs* which would have been tantamount to an enhancement of rent. While every other detail affecting the relations of zemindar and raiyat was carefully elaborated in the Regulations of 1793, they contain no provision for an increase of that rent which ancient custom had determined as the established pergunnah rate of rent. The intention, that by the arrangement of 1793, the raiyat's rent should be as permanently settled as the zemindar's at the amount obtaining in 1793 was so well known that it was carried out in the similar settlements in Benares and in the zemindari tracts in the Madras Presidency; and Mr. H. Colebrooke, on the same understanding, urged in 1812 that even then "measures should be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates according to which the raiyats of each pergunnah or district will be entitled to demand the renewal of their pottahs, upon any occasion of a general or partial cancelling of leases." In the same conviction the Bengal Government, on the 1st of August 1822, proposed to settle the rents payable by raiyats to zemindars in the permanently settled Lower Provinces. The pergunnah rate continued, in law, standard maximum rate from 1793 to 1859; as such it was recognised in the Sale Laws, and in those relating to distraint and the collection of the revenue, as for instance, Regulation XLIV of 1793, XX of 1795, VII of 1799; VIII of 1819 and XI of 1822.

Your petitioners, therefore, pray as follows:—

- (1) That no alteration may be made in the present law relating to the presumption as to fixity of rent where the tenant has held for twenty years consecutively at the same rate.
- (2) That enhancement of rent may not be allowed on the ground of rise in prices.
- (3) That enhancement of rent may not be allowed on the ground of a prevailing rate.
- (4) That the rent of the occupancy or non-occupancy raiyat may never exceed one-sixth of the value of the gross produce calculated in staple food-grains, whether the enhancement be by suit or private agreement.
- (5) That no distinction may be recognised between occupancy and non-occupancy raiyats as regards the rates of rent payable by them and the grounds on which enhancement may be claimed.

And your petitioners as in duty bound shall ever pray.

A. :

Abstract shewing the actual state of Tenancy to be filed annually before the Collector by every person holding interest above that of the occupancy or mocrury or other class of raiyats.

1	2	3	4	5	6	7	8	9	10	11	12
NAME OF RAIYAT.	Number of plots occupied by each.	Area of each plot.	Classes of each plot showing produce.	Rate of rent per bigha of each plot.	Date of the original creation of the tenancy.	Conditions of the original tenancy whether by written contract or possession.	Rent paid for each plot.	Cause if any of the change in the rate of rent.	Percentage of increase or decrease of rent with reference to the table of rates prepared by Government.	Price of each sort of staple food crop at the nearest market.	Remarks by the Collector whether rackrented or more or less.

N. B.—Columns 1—9 to be filled in by the landlord, and columns 10, 11, & 12 to be filled in by the Canongos or other officers of Government.

Note by the Hon'ble T. M. GIBBON.

Transferability of Occupancy-holdings.

I have hitherto been under the impression that the Government, in making the provisions of the Takkavi Act applicable to this province, had declared for the principle of transferability, and that the principle was no longer at issue.

The decision came to by His Honour to leave the law regarding the transfer of occupancy-rights in Bihár in its present unsatisfactory state, by omitting transferability from among the incidents attached to an occupancy-holding, or as His Honour has put it, "leave transferability of occupancy-rights in Bihár to custom," to have one law for the raiyats in Bengal and another for the raiyats in Bihár, to throw over at the 23rd hour of the day a provision of the Bill which mainly recommended it to the outside public,—a provision of the Bill which, if abandoned, will make half the Bill unnecessary,—has, I am free to confess, created in my mind a feeling of anxiety and intense disappointment; and I would fain believe His Honour has failed to realize the full effects of his decisions on the well-being of the province, the enormous restrictions it places on all fair trades or the greater disadvantage it places the raiyat in his race for life. I would fain hope His Honour may reconsider his decision. Opinions so forcibly and lucidly stated, expressed in language that none among us can hope to equal, must, I am sure, at all times carry great weight with them; when franked with His Honour's seal their evidence is almost conclusive. To try to refute His Honour's arguments, or to induce your Council to pause before accepting them as final, I feel to be almost hopeless; but hopeless as the task may be, an effort must be made, that all whose interests are locked up in the passing of the measure may feel that an effort (however poor a one) has been made to advocate their cause, that all may be assured and feel that the measure has been abandoned only from the essential weakness of our cause. With this object in view I would crave your assistance—above all, your patience. I would preface the remarks I am about to make by saying that, to my mind, there has always been a wide distinction between the transfer of a holding and a transfer of the rights attached to that holding. A raiyat may transfer his holding to another beyond

recall, but he cannot transfer his "rights" in that holding to another, as the law distinctly declares that a person can only acquire a right in land from long possession; and it is to rectify this that the provisions which relate to transfer in the Bill are required—required to legalize, direct and control it, and, where the right may be exercised to the injury of others, restrict it.

Six years ago, when the measure was first mooted, some of us, who are now strongly impressed with the necessity of controlling the system, were then among the opponents of the measure: many of us, who were then content to leave transferability to take root gradually and consolidate itself, are now strongly convinced of the necessity of legalizing and directing it: the events of the last few years have taught us differently. The day for leaving it to be governed by custom has passed; our own acts have made it impossible. For six years the measure has been discussed and re-discussed until every raiyat and trader believes that it has become part of the law of the country; and small blame to them for doing so.

Means for restricting it, measures for controlling it, have all been discussed, but in all these years the Government has shown no sign that the principle of the measure was at stake. The child of the Bengal Government and of the service, the public adopted it; the Government will now be doing the public a positive wrong to disown it.

The Government by their acts have stimulated transfer, and with transfer, the mortgaging of occupancy-holdings to an extent that few could have foreseen a few years ago, and which few who do not come into direct and constant contact with the raiyat will realize to an extent that the papers submitted by the Government of Bengal fail to show.

I would again urge you to control the movement before you are too late.

To turn round at the last moment and tell the people that our Government has changed its mind, that the money they have advanced on the security of the land is so much money wasted, will, to say the least of it, be a cruel act, and may be a hazardous one.

Without questioning the correctness of the figures submitted by His Honour's Government, I may be permitted to say that they in no way represent the full significance of the movement, or the hold it has taken on the minds of the people.

Free transfer, and transfer under decrees of Court, must at all times be few in comparison with mortgages or transactions of a temporary nature, and it is only by enquiring the number of mortgages effected within the last six years—registered mortgages and mortgages the registration of which is optional, that one can realize the result of this long discussion. The papers submitted by His Honour's Government make no reference to mortgages.

In these papers my own district appears in reference to numbers and value of transactions almost at the bottom of the list, yet it shows that five times the number of transfers were effected in 1883-84 than were effected in 1881-82.

For me, a non-official, to attempt to give a precise list of all the mortgages that have been effected in this district within the last six years would be impossible; it would entail a house-to-house enquiry and enormous labour, but for my own satisfaction I made the enquiry on a portion of the estates under my charge. The estate consists of nearly 1,700 villages; I enquired in the following, and the result is as follows:—

Villages.	Transactions.	Area of holdings in Bihār.	
		Local bighās.	Standard.
202	1,792	7,392	29,568.
Rent payable.	Bighās mortgaged.	Money raised.	
		Local.	Standard.
Rs. 19,071	2,106	8,424	

Rs. 1,22,734.

or Rs. 61 per local bighā, Rs. 15-4 per standard.

When it is remembered these transactions were effected in Champaran—a district in which transfers were, a short time ago, almost unknown, a district in which land is easily procurable, that the area covered is only a small portion of an estate—I would urge you to consider how necessary it is to direct and control the movement, and of what importance the measure proposed in the Bill must be to us and to more forward districts. I would point out that nearly all these transactions refer to portions only—jotes, not entire holdings. Careless and improvident as the raiyat is, such as he is, your laws have made him; believing in the first instance that lands could not be seized, can you blame him for not making provision for the future?

I would beg of you to try to realize the position of a man who may not sell the property to clear himself of debt, and yet whose property may be sold under a decree of Court for one paid. That the picture here drawn is not the fruit of my imagination I would beg to submit the following instances. Cases such as these are all over Bihār of frequent occurrence.

No.	Principal.	Total decree with interest and costs.	AREA SOLD.		Amount realized.	Balance due.
			Local bighās.	Standard.		
	Rs. A. P.	Rs. A. P.	B. C. C.		Rs. A. P.	Rs. A. P.
1	182 9 0	237 9 0	5 17 0	22	123 0 0	124 0 0
2	82 0 0	113 7 9	11 4 16	44	45 0 0	68 0 0
3	55 0 0	111 10 3	2 4 0	8	37 0 0	64 0 0
4	49 6 0	68 10 9	2 11 0	10	28 0 0	40 0 0
5	242 0 0	343 15 9	11 16 14	46	98 0 0	245 0 0
6	692 11 0	822 10 0	3 10 0	14	102 0 0	720 0 0
7	110 0 0	126 0 0	3 3 0	12	45 8 0	81 8 0
8	204 6 0	302 2 9	7 11 18	30	159 0 0	143 0 0
9	606 4 0	862 15 0	13 19 12	56	67 12 0	805 0 0
10	424 0 0	556 4 6	5 0 0	20	55 0 0	501 0 0
11	112 0 0	194 7 9	1 8 0	6	43 0 0	151 0 0
12		45 2 8	1 19 0	8	15 8 0	30 0 0
13		37 0 0	1 9 5	6	28 8 0	8 8 0
14		18 0 0	0 12 1	2	5 0 0	13 0 0
15		293 13 6	12 13 0	50	126 0 0	173 0 0
16		176 12 0	9 17 12	40	98 0 0	78 0 0
17		102 14 6	3 6 10	13	71 0 0	31 0 0
18		52 0 0	1 19 5	8	18 0 0	34 0 0
19		32 0 0	1 0 0	4	6 4 0	23 12 0
20		46 15 0	0 16 5	3	15 0 0	31 0 0

In making out the above account I have taken the local bighā as four standard bighās and dropped annas and pie.

I would here maintain that were transferability legal, either the creditors would have been satisfied with their security, or the debtors could have cleared themselves of debt by disposing of their property at its proper value.

That the measure is now essential to the welfare of the province many have urged more forcibly than I am able to do. It has, I think, been admitted on all hands, as also by His Honour's Government, that legalizing transferability of occupancy "rights" will enable the raiyats to raise money on easier terms than they could otherwise do.

To some this seems a small matter and hardly worth the stir that has been made over it, but to all who have had any experience of the subject, it makes all the difference between life and death, between degrading poverty and affluence.

With power to raise money on the security of his land, he may in his time of need raise a larger sum than he could otherwise do—possibly to the extent of five years' purchase of his holding—at a lower rate of interest and, what is of even greater importance, for a longer period.

Obliged to raise it on his farm implements or on the probable outturn of his crops, he can only raise it for short periods, necessitating his disposing of them in the worst market, and owing to the insecurity of the investment he can only raise it at exorbitant rates of interest.

In a season of scarcity where his crops have failed he has nothing but his bond to offer. The trader or money lender, when investing his money, will look for interest in proportion to the risk he runs, and not even an Act of Parliament will induce a trader to lend his money against his inclination.

Unless the raiyat is placed in a position to offer some tangible security for the money he borrows, he must continue to pay the exorbitant interest he is at present accustomed to pay to the end of the chapter.

Traders and money-lenders at present demand and receive exorbitant rates of interest from the raiyats. They not only charge from 25 per cent. to 30 per cent. interest on the money advanced, but the raiyat has to agree to repay the debt in grain and to deliver the grain some years cheaper than it is selling in the market.

The experience of all countries goes to prove that the cultivators of the soil are borrowers, the very nature of their employment to a certain extent necessitating their being such. That they should be obliged to borrow at the above exorbitant rates of interest is the result of our laws.

That they should continue to do so, and ever hope to be independent is an impossibility. That they should do so and still live, they may thank a bounteous Providence and not our laws. A law that gives the landlord the first lien on the crop, and will not permit of the land being given as security, must act as a deadweight on the tenant-farmer.

Many have argued that the raiyat is such a improvident creature that you should enact laws to save him from himself. With these I cannot agree; our laws are forcing him into unnecessary debt; in the hope of preserving him, they are driving him on to ruin.

If it is your wish that he should ever become self-reliant, let him feel that he is looked upon as a reasonable creature—a man responsible to himself for his own acts.

If it is your intention to re-enact for his protection the laws in force a century ago, you must be prepared to re-enact the old usury laws, and few, I think, will say that this is to be done.

It may be said all my experience, all my information, only refers to the North Gangetic portion of the province. This I deny, but to these I would reply that if I show that the necessity to the most backward portion of the province I prove that it is a neces-

Many have argued that to legalize transferability of occupancy-rights would be to do the landlords a grievous wrong.

The landlords, through their representatives, have objected to the measure on the grounds—

First—That it is injurious to the raiyat.

Secondly—That it will be injurious to the zamindár as it will take away a valuable right from him.

Thirdly—It will allow hostile persons to intrude into his estate.

Fourthly—That it was not permitted under the terms of the permanent settlement or under Act X of 1859.

Fifthly—That there is nothing in the Bill that will prevent greedy speculators from trafficking in land.

Whether it will be injurious or not to the raiyat I have in the above attempted to show; that it can under proper safeguards by any possibility be injurious to the landlord or take away from him a valuable right I cannot realize, and in no instance that I remember have the zamindárs directly or clearly stated what that valuable right consists of which they are being deprived of. The only "right" they might have claimed—a right that (if I may use the expression) they have hinted at, never openly and directly claimed—is the right to participate in the price of the transfer.

Whether, owing to the *laches* of our Government, they may be considered to have acquired a prescriptive right to do so or not, I must leave others to decide; for my part I would rather see their right declared and legalized than let matters drift on in their present unsatisfactory way.

Otherwise their rights in the land are preserved to them under the Bill. Their rents are assured to them, as they are the first charge on the land and on the crops.

Their rights to enhance and distrain, &c., are left intact, as the transferee acquires no new rights with the land.

That it may permit hostile persons to acquire a footing on their estates I admit to be a drawback, but this has been to some extent remedied in the Bill.

That it was directly permitted at the time of the permanent settlement is true; that it was forbidden there is no evidence. Under the Regulations that the zamindárs appeal to, a raiyat could not be dispossessed of his lands. If the raiyat did not pay his rents, his crops were distrained. He suffered in person—he could not be deprived of his lands. Under the old Regulations, if a jotedár failed to pay his rents and his landlord seized his lands, when the rents were paid, the zamindár had to account for his stewardship; he could not deprive him of the land to give to others. If the zamindárs, when objecting to the raiyats being accorded the right to transfer, under the plea that they had not that right at the time of the permanent settlement, offered to forego their right to evict, or their present right to sell up the holdings for the non-payment of rents—rights they did not possess at the time of the permanent settlement—there might be some show of justice in their demand; at the present there is none.

In reference to the objection that the land will fall into the hands of speculators and land-jobbers, I think I may say that there is more speculation of this kind going on at present—I may almost say gambling in land—than there can ever be after the Bill becomes law and transferability is legalized and defined.

I am convinced that, if the fear of land-jobbers and speculators is the *only* obstacle to legalizing the measure, it may be easily remedied. To remedy this there are many courses open to the Government.

I believe the Secretary to the Planters Association has already forwarded the outcome of our discussions, so I need not take up your time by referring to them here.

Throughout the discussion of this measure the interests of the landlords and tenants have alone been considered; the interests of traders have been ignored.

Much as the money-lenders and traders have been reviled, black as they have been painted, so black that charcoal will leave a white mark on them, they perform a useful part in the economy of the country. Being there, their interests should be considered, their existence not ignored.

Much as many of us may wish it otherwise, both landlord and tenant must for many years come to solicit the assistance of the money-lender and trader—the one for the due recovery of his rents, the other often for his means of subsistence; and yet the Bill is never discussed in a manner to show that the money-lender, grain-dealer, merchant or trader had any concern with its provisions. To make trade secure, the interests of traders must be considered, and their transactions must receive due protection under the law. Provision must be made to enable the trader to recover debts due to him, to recover damages for breach of contract. With the crops hypothecated to the landlord's rents, how, and from whence, is the trader to recover his dues if not from the land?

It may be said that matters have fared well hitherto without this alteration having been made in the law; but in this I beg to differ; but whether they fared well or indifferently, they can no longer proceed in the same groove. The landlords, the raiyats, the traders, and the Courts have one and all had their eyes opened by the discussion to the state of the law; matters can never again settle down into their old channels.

His Honour's Government would leave it to custom. Custom is a child of very slow growth. Custom must exist for many years before the Courts will acknowledge its existence, who is to pay for its education?

Hundreds may be ruined before the Courts will acknowledge it. Leaving it to custom, you cannot forbid the sub-division of holdings, the transfer of portions—the most mischievous form of transfer and which is now rife everywhere.

To us planters the measure is a necessity; without it we cannot hope to carry on any business with the cultivators. If we cannot recover damages for breach of contract, we cannot carry on business without first acquiring the position of their landlords. I would also beg of you to consider our position, to remember that to bequeath is to transfer. The native inherits; the planter bequeaths to his heirs.

Stress has been laid by his Honour on the fact of the Bihár Committee, and again the Bihár Conference, having vetoed transferability. I would beg to remind you that in the first day of its meeting the Committee agreed that transferability was a necessity to the raiyat. It was only on again discussing the subject the Committee were of opinion that it might give rise to litigation under the Hindu law. And I would beg to point out that transferability was adopted in spite of the Committee's objection to it, and that the excessive litigation that it might give rise to among shareholders is not among the reasons given by His Honour for abandoning it.

By many the rights others claim in property under the Hindu law are considered valid and legitimate restrictions on transferability.

In reference to the decision come to by the Bihár Conference, the accounts are too meagre to enable me to weigh the reasons which induced them to come to it.

It was, I believe, carried by a casting vote only. His Honour has decided to legalize transferability in Bengal and leave it to custom in Bihár, and founds his decision on the information supplied from the registration office. To me they read another lesson. The papers show the "number of years' purchase reckoned on the rents payable," instead of, as it should be, on the raiyats' profits. It would have been fairer and better to have taken the price of a standard bighá in each district as the standard of value. Taking the figures, or given 1883-84, I find under sales of occupancy-holdings at fixed rates by decree of Court, land in—

	Rs. A.	Rs. A.
Burdwan selling at	2 12	per bighá.
24-Parganas "	3 12	"
Rajshahi "	3 0	to 4 0
Dacca "	4 0	"
Whereas in the Patna Division it averages	5 4	"
I find under sales of other occupancy-holdings—		
Burdwan land brought	5 8	per bighá.
24-Parganas "	2 8	to 3 12
Rajshahi "	3 0	"
Mymensingh "	1 12	"
Dacca "	7 0	"
In the Patna Division	4 8	"
In Bhagulpur only	1 0	"
Under sale by registered deed—		
Burdwan land brought	25 12	per bighá.
Presidency Division "	6 8	"
Rajshahi "	12 8	"
Dacca "	13 0	"
Patna "	22 4	"
Bhagulpur "	8 8	"
Under sale of ordinary occupancy-holding. I find—		
Burdwan land @	14 0	per bighá.
Presidency Division @	6 8	"
Rajshahi @	11 4	"
Patna @	18 8	"

That is to say, in nearly all instances land has brought a better price in Patna than it has done in Bengal.

If the number of transfers in a district is a sign of the improvident habits of its raiyats, Bengal certainly has the advantage of us.

I would point out that, whereas the parties believing they are acting within the law are able to raise 15 per bighá on mortgage only in Chhmparan, when sold by decree of Courts, they bring sums varying from Re. 1 per bighá in Bhagulpur to Rs. 7 in Dacca.

I have now said all I wish to say, I have taxed your patience to its utmost; I would now only urge you that, be the result of your deliberations to us what they may, try and make a man of the raiyat, and all the rest will follow.

Legalize the transferability of entire holdings, but place every restriction possible on the transfer of portions of them.

Note by the Hon'ble T. M. GIBBON.

CHAPTER I.

1. Believing that the wish to stand well with one's superiors, the hope of future promotion and the natural desire to enhance the value of all estates under one's charge is as deeply implanted in the breast of all officials as it is in that of any other class of men, I cannot, I am sure, say, endorse the moral adduced in paragraph 5 of the Bengal Government report, viz., that Government officials have nothing to gain by large enhancements. Believing that the

good intentions of our Government cannot in any way redeem its bad laws, I have read with great pleasure that it is His Honour's wish that all Government khas mahals should be made subject to the provisions of the Bill.

2. I would ask if the Government could not see its way to making the enhancement of the rent of raiyats living on estates subject to periodical settlement with zamindars, subject to the same rules as apply to the rents of raiyats living on permanently settled estates?

3. I would urge Government to accord to all raiyats, whether living on permanently-settled zamindars, Government khas mahals or periodically-settled estates, the same rights and the same privileges, even to the extent of their acquiring a right to hold at fixed rates under the 20 years' presumption if the presumption is to be retained in the Bill.

4. Many of us fail to understand why 40 years' exemption from enhancement should be a valid reason for enhancing the rents of raiyats living on estates under Government control, while 20 years' freedom from enhancement creates a presumptive right to hold at fixed or permanent rates in favour of raiyats who pay their rents to zamindars.

CHAPTER II (Paragraph 14, Bengal Government Report).

5. *Presumption of tenure-holder from area of holding.*—Unless our Government is prepared to follow the advice of the Lord Chief Justice and lay down a hard-and-fast rule, which I from my experience believe to be impossible, I would earnestly beg of the Government to retain the presumption exactly as it is laid down in the Bill.

6. It is, I think, the very best solution of the problem that has as yet been proposed.

7. As far as I am able to understand the objections raised to the presumption being retained, most people assume that it is the raiyat's interest to prove that he is not an occupancy-raiyat but a tenure-holder, whereas the contrary is the case. Unless he can at once show that he is a permanent tenure-holder, he is better off as an occupancy-raiyat than he is as an ordinary tenure-holder.

8. A person holding land under a tenure-holder can acquire occupancy-rights in the land; a person holding land under an occupancy-raiyat cannot.

9. As between him and his tenant, a person who is in possession of more land than he can cultivate, and who elects to sublet his lands to others, and afterwards attempts to recover possession of them, pleading that he himself is an occupancy-raiyat, and therefore his tenant can have no occupancy-rights in the land, should, by reason of his subletting, have the onus of proving that he is an occupancy-raiyat and not a tenure-holder cast on him.

10. Again, as between him and his landlord, he may not be evicted from an occupancy-holding; he may from a terminable tenure.

11. It is to be presumed that all "raiylats" acquire the land in the first instance for their own home cultivation.

12. If they do not or cannot cultivate themselves, but sublet to others, there can be no hardship to them in having to prove that they acquired the land in the first instance as a raiyat and not as a tenure-holder.

13. Exception has been taken to the limit of area.

14. My own experience goes to show that the limit of the holding as laid down in the Bill is as fair a one as it is possible to give.

15. The limit to be laid down should, I think, be equal to the area an ordinary well-to-do raiyat can cultivate with his own appliances,—over it rather than under it,—and I think one hundred standard bighas about as much as he can manage.

16. Although I cannot follow Mr. Reily's example and state the area cultivated by different raiylats living on the estates in my charge, as many of the raiylats have holdings in two and three villages, I can at least show from incontestable evidence that extremely few "holdings" exceed one hundred standard bighas in this district.

17. If the limit is lowered, thousands whose occupancy-rights are now beyond dispute will be liable to have their titles contested; and this, I presume, the Government do not desire.

CHAPTER III.

18. Section 11 of the Bill is not, I believe, directly referred to in the report of the Bengal Government; but, as I am doubtful on one or two points connected with it, I would beg to be allowed to call your attention to it.

19. Under section 26 of Act VIII of 1869, a zamindar is compelled to register all divisions of tenure among heirs and others, but he is not required to give effect to any division of "rents."

20. For this section there is, I believe, no direct substitute in the Bill, unless it may be considered that section 97 is intended to apply to tenures as well as to occupancy-holdings.

21. I doubt very much whether a Court of law would consider that the term "holding" applied to the large tenures (almost or quite estates) in North Bihar.

22. If it is intended to give tenure-holders the right to divide their rents as well as their lands against the wishes and to the detriment of their landlord, some procedure should be laid down for the proper apportionment of rents.

Discussions of the 20 years' presumption.—When the Government of Bengal admits, which it practically does, that the presumption is an infringement of the Permanent Settlement, it admits all we have ever claimed for it.

23. Far from the agreement involving the absurdity that no rules of procedure are to be laid down with a view "to shorten litigation," it is not a matter of "procedure" that is involved but a matter of right. We deny that the raiyat ever had or was intended to have the right to hold at fixed rates without the consent of his landlord: we look upon it as a transfer of property from one class to another.

24. I am sorry to say I look upon every instance in which the Courts have, under the procedure decided in favor of a raiyat's right to hold at permanent fixed rates, as a wrong to the landlord.

25. If, as a matter of policy, the Government thought it necessary to accord the raiyat a right he never before possessed at the expense of the landlord, the landlord was clearly entitled to compensation.

26. The report of the Bengal Government nowhere alludes to the rule being made applicable under section 84 (3) to commuted rents.

27. As I said all I wished to say on the subject in my dissent to the Bill, I need not refer further to the subject here.

28. *Procedure for the registration of transfers.*—I would strongly deprecate the alterations recommended in the report being adopted. The chapter, as it stands, I consider extremely valuable, and I would be sorry to see it altered.

CHAPTER IV.

29. I must still adhere to all I said in this chapter in my memorandum of dissent, and I still think the distinction, I then advocated, should be made in this chapter. I am glad to see I am supported in this by the Bihar Conference.

CHAPTER V.

30. Should the estate be limited as to extent or period of creation?

His Honour says that "having regard to the condition of the raiyat and the perfect freedom of the landlord to give or withhold the land, he is satisfied that abuse of the rule is not a practical danger to fear."

31. This may be correct with reference to land at "present" in the possession of the landlord, but will not apply to land already made over to raiylats by landlords who were at the time ignorant of your intention to lay down this hard-and-fast rule.

32. It is only the raiylats of large zamindars, such as Burdwan and Bettiah, that will be affected by the alteration asked for; and I think even the most exacting raiyat may be satisfied if the limit of a thana or tappa is accepted.

33. His Honour's suggestion that the limits of the estate should be taken as they may exist at the time of the introduction of the Bill, instead of as it stands in the Bill, is, I think, a move in the wrong direction.

34. Whereas the one will only affect the raiylats of a few estates, and that not injuriously, a very large number of raiylats will be seriously affected by the other.

Section 25 (2) of the Bill.

35. I would beg to be allowed to call your attention to the purport of this section, and to ask if it might not be taken to mean that a person may revive a claim to land he has been dispossessed of under a decree of a competent Court subsequent to 1st March 1883 and prior to the introduction of the Bill.

36. Section 26 (2) was I believe accepted by the majority of your Committee under the belief that it was in accordance with the present law and practice of the Courts.

37. I would beg to call your attention to the minute of the Lord Chief Justice on the subject, who is evidently of a contrary opinion.

38. Should His Lordship's reading of the law be correct, the subject should, I think, be reopened and re-considered.

Note by the Hon'ble T. M. GIBBON.

Limitation on Transfers of Occupancy-rights in Bengal.

HIS HONOUR the Lieutenant-Governor is of opinion that "if by any definition or legal provision the limitation of the occupancy-right to the actual cultivators could be secured, the free right of transfer would, by common consent, be unobjectionable."

To remedy this, His Honour proposes to allow the landlord a power of vetoing a sale of an occupancy holding to any but cultivating raiyats. The weak point in this scheme would be the difficulty of appointing the person who is to decide whether the purchaser is a cultivating raiyat or a mahajan. Cultivators are so often mahajans, and mahajans so often cultivators, I am afraid, we would require a very complicated procedure to prevent the power being abused.

If it is thought necessary to place restrictions on transfer in order to prevent the land falling into the hands of landjobbers and speculators, I would prefer seeing the transferee's rights in the land restricted to allowing the zamindar the power of making invidious distinctions. I would restrict the transferee's power to sub-let or again transfer to another for a certain time or term after purchase, and I would place the remedy in the hands of the zamindar, and thereby compel the transferee to cultivate the land purchased for a certain number of years, or abandon it.

I would beg to be allowed to reserve my opinion of His Honour's scheme until it is more fully worked out.

Checks on sub-letting.

The majority of planters will hear with regret that it is His Honour's wish that sections 37 and 62 should be abandoned; for myself I am very glad to hear it. I think it would, if retained, lead to complications hereafter necessitating special legislation to remedy. My brother planters are strongly of opinion that the term of seven years allowed for a sub-lease is not a sufficiently long period, and ask for a longer term. In reference to section 62, the majority of us approve of it as it stands, and, I think, would be sorry to see it abandoned. I do not. I would like to see the tenant and sub-tenant allowed to come to any agreement that they may think fair among themselves, provided such agreement is properly registered; but I would in no instance allow an occupancy-raiyat to recover more than fifty per cent. over and above his own rents from his sub-tenant when the arrangement is a verbal one or unregistered.

To meet the above the section should be altered, not entirely abandoned.

Section 63 contains a very valuable provision, almost the only protection given to a sub-tenant in the Bill, and should be retained.

On the ground of fluvial action.—I agree with all His Honour has said on this subject, and would be glad to see the right to enhance on account of fluvial action abandoned.

Enhancement under section 43 (a).—His Honour is of opinion that this is the most objectionable provision in the Bill, and wishes to see it struck out.

His Honour will no longer oppose initial rents being competitive, provided this section is cancelled.

As I understand them, His Honour's principal reasons for wishing to see this provision omitted from the Bill are as follows:—

First, that the rents of occupancy-raiyats will be unduly influenced by the rates the landlords will secure from new raiyats under the competitive system.

Second, that a "prevailing rate" no longer exists.

Third, that the prevailing rate deprives the occupancy-raiyat of protection.

Whatever difficulty there may be in ascertaining the prevailing rate, whatever abuses may have been allowed to creep in in the practical application of the rule, there can be no doubt that it is a provision of the law which the landlords have, for many years past, enjoyed the benefit of under several consecutive enactments, a provision of the law that they appreciate, and the deprivation of which they will resent as a bitter wrong. In resenting it as such, they will carry the sympathies of most people with them; the cancelling of this right will go far to justify their opinion of the Bill.

Although the Bill accords to every settled raiyat on an estate rights of occupancy in all land held by such settled raiyat in the estate on the 1st March, 1883, a raiyat, whether he be an occupancy or non-occupancy raiyat, can in the future only acquire occupancy-rights in any fresh lands he may acquire by lapse of time; therefore, as the section is drafted, the rents of occupancy-holdings will only be affected by any initial rents when the raiyats who acquire the fresh lands acquire occupancy-rights in those lands, viz., after the lapse of twelve years from the time of acquiring possession of each such holding.

Again, the quantity of land left under the control of, or subject to the influence of, the landlord and through which the rents of occupancy-raiyats may be affected, will be comparatively small.

Thanks to the provisions of the Bill, there will, after the passing of the Bill, be few raiyats in the province not entitled to claim occupancy-rights in the lands they at present hold. Abandoned holdings and land freshly brought under cultivation, will alone remain to the landlord for the dreaded purpose.

Where the raiyats of this province have a tendency to being nomadic, the landlords have more trouble to retain them than to drive them away; the landlords must concede much to them; rackrenting their holdings is seldom to be feared.

The raiyats of well-settled estates may for one or two reasons abandon their holdings—owing to their being rackrented, or to their being in debt. When raiyats abandon their holdings owing to their being rackrented, it is not probable that the initial rent of the new raiyat will be a higher one; besides, the resident raiyats will in so much be gainers, that the rack-rented holding will become a non-occupancy holding, and can no longer be taken into account when estimating "prevailing rates."

Should the raiyats abandon their holdings by reason of their indebtedness, with legalized transferability the landlords could hardly be the gainers.

Any effect that initial rents may have on prevailing rates must, from their nature, be very slow in their operation.

The rents of occupancy-holdings are not likely to be affected by the initial rents of newly reclaimed land, and, even when the raiyats who have reclaimed the land have acquired rights of occupancy in it, the rents of others can only be affected to an inappreciable extent by them.

Where the land lying waste on an estate is out of proportion to, or greater than, the cultivated area, we may be sure the uncultivated land helps to keep rates low; any attempt to demand higher rates for newly reclaimed lands than are being paid for occupancy-holdings on the estate would drive away raiyats, not attract them.

We may, I think, admit that it is very doubtful whether a prevailing rate in the hard-and-fast acceptance of the term adopted by His Honour ever existed over any wide extent of country. I certainly know of no district, estate or village in which one uniform rate exists for each class of land; but it should be borne in mind that the old Regulations declared that, where there were "no" pargana rates prevailing, "the collections were to be made according to the rate payable for land of a similar description in the places adjacent."

When we come to consider that the landlords of this country have from the remotest period been declared entitled to a certain fixed portion of the produce in lieu of rent, and the tendency of our laws has been to allow the raiyats to grow whatever crops they pleased on their lands, and to displace produce-rents by money-rents, it is but logical to declare that lands of equal value shall pay equal rates, and to allow one raiyat's rents to influence another's, more especially that fixity of tenure is by law attached to a holding.

To my mind the mistake lies in the application of the rule, not in its principle.

The Courts as a rule are satisfied to enhance the rent of a raiyat's holding when it is shown that the land in its "immediate" vicinity is paying a higher rent. This, I hardly think, was ever intended by "in the places adjacent." The rule as applied or interpreted by the Courts is often harsh in its action. To remedy the procedure of the Courts it is not necessary to deprive the landlords of a valuable right—a right that I consider just in principle. I would rather give the rule a wider range, and denote its application with an illustration.

If I might be allowed to make a suggestion, I would suggest that the sub-section should be allowed to run somewhat as follows:—"that the rate of rent paid by the raiyat is below the average rent paid by the occupancy-raiyats of the village."

I do not know if I have received a copy of Mr. Dampier's paper on the subject; if I have, I have mislaid it and cannot refer to it now; but, from the remarks made in paragraph 41 of the Government of Bengal report, the scheme he has propounded would have much the same effect as the above.

I am still of opinion that section 44 (a) should be omitted from the Bill.

Notes by the Hon'ble T. M. GIBBON.

Enhancement on ground of rise in prices.

I AGREE with His Honour in deeming the above a legitimate and valid ground of enhancement, but I disagree with His Honour in thinking that it affords ample compensation to zamindars for the withdrawal of other grounds; nor do I agree with His Honour in deeming it necessary, or even right, to withdraw the power given to the Court under section 48, substituting a section which will direct the Courts to make an allowance for the increase in the cost of production previous to decreeing enhancement on account of a rise in price.

In discussing this subject His Honour has throughout his able minute accepted the lessons taught by political economists in England and their theories of "rent" as the basis of his argument. His Honour has, I think, (and I say it with diffidence), omitted to see that rent as understood by the political economist, and rent as it is constituted in this country, are not the same.

The term "rent" as understood by the political economists in England and "rent" as it exists in this country both denote the sum paid by the occupier of the soil for the use of its natural properties, and in so much it denotes the same in both countries; but the conditions under which the tenants of the two countries hold their lands and the authority of the landlords over their tenants, are so dissimilar, that with this translation of the term the similarity ceases. In England the landlord is the absolute proprietor of the soil, with power to evict a tenant should he decline to pay the rent demanded; and the only restraint on the landlord's

power to enhance is his fear of having his farm thrown on his hands; the landlord's "rent is a competitive rent, it is a share of the "profits" of cultivation. On the other hand, in this country the tenant may under the law acquire a right of occupancy in the soil; his landlord's power to evict him is restricted; and with all the power to evict there can be no competitive rents.

From a very early period the landlord in this country has been entitled to a certain portion of the "outturn" of the crop as rent, in some places a larger, in others a lesser, share, but still a share of the outturn, not of the profit; be there profit or loss, his rents varied with the outturn; cost of production was no concern of his.

At an early period the British Government perceived that, as long as the landlord could demand a share of the crops as rent, valuable commodities requiring special knowledge, large means or incessant attention could not be grown, and determined upon encouraging the substitution of money-rents for rents in kind; where money-rents now prevail, they are the direct outcome of the policy of the British Government.

There can, I think, be no doubt that the Government of Lord Cornwallis, when encouraging the substitution of money-rents for rents in kind, fully intended that the landlord should participate in the progressive prosperity of the country. Debarred from demanding competitive rents, to allow him to participate in the future prosperity of the country, the Government must "enable" him to do so, or he will otherwise be reduced to the position of an annuitant on his own estate. This can be best effected by allowing him to enhance on the ground of rise in prices.

His Honour approves of provision being made in the Bill for enhancement on the ground of rise in prices, but wishes to empower the Courts to make an allowance for an increase in the cost of production.

To effect this His Honour would strike out section 45 (b) from the Bill, substituting a new section for section 48.

Section 45 (b) declares that the Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

This is again made subject to section 48, which declares that "the Court shall not in any case decree any enhancement which appears under the circumstances of the case unfair."

The enormous discretionary power hereby vested in the Courts under this section is, I believe, without precedent; without rules to guide the Court, it lays the Government open to the charge of leaving enhancement at the mercy or bias of the presiding officer and no longer governed by the law.

The only safeguard we have against the abuse of this power lies in the powers of supervision vested in the High Court, in all instances salutary, but insufficient to prevent loss of time and trouble to the litigants.

Wrong as I believe the section to be in principle, I would support the provision as it stands as a matter of policy.

Taking into consideration the extraordinary differences of rates paid for land in the same village, I do not see how the poor are to be protected if this section is not retained. Our Chumparan bight varies from three to six standard bighás to one local bighá, and the rents of the raiyats vary from eight annas to eight rupees per local bighá in the same village. Under the Bill as it stands, the landlord would receive two annas increase on rise in prices from the one raiyat, and sixteen times that amount from the other; and, unless the Court has the power to declare that the raiyat is already paying a rent out of all proportion to the rent others are paying, great injustice may be done. This cannot be done by rule; it must be left to the discretion of the Court.

If some such discretionary power is not given to the Court, the effect of the rule will be such that the heavier the rent the heavier the enhancement.

I would beg of you to remember that the amount to be gained by the enhancement makes no difference in the cost of the suit.

If the rule His Honour wishes to lay down for the guidance of the Courts is adopted, all must be treated alike, and the poor will remain unprotected. Besides objecting to His Honour's suggestion that "the Courts should be authorized to make an allowance for increased cost of production" on the above grounds, I object to it on grounds apart from these. I object to it on its merits.

If His Honour had been content with suggesting that the Local Government should be authorized to omit a season of calamity or famine from the price-list of a district, or that the Courts should have discretionary power allowed them to do so, I would have supported the proposal; but I am not prepared to follow His Honour to the lengths he proposes to go.

His Honour presumes that any rise in prices would solely affect the landlord's share of the outturn. This, I think, is incorrect.

Without going into any minute calculation as to the exact shares into which the outturn is divided, we may assume that it is divided, roughly speaking, into three portions—one portion to cover cost of production to the raiyat, one to cover the landlord's rent, the third may be looked upon as the raiyat's profit; but whether the third share is profit on raiyat's cash capital or labour capital is of little consequence here.

Any rise in prices will directly affect the value of the whole outturn, not the landlord's portion alone.

The landlord's rent in this country is supposed to represent a share of the outturn, the share varying from one-fifth to one-half. To this he is, theoretically speaking, entitled what-

ever the value of the crop may be. The balance is the raiyat's, but how much of the balance may be considered cost of production, and how much profits for the subsistence of his family, no one can say. I think, in a country where holdings are very small and families very large, the farmer may consider himself repaid for his trouble when he is able to subsist by farming the ordinary food-crops of the country. If he wishes to live in affluence, he must turn his attention to the cultivation of more valuable crops.

The implements of the country are of the simplest kind; if they invest in improved patterns, they will do so with the hope of receiving a better outturn.

Draught cattle may become more expensive, but, as the raiyats are themselves the breeders of the cattle, it cuts both ways.

The labourer's wages are usually paid in grain; therefore, if the cost of production becomes heavier, so will the portion of the crop which goes towards paying for cost of production become more valuable.

I can think of only one way in which the cost of the production of staple food-crops can become greater without any proportionate increase in the value of outturn taking place, and that is by the extension of the cultivation of other and more valuable commodities to the displacement of the cultivation of staple food-crops—commodities which can, from their intrinsic value being greater, afford to pay higher wages and at the same time appropriate more labour.

But as the landlord cannot by any possible chance gain any direct benefit under the Bill from the cultivation of the more valuable commodities on his estate, excepting indirectly to the extent that the cultivation of them will force up the price of food, and as the whole benefit to be derived from their cultivation is to accrue to the tenant, it is not fair to debit the landlord with the extra cost of such labour.

I agree in the decision come to by your Select Committee that staple food-crops should alone be taken as the standard of value.

A province may be enriched by the extension of the cultivation of the more valuable commodities, but the very fact of a greater number of farmers taking to their cultivation, and increasing their supply, would assuredly reduce their marketable price.

I agree with His Honour in thinking that the price of food-grains generally must, for some years to come, have an upward tendency, and I agree with His Honour in thinking that the prices ruling at the principal grain-mart of the sub-division should be accepted as the standard, as least liable to undue fluctuations.

I would prefer taking the average of the prices current during the whole year to taking the prices current at harvest-time, as being less liable to the influence of panic or speculation at a time of impending scarcity.

Notes by the Hon'ble T. M. GIBSON.

I OMITTED to remark in my notes on "an allowance to be made for increased cost of production" that His Honour has in support of his argument cited the ruling of the well-known case of *Thakurani Dassee*. I would respectfully beg of you to read that ruling carefully, to see if it in any way supports His Honour's arguments.

Four Judges—Messrs. Trevor, Macpherson, Phear and Norman—supported the rule of proportion. Sir Barnes Peacock alone dissented, wishing to apply the lessons of the political economist Malthus.

In the case of *Thakurani Dassee*, Sir Barnes Peacock only repeated his former decision in the case of *Hilla v. Ishwur Ghose*.

To learn what His Honour's Government thought in 1881 of this application of the abstract definitions of rent of Mr. Malthus by Sir Barnes Peacock to the law of this country, I would beg to refer you to page 81, Vol. I, of the Bengal Report. Without quoting all the Bengal Government then said of Sir Barnes Peacock's decision in *Ishwur Ghose's* case, I may be allowed to point out that the Bengal Government then thought that "this decision was at once felt by every one acquainted with revenue law and history to be a fatal blow to the customary rights of the whole cultivating class in Bengal."

Enhancement on grounds of landlord's improvements.

I agree with His Honour in thinking some limit may be placed on the landlord's power to enhance on account of improvements made otherwise than under an express agreement with his tenants. It is a mistake not to leave it open to the landlord and tenant to come to an understanding among themselves with reference to the return the landlord is to receive in the shape of "enhanced rents" (if it can be called rent, which it is not) for the capital he expends.

This can certainly be evaded by the landlord and tenant entering into an arrangement among themselves, that the landlord is to receive a certain amount of "interest" on any money he may expend on improvements.

It would then be, what it really is, a return for the capital he expends, not "rent." It is a serious matter to say that people who enter into arrangements of this kind with their free consent, and with their eyes open, believing that it will benefit themselves, shall be allowed to withdraw from their contract if the works erected turn out otherwise than as they expected. I am not prepared to go so far.

Take, for instance, the Sarun irrigation works constructed by Government on an understanding with the planters and zamindars that a certain amount per annum shall be paid by

Government as a return for their expenditure. Do you think the planters would be justified in withholding their subscriptions if the water did not benefit their lands?

I think in all such matters the people should be left to themselves. The tenant is just as likely to know what will benefit his lands, and what will not, as the landlord. I think it is impossible to limit in a Rent Bill the return one person shall agree to pay to another for capital expended.

Enhancement under registered contract.

Under the Bill as it was submitted to your Select Committee, a holding might be enhanced to the extent of six annas in the rupee, or $37\frac{1}{2}$ per cent., provided the enhanced rent did not exceed one-fifth of the gross produce of the land, and the landlord was to be debarred from again enhancing the rent within a period of ten years.

Your Select Committee struck out the gross-produce limit, and limited enhancement under contract to $12\frac{1}{2}$ per cent. for a period of seven years, and to 25 per cent. for a period of fifteen years.

Judicial enhancement may be effected to the extent of 50 per cent. increase on the former rents under the prevailing-rate rule, and to the extent of 25 per cent. on rise in prices.

That some restrictions should be placed upon voluntary enhancement, in order to protect the poorer class of raiyats, was, I think, admitted on all hands; but, with reference to the extent and nature of such restrictions, there was, I believe, much difference of opinion.

The reason assigned by the Government of Bengal for reducing maximum limit of enhancement, and for increasing the period for which it was to run, was the withdrawal of the one-fifth gross-produce limit.

His Honour now wishes to re-insert the gross-produce test, and again reduce the maximum limit from 25 per cent. to $12\frac{1}{2}$ and to again increase the term.

Were I assured that the gross-produce test would work without friction, in other words, could possibly be applied, or that the Bengal Government could show me how they proposed to overcome my difficulty, I would unhesitatingly support their proposal as the very best means of preventing the poorer class of raiyats from being rackrented; but neither from the discussion which took place in Committee, nor from the minute now published, have I realized that they see their way to overcoming it, or even that the Government has realized wherein our difficulty lies.

His Honour has stated one of the objections to be "that the limit, though fair for particular localities and particular crops, might not be so for other localities and other crops."

To me it is not the matter of limit wherein the difficulty lies, but the practical application of the test. But in reference to the objection stated by His Honour no attempt is made to show how it can be got over.

With reference to the practical application of the test, I would beg of you to remember that the Bengal Government wish to take "specified" staples as the standard by which to test the value of the land, not the "particular" crop for which the land is suited, or "any crop" grown in the village.

For the sake of example, take wheat, barley, oats for the winter-crop test, rice and maize for the summer. The number of staples must at any rate be limited.

I am ready to admit that any jury consisting of practical farmers—men with a fair average amount of intelligence—would be able to estimate the probable outturn of any acre of land sown with any stated crop, provided the question is fairly put to them; that is to say, if they were asked "what would be the probable yield of such a field in an average season, if sown with wheat?" The amount at which it was estimated by each man would vary very little; but the difficulty does not lie here, or even with the jury. The difficulty lies in having to estimate the value of a field, the soil of which is only suited for special crops, by staples that the soil is quite unsuited to grow. Many fields that will not yield either rice or maize will grow good sowan, murreah, sweet potatoes, &c., &c.; many lands that will not yield five rupees when sown in cereals will yield fifty when sown with chillies, and *vice versa*.

It seems to me that if the Government's proposal becomes law, the sum in arithmetic which each juryman will be required to solve will be—"If a field that will yield 20 maunds of a given cereal has to pay four maunds in rent, what is a field that will not yield anything in cereals, but will yield any amount of (say) cotton, to pay?" If this difficulty is overcome, the rest is only a matter of details.

Unworkable as I believe it to be, I would infinitely prefer seeing the test adopted than to be constantly reducing the limit.

For six years the Bill has now been discussed and re-discussed, altered and re-altered, until the original is not recognizable in its present form. The special grievances that the Government intended to redress have been almost forgotten in the *interim*: our over-caution trenches very closely on indecision.

The changes and alterations now proposed by the Bengal Government in every portion of the Bill are so great, and so far-reaching, that they will necessitate a re-casting of the whole Bill, and with it at least another two years' discussion by the public.

The amount of injury that this would do the country, to both landlord and raiyat, I need not point out to you; I at least would look upon it as a calamity.

The relationship of landlord and tenant is now strained to its utmost; a little more and you will have the whole country on your hands. The zamindars are strongly impressed with the idea that the Government has no sympathy with them, and hardly expect to be dealt

fairly by. The raiyats measure their gains by the opposition of the landlords, and believe the millennium is at hand; another year of agitation; and you will, in order to govern the country, have to give them a sad awakening.

I should beg of you only to make such changes in the Bill as will permit of its being passed this Session; if it is not, or cannot be, passed this Session, I would pray of you to drop it. You will do more harm by allowing the discussion to go on for another year than you will remedy in five under the Bill. At any rate, do not let it appear as if every alteration now to be made in the Bill was to be a fresh restriction on the landlord; if voluntary enhancement must be restricted, give the landlords a set off by withdrawing the limit to be placed on judicial rents under the prevailing-rate rule.

Note by the Hon'ble T. M. GIBBON, —(dated 28th October, 1884).

Commutation.

The commutation clauses in the Bill I do not like; I think the defendant will in each case be the sufferer.

I think commutation of rents should only be allowed when the raiyat wishes to cultivate a more valuable crop than the edible crops he has been in the habit of growing on his *bhaoli* land, and in this instance he should be bound to pay a full average of the proceeds of former years.

His Honour, on the contrary, would make these provisions still more stringent.

His Honour finds a proposal, supported by the high authority of Messrs. Dampier and Reynolds, that the commuted rent should not exceed the rent of the road-cess *jamabandi*, plus what rise in price may have occurred since the road-cess assessment was made. As final evidence against landlord or tenant, the road-cess *jamabandis* are worthless, and I hope I may be pardoned for saying so; but I doubt very much whether either of the above gentlemen ever examined the road-cess *jamabandis* on this point for themselves, or they would hardly support such a proposal. The framers of Act X of 1871 fully intended that the *jamabandis* to be called for, for the road-cess assessment should be final evidence as against the zamindar, and with that end in view made provision under sections 17 and 18 of the above Act to permit of any one who might consider himself aggrieved by the *jamabandi* entered against his name contesting its correctness.

This provision of the law was not re-enacted under Act IX of 1880, nor does Schedule A, Part II, necessitate the entry of all particulars of a holding; whereas the original Act required close scrutiny of the *jamabandis*, in order that they might in time become valuable evidence. The latter Act was enacted for fiscal purposes only.

The state of the Government exchequer at the time of the introduction of the Act necessitated rapid action instead of deliberate enquiry.

Jamabandis were accepted anyhow, and from anybody. The provisions of section 17 of Act X of 1871 were allowed to become a dead-letter.

Jamabandis, as a rule, do not show the gross produce of the *bhaoli* lands; they only show the cash rent due by the raiyat for the undelivered portion of the outturn.

Raiyats, as a rule, do not pay road-cess to their landlords on their *butlaya* lands in this part of the country.

If you wish to declare any evidence final as against any person, first make it necessary to take papers from that person with his signature attached; papers that a person has never had an opportunity of examining should not be accepted as evidence against that person.

To introduce such a provision now may be dangerous; knowing with what object it would be introduced, unscrupulous people might be induced to lodge enhanced *jamabandis*.

The non-occupancy-raiyat.

Short of making occupancy-rights inherent in the soil, the provisions of this chapter go almost as far as it is possible to go to secure the non-occupancy-raiyat fixity of tenure.

The gross-produce limit, I do not think, can be introduced for reasons previously stated. Compensation for disturbance I do not approve of. I certainly am not prepared to support its re-introduction into the Bill at the cost of having to cancel sub-section (7) of section 60 of the Bill.

To re-introduce the compensation-for-disturbance clauses into the Bill, I deem it would be necessary to cancel the above sub-section, as it was introduced into the Bill at the request of the Bengal Government, and accepted by the Select Committee as a set-off to their non-acceptance of the compensation clauses.

If it is necessary to go any further in providing security of tenure to the non-occupancy-raiyat, declare that the initial lease shall be for a particular term.

Bastu lands.

I quite agree with His Honour in all he has said on this important subject.

Raiyats who erect their huts on their own holdings should, as a matter of course, hold the lands on which they are built on the same conditions as they hold the rest of their holdings.

The only point to be considered in reference to the above is the effect of transferability. When a raiyat sells his holding he will be obliged to transfer his hut with it as a matter of course; but this should be made quite clear.

A raiyat who is allowed to erect a hut on a village site should, as a matter of course, acquire a permanent interest in the land on which it is erected, but he should retain the land only for such purpose. Undisturbed possession for twelve months after erection of the building should, in all instances, be sufficient proof of right to remain on the land.

He can only acquire a site to build on with the consent of the landlord direct or implied.

If he abandon the site, the land in all instances, and in many districts the hut, reverts to the landlord. If the raiyat sells his hut or house, or it is sold up under a decree of Court, the material with which it is made is alone sold; the site reverts to the landlord. It is optional with the landlord to allow the purchaser to retain the site or give him notice to take away the material.

No raiyat has the right to cultivate any portion of the village-site without the direct consent of the landlord.

The raiyat's right to hold the land permanently for residential purposes should be assured. There can be no enhancement law for lands set aside for building purposes; the initial rent, if any, must be a matter of contract; the initial rent must be a permanent one.

For the sake of the village-community the landlord's power of veto, as above detailed, should be assured.

Receipts and accounts.

In reference to this subject I have from time to time said all I had to say. I would now only urge the Government to insist on all zamindari books of account, either tendered or summoned in evidence in a Court of law, being returned to their owners as quickly as possible.

The gentlemen who talk so fluently about insisting on all accounts being kept in bound books have no idea of the difficulties we encounter in recovering our books from the Courts, or the cost entailed, or the break that occurs in the routine of our business when they are so detained. I would beg of you to remember that books of account kept on large zamindaris are as often called for by the Courts on other people's business as on account of their owners.

The delay in recovering books of account from the custody of the Courts is encouraging people to keep duplicate books, one for the Court and one for their own use; and I can hardly conceive anything more objectionable.

Make it possible for zamindars to keep their accounts in bound books, encourage them to do so, and the rest will follow as a matter of course.

Proposals regarding pasturage, fisheries, and forest rights.

In reference to the above, His Honour is of opinion that questions of enhancement of the rent, reduction of rents and acquisition of status should, be provided for in the Bill.

This appears to me, from the very nature of such tenures, an impossible task. To me it is quite new to hear that "pasturages, fisheries or forest-rights" are now, and ever have been, dealt with as on the same footing as "agricultural holdings." I have never heard of tenants being in a position to acquire occupancy-rights in them.

The law does not permit them to do so; I have never heard of tenants who held fisheries, excepting under terminable leases or permanent grant from their landlords. I have never heard of a tenant who was in a position to claim a right to hold the above at a judicial rent.

I will reserve what I have to say to the above being made subject to the incidents attached to an occupancy-holding, until His Honour's scheme with all its details, comes before your Select Committee.

His Honour is under the impression that, because some of the above items were included by your Select Committee in their form of rent-receipt and rent-account, they intended them to be looked upon as among the incidents of a raiyati holding. I do not remember anything occurring in Committee that would permit of such a construction being put on their being included in the account; and, had I thought it possible to put such a construction on their act, I for one would have protested against their being so included.

I think all the Committee intended was that each account should, if possible, show all that is due by one raiyat to his landlord. Pasturage in which alone there might be a possibility of the raiyat acquiring a right by long prescription, is not included in the account. Forest-rights, such as the right to gather fuel and cut timber, is not usually paid for on the area, but on the quantity taken. *Zulkar* or fruit depends on the season. *Zulkurs* or fisheries are usually settled under contract, and are in many places dependent on the rainfall of the season.

Note by the Hon'ble T. M. GIBBON.

Improvements—Acquisition of irrigation-channels for landlords.

No portion of this otherwise most able report of the Bengal Government has astonished me more than those portions of it which refer to improvement; and I am very very disappointed at the decision come to by His Honour on the subject. I would fain hope that when His Honour once realizes how difficult it is for us, living in North Behar, to stave off famine without some such provision as was suggested in Committee being made in the Bill, His Honour will be induced to accede to our request.

His Honour cannot have realized the enormous difficulties both landlord and raiyat have to contend against in carrying out improvements against the wishes of a hostile raiyat. One hostile or obstructive raiyat may starve a village-community; and such difficulties will increase year by year as the public become better acquainted with the law.

At the risk of being tedious I would beg to remind you that the specific propositions submitted to your Select Committee were as follows:—

(1) If the landlord or any raiyat holding land in the vicinity is likely to be injured by the raiyat making an improvement, an appeal should be allowed to the Collector, who should be empowered either to allow or prevent such improvement, and whose decision should be final.

(2) On the application of the landlord or several raiyats jointly, the Collector or Sub-divisional Officer should be empowered to allow the cutting of irrigation-channels and arrange for the distribution of water generally.

(3) When, on the application of the landlord or on the joint application of several raiyats, the Collector makes arrangements for the distribution of water, he should be empowered to compensate individual raiyats who may suffer temporary or permanent loss by such acts.

(4) Such compensation to be paid into Court either before or after completion of work, as the Collector may decide.

I would beg to point out that the above would be to the benefit of the raiyats as well as to the benefit of the landlord. I would beg to remind you that a raiyat must in all cases bring water "to" his land and "across" some one else's land to irrigate his holding. He must cut a channel "to" his fields and "across" his neighbour's to irrigate his holding. Under the present law, if a landlord or a number of raiyats jointly dam up a stream to irrigate a village, the water cannot be carried through or "across" any raiyat's field without his consent. If a raiyat wishes to irrigate his land from a village well, he must first procure the consent of his neighbours who hold land situated between his holding and the well before he can do so.

Any improvement that will affect large areas may temporarily affect a few injuriously, or, even if raiyat is not likely to be injured, he may still declare he is likely to be so, and prevent others from being benefited.

It was to take away one man's power to injure the many that the above resolutions were brought forward in Committee.

Every season that the rains cease unusually early the executive brings pressure to bear on zamindars to assist their raiyats to dam up the streams and to irrigate their lands to stave off famine; but the law does not protect either the official who wishes to assist the raiyats or the landlord who is willing to stand the cost. I would appeal to every Collector and Sub-divisional Officer who has served in North Behar in a season of impending scarcity to say how often they could have, and would have with the assistance either of the landlord or raiyat, staved off scarcity, had the law empowered them to act in the matter, or had they not feared a suit for damages being brought against them if they acted on their own responsibility. I would appeal to the records of their own Courts to show how often disputes about water end in a breach of the peace.

When it has once been agreed by both parties that an improvement is necessary, it becomes a matter of little importance whether the landlord or raiyat should have the prior right to make it.

I think a raiyat should in all instances be the best judge as to whether any alterations to be made on his holding be an improvement or not.

Inasmuch as the Bill allows a landlord to make an improvement on a holding for the good of that holding, I do not approve of the section as it stands. A landlord may wish to cut a drain to drain the land; the raiyat may elect to retain the water.

If the raiyat wants the improvement, let him make it himself if he wants it; if he cannot ask assistance of his landlord; if he objects to it and does not think it an improvement, the landlord should desist from making it.

The Patna-Conference fully recognized the importance of the Collector's being empowered to act in an emergency, and the suggestion made by Mr. Henry and adopted by the Conference had that end in view; but they went much further than anything proposed in your Select Committee.

Their reply in the negative given to the question put by the Government of India I take to mean that they negative the idea of allowing distributaries to be cut where the landlord makes the improvement for the sake of profit, but would allow him to do it for philanthropic purposes. To this I have no objection; but I submit that under the resolutions submitted to your Committee the Collector would in all instances still remain the best judge as to whether an improvement should be allowed or not. If the landlord made it for the benefit of others without expecting any return, he could allow it to be made; if he made it for profit, he could refer him to the Civil Courts to prove his right to do so.

There are few among us who will not pay ample damages, or risk a suit for damages where it is necessary to stave off famine from the many; but most of us will think twice before we make an improvement if we have to be arraigned for trespass or mischief at the end of it.

Measurements.

I quite agree with His Honour in thinking a chain should in all instances be used for measurement; but I do not quite follow His Honour in what His Honour says about "latka"

raji" lands. "Lakhiraji lands" I take to mean revenue-free lands, not "rent-free" lands.

Of the former I know of none in North Behar. Between revenue-free tenures and rent-free holdings a wide distinction is made.

At the time of the Permanent Settlement it was found that numbers of raiyats held lands free of rent from their landlords, who were sometimes zamindars, sometimes only thikadars. A regular register was made of such holdings, and is known in Chumparun as the "*sun do kee bahn*."

All above a certain area (nominally 100 acres) were resumed by Government after the Permanent Settlement and revenue assessed on them, and zamindars were given permission—I may say pressed—to resume the others themselves, but only in very rare instances acted on such permission.

Again, under Act X of 1859, clause 28, gave the zamindars another chance, but again they refused to take advantage of it.

These grants and *bhirs* granted since the Permanent Settlement are for a specified area only.

Although they do not pay rent, they are exactly on the same footing as ordinary occupancy-holdings, and should not be specially legislated for.

In the majority of instances the holders acquired their lands under sufferance; their titles are perfected by prescription.

Summary sale of registered tenures.

I will reserve what I have to say on this chapter until the Select Committee meets—until we are informed which of the numerous suggestions for the more speedy realization of rents the Government will adopt.

I would now only submit a typical case which has come under my own experience as Manager of the Bettiah Estates, every figure of which I can vouch for, and it was for cases such as this that we asked for a more summary procedure for the realization of rents:—

Burgown Tenure, consisting of 17 villages.	Area 9,870 acres=29,610 standard bighas.	Tenure-holder's collections, Rs. 13,500-4-3.
Revenue to Government by Rájá, Rs. 2,237-14-8.	Road-cess and public work-cess, Rs. 779-15-8.	Málikána to Bettiah Rájá, Rs. 208-8.
Payable—		Total payable by tenure-holder, Rs. 3,226-6-4.

Collected last year by help of Courts, Rs. 2,074-15.	Have got another decree for Rs. 3,796-9-5, but not yet recovered.	This suit was commenced on the 18th August, 1883; decree obtained 16th July, 1884.	I have just had to institute another suit for Rs. 3,031-6-2.
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Out of five years' rents, the tenure-holders have paid me Rs. 2,724-15-4 of their own free will without suit.

The Maharájá of Bettiah has had to pay the revenue regularly under the sunset law.

His Honour is evidently under the impression that it is only the rack-rented raiyat who refuses to pay his rents and has to be sued by his landlord. I do not think the records of the Courts will bear His Honour out in this opinion. My experience certainly does not. One of the prime reasons given for the introduction of this Bill was the difficulty in the way of the landlords collecting their rents under the present law; but nothing has yet been done to redeem this promise; on the contrary, by taking away the landlord's power to evict a raiyat for non-payment of his rents and substituting sale under a decree of Court, we have materially retarded their collection. However it may be done—by whatever means—the promise should be redeemed.

No. 1926—1009 L.R., dated 28th November 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government, Bengal,
To—The Secretary to Government of India, LEGISLATIVE DEPARTMENT.

I am directed to submit, for the information of the Government of India, the accompanying copies of a representation from Mr. John Stalkartt on the Bengal Tenancy Bill, and to say that the Lieutenant-Governor desires to place it before the Government of India separately, as it has come too late to be conveniently included in the same volume with other reports.

Dated 3rd November 1884.

From—J. STALKARTT, Esq., for the Raiyats of India,
To—His Honour the Lieutenant-Governor of Bengal.

Permit me, on the part of the raiyats, to thank Your Honour for forwarding their letters to Your Honour, so that the Government of India has published them in the Government Gazette, &c., &c. May I be allowed to bring to Your Honour's recollection my expressed opinion that the time allotted to the 14th August was not sufficient to express fully our views; also that the raiyats should be admitted to the conferences of the officials, and to the Legislative Council that the points under discussion might be brought down to as few as possible, to be submitted to the Legislative Council of India. In verification of the above, we quote from the report of

the Government of Bengal on the Bengal Tenancy Bill, 1884, pages 2008-2009, the opinion of the well-known Sadr Judge, Mr. Hawkins, who thus interpreted the Permanent Settlement "The contention of the petitioners is that of the three parties—the State, the zamindars and the cultivators; the first had, without consulting the other two, virtually plotted out the map of the country, that it then distributed the different portions to individuals comprising the second class, defined most accurately the respective liabilities to the State, and required them to respect any claim against them, such as might then exist, on the part of any individuals of the third party. Nothing was left open for legislation as to the substantial rights of subsequent cultivators." This is begging the question; apply this principle to the present intended new Tenancy Law, namely, that it has no power over "subsequent cultivators." This will at once bring a smile on the countenance of every official and non-official—eh? The law for murder passed only for the punishment of the murderers of the date of passing the law against murder: therefore all the murderers since punished have been unjustly so. It is self-evident to every right thinking man that such a state of things could never have been contemplated by any law. The Law was passed for the future cultivation of the soil, even for waste lands (see Regulation XLIV of 1793); the law for assessing waste lands, which of course at that time could not have been under cultivation, and must have "subsequent cultivators," at the same rates as for lands then under cultivation, in fact supported by Regulation IV of 1794, section 7, and by No. 54. Resolutions passed for the Permanent Settlement, respecting receipts of rents, which are divided into three parts only, namely, khudkásht, paikásht, and khámár. This settles the question of non-enhancement of rates of rent of all land; not a word respecting these receipts not applying to future cultivators, more particularly as the zamindars wish to claim waste lands as khámár lands, whereas by Regulation VIII of 1793 the zamindar is strictly enjoined by section 52 to let the whole of the remaining lands, must be to "subsequent cultivators." As the legislature of that day is silent on this point, it classed all "subsequent cultivators" as having the rights of the cultivators of 1793—not a word for giving receipts to raiyats holding only a right-of-occupancy, meádee pattás, tenants-at-will, &c., &c. We quote again page 2009: "This the Permanent Settlement of Bengal, whether good or bad, as a piece of fiscal policy, whether right or wrong as a political measure, was the result of mature deliberation, and to break it by round-about measures would obviously be worse from considerations of either kind" (Act X of 1859, &c., &c.). Then let the old form of receipt be restored with the penalty attached for non-fulfilment, "khudkásht, paikásht, and khámár," leaving not a section for raiyats with rights-of-occupancy only, meádee tenants, or for tenants-at-will.

Many object to the record-of-rights being made on the principle that it will make disturbances. The record-of-right must accord with the receipts that the zamindars, like any other tradesmen, are forced to give, declaring in the bill the number and qualities of the goods sold. The raiyats ask nothing out of the ordinary routine of business. Of course, if the above is listened to by the Government of India, the whole chapter on enhancement of rent should be struck out, and the remaining legislation considerably altered to meet the requirements of the older Regulations, which this Bill professes to restore by Regulations VIII of 1793 and VII of 1882. There has been a great deal of injudicious talk, such as the "village-communities have been broken up in Bengal since long before the Permanent Settlement," &c., &c. "Such claims must have been extinguished by the conquering power having laid hands upon them, and made them over to the landlords of their choice." The same thing *versus* the above (see the petition to England before 1784) may be said with respect to the English proprietary right (misalled so) of the zamindars, who were made only landholders by Regulation I of 1793, and all their proprietary right extinguished by Regulation XVII of 1793. "You shall not distrain the land and houses of the raiyats, not even his plough, his plough-bullocks, nor his seed for next year's crops." This is important, as the present intention of the Bill is to sell all the rights of the raiyat instead of distraining his personal effects: to sell him up contrary to the provisions of the Permanent Settlement is manifestly unjust. On a cursory perusal of the various memoirs of the Government officials, their want of knowledge of the principles governing the Permanent Settlement Regulation, VII of 1822, is very apparent, as their opinions are given irrespective of the rights conferred on the raiyats by the above settlement. By Regulation VII of 1822, with each settlement there was record-of-right. Your Honour desires that there should be record-of-right made for the whole of Bengal. Many of the officials support the idea of the record-of-right, but the zamindars do not want the rights of the raiyats to be entered in the record, &c., &c.

Another error of Sadr Judge Hawkins, page 2009: "The engagements of the time, it may be repeated, were made in respect of land," &c., &c. No such thing: the lands are not divided into khudkásht resident, paikásht non-resident land, but the engagements are with the raiyat, if he resided in the village. Khudkásht resident raiyat, no matter what land he cultivated, the rates could not be altered; the same also with the paikásht non-resident raiyat, no matter what lands he cultivated; both were entitled to fixed rates, that is, no enhancement, of rates of rent. It is an error of the Courts to ask "what is the origin of the tenure?" It should be "what are the rights of this Bengali or raiyat?" Is he khudkásht or paikásht? The petition of the zamindars wish all to believe that their raiyats are all foreigners, and never lived in the village or any other village in Bengal.

We revert again to the Permanent Settlement. The officials by their memoranda would make us believe that the rates of rent were very carelessly settled. Even if they were, all that Regulation VIII of 1793 permits is a correction of the assessment not enhancement of rates of rent. For twelve years before the Permanent Settlement, the zamindars were yearly tenants-

at-will of their official status as zamindars (so all their proprietary claims must have been extinguished by the conquering power, page 2009); they had to collect all the revenue, and pay it into the treasury, every pice of it, and their accounts were rigidly scrutinised. The whole system was a very elaborate one of proportion (ratio) throughout; the lands were divided into aouel, doem, tertium, 1st, 2nd, 3rd, 4th quality for paddy land, the same for middle land, the same for *dhee* (high land), *purtee* or grazing land, and between each set of land the ratio or proportion (proper) was established; so no matter what land a raiyat ploughed he was not under the burden of inequality when he sold his crop in the open market. Now, if a zamindar, at the passing of Act X of 1859, or before, went to court and stated that the raiyat was not paying the prevailing rate, ten to one he was stating an untruth. Suppose him successful, and he has gained his suit, and broken the rate of any one class of land, say, the 2nd quality, then the ratio of this 2nd quality to all the other lands of the village is broken, and the equilibrium upset respecting other villages. No wonder former Moslem sovereigns never broke the standard assessment, but regulated the money they required by a percentage on the *azul* or standard assessment, so that the country was not demoralised as it is now by Act X of 1859. It is perfectly agreed to by Lord Cornwallis that the making of *abwabs* is a royal prerogative, and does not belong to the zamindars; so that if the above principle is carried out, the claim of the zamindars to enhancement of the rate of rent has been long ago extinguished by the conquering power. The rights of the zamindars are to be racked up, but the rights of the village-communities are not to be thought of, though only as late as 1793 (see No. 54, Permanent Settlement papers, up to that date) the villager had to pay the rents, not his own only, but the rents of those that ran away; so the assertion that the rights of village-communities of Bengal have been broken up in Bengal since long before the Permanent Settlement is a downright untruth. This is not evenhanded justice.

The zamindars by their spokesman, the Rájá of Darbhanga, page 1868, speak of the Permanent Settlement as the Magna Charta of the rights of the zamindars and raiyats in other words, one of the fundamental laws of this realm under the "Empress of India, Kaisir Hind," which it would be treason for any legislature to break. We raiyats of India, are quite willing that it should be so, and earnestly beg that Your Honour will institute a Court to try the rights of the zamindars and the rights of the raiyats by professional barristers on both sides. If these points of non-enhancement and non-ejectment are not determined, it is useless to ask opinion of gentlemen, official and non-official, for the points of dispute are not determined by such a course of action, and matters remain *in statu quo* unless it is determined to ignore the Permanent Settlement and make fresh legislation. If so, by Sadr Judge Hawkins, there were three parties to the Permanent Settlement—the State, the zamindars and the cultivators—and in the Bengal Tenancy Law the rights of the State are omitted. If it is intended to give the zamindars anything above the 10 per cent. of the Permanent Settlement, then it is nothing but right that the portion belonging to the State should be increased in the same proportion. We refer to page 1722 by Mr Finucane, respecting the village of Jazpotee, being 500 per cent. above its original assessment. A zamindar of Burdwan five times, of Dinajpur twice, a zamindar of Darbhanga thirty-eight times the surplus over Government revenue, &c. &c. We may make a general average of all zamindars that their present rental is five times the amount that they pay to Government under the Permanent Settlement; in other words, their right to the rental is Rs. 100, but their present collections are Rs. 5,000, Rs. 4,000 of which they retain, instead of the above Rs. 100, and yet they say that they cannot collect their rents, and want a summary law of distraint; therefore, it is nothing but fair in the new order of things that the Government should have at least 50 to 75 per cent. of the collections of the zamindars. Then the Road Cess and Public Works Acts may be cancelled, for they press very hard upon the raiyats. If they cannot pay their present assessment, how can they possibly be expected to pay these new Government taxes? Your Honour is well aware that there are six or seven millions of raiyats so poor that they are unable to resist the zamindar in any shape, and particularly the idea in the new Bill that if they do not agree to enhancement they will be summarily ejected. Let me recall to Your Honour's mind the history of Jonah, whom God sent to give warning to Nineveh. Most people are taken with the romantic portion of the story that Jonah remained in the whale's belly three days and three nights, but the moral does not lie there, but in the last verses of the 4th chapter of Jonah: verse 2nd—"For I knew that thou art a gracious God and merciful, slow to anger and of great kindness, and repenteth thee of the evil"; Verses 9, 10, 11—"And God said to Jonah, Doest thou well to be angry for the gourd? And he said: I do well to be angry even unto death. Then said the Lord: Thou hast had pity on the gourd, for the which thou hast not laboured, neither madest it to grow, which came up in a night, and perished in a night; and should I not spare Nineveh (that repented), that great city, wherein are more than six score thousand persons that cannot discern between their right hand and their left hand and also much cattle?"

Dated 24th November 1884.

From—BABU UMESH CHUNDEA GHOSH, Senior Pleader, Jessore,

To—The Secretary to the Government of India, Legislative Department.

I have the honour request the favour of your placing the accompanying memorial of the tenureholders of the Sadr Sub-division of Jessore in the hands of the members of the Legislative Council.

Memorial of Middle Tenure-holder of Sadr Sub-division of Jessore.

To His Excellency the Viceroy and Governor General of India in Council.

The humble memorial of middle tenureholders of the Sadr Sub-division of Jessore—

MOST HUMBLY SHREWETH—That the question of middle holding forms an important element in the land law of the country; but, unfortunately, this question has not received a fair share of consideration at the hands of the authorities.

That, owing to such an inadequacy of consideration and attention to this question, the just interests and rights of the class of tenureholders to which your memorialists belong have not been duly cared for in the Tenancy Bill pending before Your Excellency's Council.

That Your Excellency's memorialists therefore crave leave to approach Your Excellency with this humble memorial, briefly stating the points on which the Bill, both by commission and omission, would inflict injustice on Your Excellency's memorialists and others of the same class.

First of all, Your Excellency's memorialists will humbly say that the system of middle holding as it prevails in the country is in no way harmful, and has nothing in it to deserve discouragement. On the contrary, it is a beneficial institution and deserves encouragement.

By this system, small groups of tenants are placed under small landlords of moderate pretensions; whereas in the absence of it the tenants are subjected to the evils which result from their being placed under the charge of mercenary agents of big zamindars.

There is a touch of sympathy between the tenureholders and the raiyats under them, for mostly they are in personal contact with each other, and thus a sort of personal kindly relation springs up between them.

It is thus that the system of middle holding in this country is conducive to the good of the society, and, accordingly, with the instinctive support of the society, it has become a deep-rooted institution of the country.

The British Government in India, however, has unfortunately never shown any sympathy towards this good institution. But Your Excellency's memorialists submit that never before was such signal injustice intended to be inflicted on middle holders as that contemplated by the present Tenancy Bill.

The existing law for protecting middlemen holders from undue exactions and arbitrary ejectments are to be found in section 51 of Regulation VIII of 1793 and sections 16 and 17 of Act VIII of 1869.

The Tenancy Bill would repeal sections 16 and 17 of Act VIII of 1869 (B. C.) as well as section 51 of Regulation VIII of 1793, reproducing them only in a very curtailed and restricted form.

Section 51 of Regulation VIII of 1793 is a general provision and is applicable to all middle tenures irrespective of the dates of their creation. It runs thus:—

"The following rules are prescribed to prevent undue exactions from the dependent taluqdars:—

"(1) No zamindar or other actual proprietor of land shall demand an increase from the taluqdars dependent on him, although he should himself be subject to the payment of an increase of jama to Government, except upon proof that he is entitled so to do either by the special custom of the district or by the conditions under which the taluqdar holds his tenure: or that the taluqdar by receiving abatements from his jama has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

"(2) If in any instance it be proved that a zamindar or other actual proprietor of land exacts more from a taluqdar than he has a right to, the Court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit to the party injured."

Thus, there is nothing in the above section to restrict its operation to tenures which have been held from the time of the Permanent Settlement, and to make it inapplicable to tenures which have been created subsequently to the Permanent Settlement.

The present Bill, however, would restrict the operation of it to tenures held from the time of the Permanent Settlement, as is seen in section 6 of the Bill, which is meant for a substitute for the above section of Regulation VIII of 1793. Section 6 of the present Bill runs thus:—

"6. (1) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

"(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom, or by the conditions under which the tenure is held, or

"(b) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

"(2) A reduction of rent granted to a tenureholder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section."

Thus, the first line in the section, namely, the expression "where a tenure has been held from the time of the Permanent Settlement," is a new addition which narrows the meaning of the whole provision as compared with the provision of the Regulation. By this addition, the

Bill would leave wholly unprotected all tenures which came into existence after the Permanent Settlement. This alteration destroys the very essence of section 51 of Regulation VIII of 1793, and no reasons whatever have been given to justify this alteration.

Such a change, Your Excellency's memorialists humbly submit, would be a fatal blow to the rights and interests of the class to which Your Excellency's memorialists belong.

Then, again, there is no reason whatever why the Bill would repeal sections 16 and 17 of the present Rent Act and would reproduce them with two restrictions limiting their operation.

Sections 16 and 17 of the present Rent Act run as follows:—

Section XVI.—"No dependent taluqdār or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the raiyat, who, in any province to which the provisions of this Act may apply, holds his taluq or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in Section LI Regulation VIII of 1793, or in any other law to the contrary, notwithstanding."

Section XVII.—"Whenever, in any suit under this Act, it shall be proved that the rent at which a taluq or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluq or other tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period."

The above two sections were the only provisions in favour of middle class holders in addition to section 51 of regulation VIII of 1793. Your Excellency's memorialists venture to say that to curtail them and to add conditions to them would be to destroy the little status the middlemen had, and this the Bill intends to do without any reason or without any complaint from any quarter against the said provisions.

The above two sections of the present law are reproduced in section 64 of the Bill, which runs as follows:—

"64. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding."

"(2) If it is proved in any suit or other proceeding under this Act that a tenureholder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement."

"Provided that, if it is required by or under any enactment that in any local area tenancies or any classes of tenancies at fixed rents or rate of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area which has not been so registered."

It will be seen the exception introduced in clause (1), that is, the words "except on the ground of an alteration in the area of the holding," is new. This exception would neutralise the effect of the section partially, and would unsettle the rents of old tenures and make them open to enhancement for the first time.

Again, the proviso to clause (2) threatens to undo entirely the presumption provided for by clause (2). This proviso is in fact a fatal blow to the rights and interests of your petitioners as a class.

Your Excellency's memorialists humbly submit that to make the alterations referred to would really be to destroy the vested rights of an important class of subjects.

The above are the complaints of your memorialists against the injustice which the new Bill would inflict on them by way of commission. Your Excellency's memorialists would, in the next place, mention some matters which constitute the defects of the present law as regards the rights of the middle holders. These defects your memorialists have good reason to ask Your Excellency to remove. The Bill by omitting to remove them would not be just to your memorialists.

One great defect of the present law with regard to tenure-holders is that, except in cases of tenures created by deed, unless a tenure be as old as the Permanent Settlement, at all events presumably as old, there is no express law to protect the holder of the tenure from ejection.

If twelve years' holding by a raiyat adds to his rights, if a man holding land for twelve years by sheer wrong acquires absolute ownership, there is no reason whatever why a middleman who has been allowed to hold for twelve years without any express contract should not acquire some benefit.

The Courts have sometime felt the weight of the above reason. Accordingly, in some cases it has been decided that, where a middleman has held for twelve years as such, the zamindār could not eject him. The case of *Ruttun Moni Dava v. Kamala Kanta Taluqdār*, reported in 12 W. R. 364, is in effect such a case.

Your Excellency's memorialists pray that a section be introduced in the present Bill providing that, where a tenure-holder has held for twelve years, he shall not be ejected from the holding so long as he pays a fair and equitable rent.

Then, as regards enhancement. For cases in which there is an absence of any contract or local custom to regulate the rent of a tenure, the legislature should provide an equitable and fair principle to regulate the enhancement of the rent. The present law does not provide any principle for such cases.

The present Bill has some provisions on the subject; but these are by no means adequate or fair and equitable. The Bill provides that the enhancement must be so as to leave to the middleman holder not less than ten per cent. of the nett proceeds. This is not just, nor does this amount to providing a principle of enhancement.

The above provisions of the Bill proceed on an assumption that the tenure-holders have no right to the land which they hold, that they are mere collectors of rent. Your Excellency's memorialists need hardly say that this is a grievously mistaken assumption. The tenure-holders have a right of property, and, as having such rights, they should be protected against excessive and rackrenting enhancement.

Your Excellency's memorialists pray that some equitable rule of enhancement be laid down. It would be an equitable principle of enhancement to lay down that the enhanced rent shall not bear a higher ratio to the nett proceeds for the time being than the old rent bore to the old net proceeds, and also to lay down that no claim of enhancement shall lie except on the ground that there has been an increase of the nett proceeds otherwise than at the expense and labour of the middleman holder.

Without such a provision, the law would lead to hardship both to middlemen and cultivators. For, without such a provision, the Courts will be left to act arbitrarily as at present, and, in consequence, middlemen will be rack-rented, and they, in their turn, will naturally try to recoup themselves by imposing arbitrary cesses and *adwabs*. They will not resort to legal steps to enhance the rents of raiyats under them. For they will not be able to avail themselves of the fruits of such legal enhancement. They will therefore be driven to impose cesses. Your Excellency's memorialists pray that Your Excellency will remove the reasons which might lead to such an unsatisfactory result.

Your memorialist would humbly further pray that Your Excellency would be pleased to appoint in the Legislative Council a member who might represent the interests of the middle tenure-holders. Zamindārs and raiyats are well represented in the Council. It will be, therefore, an act of justice, your memorialists humbly submit, to take in a representative of the middle tenureholders.

Your Excellency's memorialists earnestly pray that Your Excellency will take your memorialists' representations in Your Excellency's favourable consideration, and will be pleased to do justice to their rights and interests.

Dated 5th December 1884.

From—BABU RAJKISSORE MOOKERJEE, *Utterpara*.

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

I have the honour to submit herewith a memorial on the subject of the Bengal Tenancy Bill, numerous signed by Bengal raiyats and addressed to His Excellency the Viceroy, and I request the favour of your laying it before His Excellency. I also forward 70 spare copies of the memorial.

To His Excellency the Viceroy and Governor General of India in Council.

The humble memorial of the undersigned raiyats of Bengal.

MOST RESPECTFULLY SHEWETH,—That your memorialists beg leave to refer in their present memorial to only one of the provisions of the Bengal Tenancy Bill considering it to be of especial importance and not implying that they entirely approve of all the other provisions.

2. That your memorialists are anxious that with regard to the twenty years presumption in relation to tenure-holders and raiyats the existing law should continue unaltered and they crave leave to quote the following passage from the report of the Government of Bengal No. 1906 T—R, dated the 15th September 1884. "In the first place, then, the Lieutenant-Governor calls special attention to the enormous preponderance of evidence in favour of retaining the presumption as it now exists. The Patna, Burdwan Presidency, Dacca and Orissa Conferences are unanimously against any change. The Bhagulpore Conference (by a majority) and Mr. Lewis would allow a sufficient time for registration, and then annul the presumption. The Rajshahye Conference alone would give the raiyat two years in which to sue for the establishment of the presumption or forfeit his privilege—a proposition which the Lieutenant-Governor would absolutely reject as affecting a right which the ryots have enjoyed under the present law since 1859, and as tending to extreme litigation. Of the judicial officers, a very few would annul the presumption altogether, a larger proportion would modify it while a still greater number would retain it unchanged. Thus the Lieutenant-Governor feels himself fully justified in saying that the weight of authority is against any alteration."

3. That your memorialists notice with very great regret the recommendation of the Government of Bengal that the presumption aforesaid should run from 20 years before passing the Bill.

4. That your memorialists submit that if the recommendation aforesaid were carried into effect the principle of the presumption would be destroyed, for the burden of proof would in reality be shifted on to the shoulders of the raiyat. The Government of Bengal has rightly spoken of "the proverbial carelessness of most raiyats in preserving receipts" and the "case with which Zemindars can refute the presumption if falsely raised." If in order to avail himself of the presumption the raiyat must prove twenty years' possession previously to the passing of the present Bill, in course of time his difficulty of offering the proof would be about as great as if he had to prove actual possession at a uniform rate from the Permanent Settlement. For instance, if the Bill were passed this year, a raiyat in order to avail himself thirty years hence of this presumption would require to be possessed of receipts as old as fifty years. As years go on the difficulty will be enhanced. It therefore, appears to your memorialists that in a very short time the presumption will be practically inoperative and the burden of proof which now rests on the Zemindar will be passed on to the raiyat. To modify the presumption in the way recommended by the Government of Bengal would be in effect to take it away. The difficulty of proof which the raiyat will experience will be cumulative; and practically there would be an absolute bar to his claim to hold as a fixed-rate tenant.

5. That your memorialists having considered the provisions of the Bengal Tenancy Bill with regard to record of rights feel bound to declare that those provisions afford no compensation to the raiyats for the loss inflicted on them by the taking away of the twenty years' presumption.

6. That your memorialists, while admitting the necessity of having a record of rights where the landlord or tenant desires it or where the preparation of such a record is calculated to settle an existing dispute or avert an impending one, are nevertheless convinced that a record of rights so far from giving to the raiyats a substantial advantage in substitution for the twenty years' presumption will produce injurious consequences. In support of this view your memorialists beg leave to quote the following passage from a Memorandum by Mr. H. J. S. Cotton, Officiating Commissioner, Chittarong, dated the 10th July 1884. "To introduce a settlement of rents and record of rights in Bengal generally will merely excite disputes and kindle litigation. The normal relation of landlord and tenant in these provinces is one of compromise; it is true that rights are unadjusted, the balance of rent is undetermined, the current demand of rent is not fixed, the area of cultivation is often unknown; it is for the convenience of both parties that the claims of either are not put to the test and yet it is not the case that the ordinary relations between landlord and tenant are unfriendly. * * * All that was elastic and unsettled will, under the new procedure, be stereotyped and fixed, and both parties will struggle with one another to the utmost in the civil courts in order that disputes may be decided which would never have arisen if the Surveyor's rod and Settlement Officer's registers had not galvanised them into life. It is difficult to over-estimate the bitterness of feeling which a survey and record of rights will thus provoke. The evil I think will outweigh any administrative advances derived from it. I venture also to think that most persons who are competent from their experience and knowledge of these provinces to form an opinion on the subject, will be found to agree with me in this deliberate conclusion that a survey and record of rights, if it is calculated to settle disputes where they already exist, is equally calculated, where they do not, to call them into existence."

7. That your memorialists submit that having regard to the history of land tenures in Bengal it would appear that the provisions of Act X of 1859 which led down the twenty years' presumption did not merely declare a rule of the law of evidence, either arbitrarily or only upon considerations of convenience, but sought to put a bar to enhancement wherever rent had been paid at a uniform rate for twenty years. Para. 225 of Mr. Shore's Minute of June 1789 published as Appendix I to the Fifth Report says: "There are two other distinctions of importance also, with respect to the right of the raiyats. 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 appears from the above that the maximum rents were paid by the tenants who had a "length of occupancy." Tenants who had held for a long time at a uniform rate could not have their rents enhanced, for they already paid the "highest rents." The legislators of 1859 made the requisite "length of occupancy" definite by fixing it at twenty years; and the presumption was intended to declare the immunity of raiyats who had enjoyed this "length of occupancy" from enhancement. If the presumption was irrebuttable the immunity would have been absolute; but in so far as it was left open to the zamindar to rebut it, it was only a partial protection that the raiyat obtained. A sort of compromise was thus effected. For the liability to enhancement newly imposed on the raiyat the only compensation or consolation that was given to him was that occupancy for

twenty years at a uniform rate would make it as difficult as possible for the zamindar to get an enhancement. To take away the benefit of the presumption now would be to deprive the raiyat of one of the very few safeguards which he enjoys against arbitrary enhancement.

8. That your memorialists, therefore, pray as follows: that the twenty years' presumption in relation both to tenure-holders and raiyats may be retained as it exists under the present law.

And your memorialists as in duty bound shall ever pray.

No. 2002—1038L. R., dated 4th December, 1884.

From—A. P. MACDONNELL, Esq., Secretary to Government, Bengal,

To—The Secretary to Government of India, Legislative Department.

In continuation of my letter No. 1906T.R. of the 15th September, I am desired by the Lieutenant-Governor to forward the accompanying statements, supplied by the Registrar General of Assurances, of the extent to which leases and mortgages of land held on occupancy-titles have been registered in the various registration-offices of the province of Behar.

STATEMENT No. I.

Return of Leases of Land held under Occupancy Titles registered in the following nine districts of Behar during the years 1881—83.

Number	DISTRICT.	1881.		1882.		1883.		TOTAL.	
		Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).	Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).	Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).	Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).
1	2	3	4	5	6	7	8	9	10
1	Chummarun . . .	1,860	75,981.9	1,888	1,60,986.5	1,797	71,254.7	5,545	3,08,223.1
2	Mozufferpore . . .	494	3,572.5	858	5,075.5	1,087	7,740.2	2,493	16,388.2
3	Durbhanga . . .	351	3,686.1	366	3,986.1	421	3,291.6	1,138	10,963.8
4	Sarun . . .	46	684.8	75	953.1	147	1,115.8	268	2,753.7
5	Gya . . .	58	1,714	37	460.2	52	521.4	147	2,695.6
6	Patna . . .	69	562.1	47	605.3	72	604.4	188	1,771.8
7	Shahabad . . .	...	...	...	...	...	...	...	...
8	Monghyr . . .	85	1,201	105	1,565	67	705	257	3,471
9	Bhagalpore . . .	...	...	...	...	...	...	...	...
	TOTAL . . .	2,963	87,402.4	3,376	1,73,631.7	3,642	85,233.1	9,982	3,46,267.1

This Statement No. I includes *corpsuisti* leases.

STATEMENT No. II.

Return of Mortgages of Land held under Occupancy Titles registered in the following nine districts of Behar during the years 1881—1883.

Number	DISTRICT.	1881.		1882.		1883.		Total.	
		Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).	Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).	Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).	Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).
1	2	3	4	5	6	7	8	9	10
1	Chummarun . . .	441	14,635.5	558	16,372.6	702	17,202.8	1,701	48,210.9
2	Mozufferpore . . .	368	3,137.3	499	3,526.5	720	5,179.6	1,587	11,843.4
3	Durbhanga . . .	261	3,113.9	200	2,577.7	295	3,883.3	756	9,574.9
4	Sarun . . .	983	4,230.7	1,547	6,414.8	1,619	6,918.1	4,149	17,563.6
5	Gya . . .	71	1,125.3	80	1,761.1	94	2,034.3	245	4,920.7
6	Patna . . .	217	2,226	178	2,195.3	188	2,028.7	583	6,450
7	Shahabad . . .	81	1,264.9	71	910.4	146	1,859.3	298	4,034.6
8	Monghyr . . .	397	7,251	483	7,201	523	9,421	1,403	23,873
9	Bhagalpore . . .	121	3,047.1	118	3,061.7	159	3,535.8	395	9,644.6
	TOTAL . . .	2,940	40,031.7	3,781	44,021.1	4,446	52,062.9	11,117	1,36,116.7

No. 2013—1041 L.R., dated 4th December 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government of Bengal,
To—The Secretary to the Government of India, Legislative Department.

I have the honour to submit, for the consideration of the Government of India, the accompanying papers noted on the margin, containing the opinions of certain officers on a pamphlet by Bábú Mohiny Mohun Roy on the procedure sections of the Bengal Tenancy Bill.

Demi-official letter from Mr. J. Tweedie, dated 10th November 1884.
Letter No. 1116, dated 13th November 1884, from District Judge of Furreedpore.
" No. 1445, dated 20th November 1884, from Judicial Commissioner of Chota Nagpore.
" dated 21st November 1884, from 2nd Sub-Judge, Tipperah.
" No. 481, dated 21st November 1884, from District Judge of Sarun.
" dated 22nd November 1884, from Munsif of Serajmunge.
" No. 34, dated 22nd November 1884, from Sub-Judge of Burdwan.
" No. 9, dated 24th November 1884, from Sub-Judge of Backergunge.
" No. 75, dated 24th November 1884, from 1st Munsif of Sudharam.

Dated Arrah, the 10th November, 1884.

Demi-official from—J. TWEEDIE, Esq., District and Sessions Judge,
To—The Secy. to the Government of Bengal, Revenue Dept.

I have to acknowledge receipt of your demi-official note dated Darjeeling, the 21st of October, and of the pamphlet therewith sent. As requested in the note, I have to make the following remarks on the pamphlet.

As far as the author has reached in the two parts of his subject as yet treated of by him, he deals first with procedure connected with under-tenures—of which the "putni" may be taken as the principal and the type—and then with suits and sales in ordinary rent suits.

As regards the former, the main proposals are, first, that they should be registered by the court of the Subordinate Judge; and that thereafter—proceedings for arrears of rent shall be taken by an "application" for their realization, being treated as a "declaratory decree" that they are due—all objections being heard finally by the court which executes, in the same way as courts now deal with objections in ordinary execution cases. The great advantage claimed for this procedure is that it will absolutely exclude any subsequent civil suit to set aside the sale.

I think that to make "registration" the work of judicial officers is a new suggestion which cannot be entertained unless Government is prepared to grant a large increase to our civil staff. Whatever may have been the case some years ago, it is not the case now that Collectors are overburdened with work. The press of work at the present day is on the judicial branch of the Administration. It would therefore be desirable, in order to avoid cause for increased expense on the civil side, to have "permanent tenures" registered, if they are to be registered, by the collectorate agency, with power to it to make a reference to the Civil Court as in registrations under Bengal Act VII of 1876.

As to the necessity of registering these tenures, I admit that I do not see it. I am a strong advocate for registration: but of all things which can be registered, I think these tenures least of all require registration, and that for the sufficient reason that no dispute, as a rule, ever arises as to their existence, extent, or the terms on which they are held.

Next as regards the state of things under the present (or proposed new draft) law; *vide* pages 6, &c., of the pamphlet. There we will find it said that Regulation VIII of 1819 "has worked very successfully." Why then disturb it? Again, we are told that the existing procedure by suit and decree results in this, that "in nine cases out of ten the amount of the decree is paid up" (page 7). What better result than this can be looked for from any procedure?

"In a few instances sale takes place, and then a proceeding or suit for setting it aside invariably follows. Take it that this is the "invariable" result. It is for these "few instances" that the new procedure has been elaborated, the author being forgetful of the risk of bringing into dispute the nine-tenths regarding which he has told us that the present law works satisfactorily, and that disputes are settled by the amount being paid out of court.

My own experience is not in accordance with that of the author of the pamphlet, where, at the end of the first paragraph on page 7 and elsewhere, he says that a large amount of litigation springs from attempts to upset sales of permanent tenures. This litigation does occur; but it forms an infinitesimal part of the general body of litigation with which courts have to deal. The "one-tenth," therefore, of cases not settled without further litigation is not only a small fraction, but a small integer.

Then as to the chief aim and object of the author's suggestions, namely (as I take it) "to leave no room or pretext for a future regular suit" (page 8, line 17). This, I think, must fail under any principle hitherto recognised by the courts. And indeed the author of the pamphlet has, himself seen this; for he provides (page 19) that while a sale once confirmed shall never be challenged, "nothing herein contained shall debar the tenure-holder from obtaining equitable relief or damages against his landlord, on proof of fraud, in a civil suit, or against any other person party to such fraud." Now the only equitable relief applicable to such a case is the recovery of the "permanent tenure" fraudulently filched; so the sale under the circumstances put must be set aside, or our ancient equity must be suspended in favour of

fraudulent landlords of permanent tenures. Suppose this matter were put as a substantive provision instead of as an "exception"—the mode adopted by the author of the pamphlet—it would run thus:—"If the lessor of a permanent tenure can, by following the procedure hereinbefore laid down, manage by fraud on his part alone, or with the aid of accomplices, to bring any sale of an under-tenure to completion by the said sale being confirmed, the defrauded lessee of the said under-tenure shall, under no circumstances, recover the property out of which he has been cheated; but he may get, by civil suit, equitable relief or damages from the fraudulent lessor, or his accomplices or both."

This crude but correct form of the proposal of the pamphlet is, I submit, sufficient for the condemnation of the scheme as propounded, and I shall not trouble to criticise details.

I come now to the second part of the pamphlet. Two objections here stare us in the face, bearing on matters of principle; so that again I need not go into details.

The first is that the scheme is limited to one exceptional case, while a general law should apply to general cases. The exceptional case provided for is, when we have got a decree between A and B not more than ten years old (page 29, line 9), in which the "amount of annual rent and instalments" (page 28, line 12) have been determined. The second objection is that the procedure suggested, when we have got such a decree, is so similar to that already practically in vogue, as to be without advantage; while it has the unquestionable disadvantage of jumping at the conclusion that there is, and can be, no defence to the second or other subsequent suit—a conclusion which must be resiled from if the defendant appear. The court is also committed by this procedure to a false position if it proceeds to execute (page 29, line 26) before it knows whether or not a defence will be made. The procedure violates the universal maxim, which recommends *audi alteram partem* before taking adverse action against it.

Present procedure requires summons to issue on representation of plaintiff; if defence be raised, the matter is tried; if, as in 999 out of 1,000 such cases as the author would provide for, no defence is made, *ex parte* decree is obtained and execution issues on the basis thereof. All this is simple, natural, rapid and fair to all sides. It is far more simple than that proposed, which is as follows:—Show your previous decree: say that such and such a fresh sum is due: get an execution proceeding on your so saying, which, however, shall not be executed unless the court specially direct. But it may so direct, and then the court has an attachment on its hands before it knows what is to become of the case. For after all, our "execution proceeding" (page 28, line 17) is only a summons to "show cause why the amount claimed in the petition should not be levied" (page 29, line 24). So we get back to our present procedure: for if the party appears, the matter has to be tried: if he does not appear, an *ex parte* decree or "order absolute" is made in favour of the petitioner.

I can see no advantage in disturbing the ordinary and well known practice of the courts by innovations such as those suggested, which are absolutely devoid of advantage to any one.

On two points of detail I must also comment—First, my experience is quite the reverse of that of the author of the pamphlet where he says that the question of payment of rent rarely is in issue (page 27-8). I have elsewhere said, and adhere to the opinion, that a very large part of our rent litigation would cease if unquestionable proof of payment were granted by the payees and were preserved by the payers as the only mode of proof admitted by the court in support of an allegation of payment. Secondly, paragraph 1, page 28, makes it incumbent on the courts "in every suit for rent" to "find and specify in its decree the annual rent of the tenure or holding and the instalments in which it is payable." But every lawyer knows that at the present time courts try all necessary issues, and will try those above prescribed whenever they are necessary to the decision of any case under trial. To enact that courts shall try them, whether thus necessary or not, is again to diverge from our recognised judicial policy and practice, and therefore the proposal cannot be approved.

The terms of the demi-official letter under reply do not seem to invite an opinion on the remarks which begin under the words "judicial procedure" on page 30 of the pamphlet. I therefore say little about them, especially as I have had another opportunity of fully stating my views on the draft Rent Bill. Generally, I hold that the right of numerous appeals in rent-suit matters should be curtailed; and I would object to making a new ground of appeal out of the fact that a "decree or order has decided a question of the amount of annual rent payable by the tenant, or of the instalments in which it is paid" (page 31); and I think that the powers of supervision given to the Judge by section 160 of the draft Bill likely to be most salutary.

It is simply impossible to make "all rent-suits," &c., "cognizable by the court of the Subordinate Judge" as a court of first instance, unless such a revision is made among Subordinate Judges, District Judges and High Court Judges as would cost lakhs of rupees for every little benefit. For one Subordinate Judge could not hear an appeal from another Subordinate Judge; all cases up to Rs. 5,000 would fall on that already far more than overburdened labourer, the District Judge, to be disposed of on appeal. The work of the High Court would also naturally be increased by bringing the first court of original instance one degree nearer to it. The proposal, I think, is not likely to be entertained; so I merely further remark on it that, as a rule, litigants do not look for courts in which they have confidence. Many litigants would prefer to have courts in which "confidence" ought not to be placed, as might be shown from some passages of the pamphlet under consideration.

Payment by instalments (page 34) should always be allowed in the discretion of the courts.

I think local enquiries under the direction of the executive more likely to yield true results, and to be free from corrupt influence, than similar enquiries held even by an improved class of amins.

I need say nothing regarding "sales for arrears under decree," as the procedure advocated by me has been freely set forth in the draft "procedure" part of my general report on the proposed new legislation; and I adhere to what I have there expressed at length.

No. 1116, dated Furrædpore, the 13th November, 1884.

From—H. BEVERIDGE, Esq. District Judge, Furrædpore,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to submit the report called for by your letter No. 2428R of 23rd October last.

2. In my opinion the views and proposals of Baboo Mohini Mohun Ray for altering the procedure of the Bengal Tenancy Bill are not of much value and ought not to be adopted. They appear to me to be the suggestions of a man who has practical ability, but who is not capable of taking a comprehensive view of a subject. He also labours under the difficulty of writing in a language with which he is imperfectly familiar. The Baboo begins his remarks by saying that it does not pay to sue raiyats, and he says that there is not much execution decrees in such cases. Then he adds the observation that in a great many of such cases the raiyats make peace with their landlords after judgment and amicably pay rents. But it is clear that, if this statement is correct, a large proportion of suits are successful. The suits compel the raiyats to settle, and thus, the landlord gains the object for which he went into court. The writer seems to have forgotten the large proportion of cases amicably settled, when he remarked lower down that, if there were no ulterior objects to serve, a landlord would find it cheaper to forego his rents. He goes on to say that it pays to sue tenure-holders. Now if this is so, it seems to me that his whole case falls. If such suits pay, to use his words, that is, if such suits are successful, then the law must be working well, and there can be no need for altering it. The writer goes on to make two statements, both of which are opposed to my experience. The first is that the amount of the decree is rarely paid up till the issue of the sale proclamation; and the other is that, under ordinary conditions, the number of suits against tenure-holders is quite equal to that of suits against raiyats. My experience is that suits against tenure holders form a very small part of our rent cases, and that in many of them the rent is paid as soon as decree has been passed. I believe that many talukdars and other tenure-holders do not pay their rents because they like to put their zemindar to trouble; others don't pay out of a foolish feeling of pride; they think it beneath them to have dealings with their superior landlord or to acknowledge him in any way. They therefore wait till they are sued, and then pay as soon as process is taken out. They get an unimpeachable receipt in this way, and they do not greatly regard the extra cost of paying in such a manner. The bad feeling which prevents a tenure-holder from paying his rent is specially common among shareholders. The co-partners in a zemindari generally hold tenures in each others share, and being commonly on bad terms with one another, they won't pay until they are compelled. No legislation will put an end to suits which are the result of the perversity of debtors; they will go on as long as human nature is what it is.

3. The remedy proposed by Baboo Mohini Mohan is to have tenures registered. His scheme is given at page 21 of his pamphlet. Registration is to be optional, and application may be made by the landlord or by the tenure-holder. I can understand why the landlord should wish to register, but I do not see what the tenure-holder will gain by doing so, and I should think that he would be very unwilling to make his tenure subject to a new and very stringent sale law. It seems therefore that the only applications will be by the landlord. The writer further anticipates that by registrations being left optional there will not be many contentious cases. If this anticipation be realised, then there will not be registration in the cases in which it would be most useful. If there is only to be registration in friendly cases, the scheme will not be of much use. When there is contention, the investigation will often be long and troublesome, and will take up a great deal of the Subordinate Judge's time.

4. I do not see any advantage in making all suits against tenure-holders triable in the Subordinate Judge's Court. There are no Subordinate Judges at sub-divisions, and the parties will be put to needless trouble and expense by having to come into the sudder station. Many tenure-holders are poor, and the annual rents are often small; neither is there anything specially difficult about the rents of tenures. The proposal therefore will be unpopular, and will be expensive to Government from its unnecessarily taking up the time of their superior officers.

5. I do not see that registration will be effectual to prevent litigation. The mere fact of registration will be no guarantee of the truth of claim, and it would be monstrous to allow it to be followed by a summary procedure of sale. I must repeat that the proposed legislation seems useless, for the writer admits that the present law works fairly well. I beg to add

that, to use a phrase of Mr. Gladstone in speaking of the Franchise Bill, the Tenancy Bill has already as much weight as it can carry, and that, even granting that Baboo Mohini Mohan's scheme is a good one in itself, it would be wise to let it alone for the present. The thing to be done is to carry through a Bill which will relieve the tension now existing between landlords and raiyats, and to let alone everything not necessary for this purpose. Holding the view that it is inexpedient to complicate the rent question by adding provisions about the registration of tenures, it is perhaps not necessary for me to examine minutely the details of the learned pleader's proposal. I shall therefore only offer a few remarks. The procedure for sale is given at page 13. The draft speaks of months, and it is evident that the Baboo is thinking of Bengali months; but unless some express provision is made in the proposed Act, the courts would, I believe, certainly construe the word to mean months according to the British Calendar. They have already done so under the present Rent Act. I do not suppose that the Bengali months and sale days would suit in Behar and Orissa. The tenure-holder is to be allowed to contest the demand; but the sale is not to be stopped on that account unless the amount of the demand is deposited. This provision is fully as objectionable and harsh as the proposal disapproved by the High Court, that no appeal by a raiyat be allowed unless the amount of the decree be deposited.

6. In section 11 it is proposed that the tenure-holder should not be allowed to bid at the sale. This seems to me to be unfair. If the tenure-holder is not to be allowed to contest the demand unless he pays up the arrear, he should at least be permitted to do all else that he can to save his property, and one of these means is to bid and buy in the tenure. Section 13 proposes to do away with the question of notice, but however unsatisfactory questions of the service of notice are sometimes, it would still be most dangerous and unfair to enact that a judgment-debtor should not be allowed to allege want of notice. At page 22 there is a note saying that pergunnah divisions are the best known divisions. This is not correct; and moreover the author has apparently forgotten that such divisions do not agree with judicial divisions, and that consequently it will often happen that the Subordinate Judge's jurisdiction for ordinary purposes will differ from that for the work of registration.

7. I now come to Part II of the pamphlet. Here the writer is on firmer ground, and his remarks are more valuable; still it strikes one that he does not know so much about petty rent-suits. One of his first observations is that the question of payment is comparatively unimportant and is not difficult to try. No one would make a remark like this who had seen many petty rent-suits tried. Disputed receipts are of every day occurrence in Munsifs' Courts, and it is often extremely difficult to determine if they are genuine or forged. Questions about instalments are, according to my experience, of very inferior importance. Another strange remark is that the question of the court-fee is not of much importance in suits against raiyats. It may not be much to the zemindar, though I believe that they complain bitterly about it; but it certainly matters a good deal to the raiyat when he is cast and has to pay the cost of the stamp in addition to the amount of the rent. It would seem, too, that Baboo Mohini Mohun really thinks the question of the stamp to be important, for his scheme is little more than the substitution of a petition for a stamped plaint. According to my experience, successive suits against the same raiyat for the rent of his holding are not very common. When a raiyat cannot pay, and a decree is obtained against him, he is often ejected, and then of course there are no more suits against him; but when such cases do occur, the process is generally summary. The landlord files a copy of the old decree, and a decree follows almost as a matter of course, and with very little taking of evidence I don't think any more summary procedure would be safe. I am not aware that the zemindars have asked for the remedy suggested in the pamphlet, and if they have not, it is pretty good evidence that it is not required. The writer's remarks about the latter part of section 168 seem correct, and I also agree with him in striking out sub-section (c). This is an alteration which has, I believe, been already decided on. I do not think that sub-section (b) should be struck out. I think that he is right in objecting to the employment of revenue officers in local enquiries, but I would allow the courts to employ pleaders and other competent persons, and not restrict them to employing Civil Court means.

8. The remainder of the pamphlet does not, I think, call for much notice. It consists of a proposal to extend the writer's scheme for the sale of permanent tenures to all sales of holdings, and of suggestions, for doing away with the provisions for protecting registered and notified inambrances, as an essential part of the special procedure in the registration of the tenures in the court of the Subordinate Judge. I do not see how it is to be applied to unregistered tenures, nor does the writer explain this. He thinks that quarterly sales will be better than monthly ones. I do not think that landlords would agree with him about this, and there would be this evil, that the sales would go on for about a fortnight. All the sales of the courts at a station are conducted by one man, for the old system of having a nazir for each court has been done away with. A monthly sale now lasts at many stations for three or four days, and even longer. If they be made quarterly, the nazir will have three times more property to sell, and will take a correspondingly longer time to get through the work. The result will be that all his other work will fall into confusion. Pages 36 to 42 of the pamphlet are mostly taken up with quotations from the Bill. If the

sections had only been referred to, and not quoted at length, there would have been a considerable saving of space. The writer objects to the protection of registered and notified incumbances, but I think he does so without good reason. The proposals in the Bill seem to have been carefully considered and to be perfectly fair and workable.

9. When this report had been partly written, I received your letter No. 1664—910 and I proceed to reply to it. For the reasons given above, I think that the procedure proposed would be unfair to the defendant, and I also doubt if it would materially shorten litigation.

10. As regards my making any suggestion of my own for the simplification of procedure, I must plead my incompetence to add any thing of importance to the rules laid down in the Bill. The great difficulty is about the proof of the service of summons. The Bill proposes apparently to remove this difficulty by allowing the courts to substitute a registered letter for the summons. This will no doubt remove all difficulty if proof that the letter was posted and registered be accepted as proof of service. But the courts are not directed to accept such evidence as sufficient, and I doubt if they would do so of their own motion. It would not be safe to do so. Few raiyats can read and write, and those who could, would in all probability refuse to accept the letter, or to give a receipt for it. The difficulty of serving processes, and of proving the service, is specially felt when the defendant lives out of the jurisdiction. If he lives in another district, or even in another munsifi, the process is served through another court, and the plaintiff has to send his man to point the defendant out. If this man does not appear, or even if he is a little late in coming, the process is returned without any attempt being made to serve it. This is a great hardship, and at least the plaintiff ought to get his process fee back, or be allowed a fresh process without payment. The piada not having gone into the mofussil, there has been no expense to Government, and consequently the fee, or at least a part of it, should be returned. But I do not see why the courts should not try to serve the summons even in the absence of the plaintiff's man. In many cases the defendant is a well-known man, and the piada could find him out with the greatest ease. A postman does not refuse to deliver a letter because no one is present on behalf of the writer to point out the addressee. Pidas, if kept at one court, get to know the people of the neighbourhood just as postmen do, and advantage should be taken of their local knowledge. If an Uriya bearer in the service of a member of a Council, or some other well-known Calcutta resident, owes two rupees of rent, it seems absurd that his landlord down in Orissa must send a man all the way from there to identify him, under penalty of having the summons returned unserved. If, however, it be said that we must have general rules, and that we cannot meet special cases of hardship, then I beg to suggest that the despatch of a registered letter be declared *prima facie* evidence of the service of summons and other processes when the defendant lives out of the jurisdiction, or more than 50 miles from the court. I think that some such concession as this could be made *ex necessitate rei*; but at the same time I would allow the defendant to re-open all such cases on his depositing the amount of the rent and costs. I do not think this would be unfair to the defendant, for by sending a registered letter the plaintiff has shown a *bona fide* intention of serving the process. I would also enact that in all cases where a defendant was found to have received the process, and to have falsely denied having received it, he should pay 25 per cent. to plaintiff in addition to the amount of the decree and the interest thereon. I may point out that the substitution of registered letters for processes served by pidas will in many districts be a saving to Government. The High Court has ordered that the boat hire of process-servers is to be paid by the courts, and it has been found in this district that the 25 per cent. added to the cost of the processes is very far from recouping Government for the cost of the boat hire. But, of course, in order to get the full benefit of the saving, it would be necessary to substitute registered letters wherever service could only be made by boat. I am inclined to think that it would be well to pass such an order. It seems absurd to employ 50 boats and two or 300 men to serve the processes of a court for a month, when 2 or 3 dāk-boats would do the work as effectually. It might be occasionally useful to serve summons by telegram, and I would therefore add to clause *d* the provision that a telegram may, if the court directs, be substituted for any other mode of service. Of course, if the above suggestion is good for rent-suits, it should be equally so for other classes of suits. Munsifs often complain of the difficulty in disposing with despatch of Small Cause Court suits owing to the delays in serving processes out of the jurisdiction. The only other alteration which I would propose to make in the Bill is the removal of section 219. I do not see any good reason why a minor landlord should not have the benefit of section 7 of the Limitation Act. He has it, I believe, under the present law. With reference also to schedule 4, Part III of the Bill, I beg leave to call attention to the decision in *Mamtazul Huq's case*, I. L. R. 9 Cal. 711. The effect of this decision is to override the provisions of section 210 of the Civil Procedure Code about payment by instalments. The section is a very useful one to debtors, and the decision I have referred to will compel landlords to be harder to their tenants than they would be if the special limitation law were less rigorous. It is not an uncommon practice in zemindary management to evade the three years' limitation by taking bonds from their tenants for the rent due by them when the time for suing for rent has nearly expired. There can be no doubt that the stringency of our limitation law is answerable for a good deal of the litigation for which Bengalis are blamed.

11. In my humble opinion, the difficulty in collecting rents through the courts is not mainly caused by defects of procedure; it is the Court Fees' Act which is to blame, and there is also a great want of Munsifs. If sufficient courts are given, and the establishments are sufficient in number and are properly paid, rents can be collected with comparative ease and rapidity even under the present law.

No. 1445, dated Ranchi, the 20th November, 1884.

From—G. E. PORTER, Esq., Judicial Commissioner of Chota Nagpore,
To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to acknowledge receipt of your letters marginally noted, forwarding No. 2427T—R, dated 23rd October 1884, copy of a pamphlet on the procedure sections of the Bengal Tenancy Bill by Baboo Mohini Mohun Roy, and asking for my opinion thereon.

2. I have read the pamphlet carefully, and am of opinion that the proposals made are well considered, and will do much to simplify the procedure in rent cases. I think the change proposed in section XIII, which is an important one, will tend to prevent litigation.

3. The only doubt I have is whether the Subordinate Judges' courts will be able to dispose of all the cases that may arise under the new Rent Law. Provisions should be made for the trial of such cases in Moonsifs' courts also.

4. With reference to the part II of the pamphlet, I am of opinion (a) that the procedure suggested would not operate unfairly towards the defendant in the suit, and (b) that it would materially shorten and cheapen litigation.

5. I have no modifications to suggest in the proposed procedure, except the one indicated in paragraph 3 of this letter. If Subordinate Judges are able to cope with the work, it would of course be better that the cases should be tried and decided by them; but this appears to me hardly possible, as in sub-divisions and outlying parts of districts there are no Subordinate Judges, and it would be hard on litigants to expect them to institute all their rent-suits at head-quarters.

Dated Comillah, the 21st November, 1884.

From—BABU AUGUSTUS NATH GHOSH, 2nd Subordinate Judge, Tipperah,
To—The Secretary to the Government of Bengal, Revenue Department.

In obedience to your letter No. 2432T—R, dated the 23rd ultimo, and No. 1668—914LR, dated the 4th instant, I have the honour to report as follows.

2. Leaving aside the financial aspect of the question, and subject to the following amendments and objections, I approve of the "draft of an especial procedure for the sale of permanent tenures for arrears accruing thereupon," including "rules for the registration of tenures," made by Babu Mohini Mohun Roy.

(a) *Section IV of the draft.*—The following may be added to this section:—"The notices should be published by beat of drum, and a copy of the notice may, if the court so directs, be sent to the tenure-holder or (if there be more than one tenure-holder, to all or any of them by post in a letter registered under Part III of the Indian Post Office Act, 1866. And if the court so directs, the notice may be published in some official Gazette or local or other newspaper."

(b) *Section XIV of the draft.*—To the three exceptions specified in this section, the following may be added:—

(d)—Any under-tenure existing from the time of the permanent settlement.

(e)—Any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure, at a rent fixed for the period of that settlement.

(f)—Any lease of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

(c) *Section XVI of the draft.*—The draft makes no provision for the disposal of the sale proceeds in ordinary cases. Section 186 of the Bill may, with necessary modifications, be made applicable to the disposal of such proceeds.

(d) *Sections XIX and XXII of the draft.*—I agree with Babu Mohini Mohun Roy in observing that "the registration of leases and counterparts is not absolutely necessary for the purpose of registering tenures." And I am of opinion that the provisions for the registration of leases and counterpart leases should be omitted. The registration of leases and counterpart leases is likely to add greatly to the work of the Subordinate Judge, to the detriment of other and more important work with which he is entrusted.

PART II.

3. I cannot approve of the suggestion that when in a civil suit a decree has been made for the rent of a holding or tenure, and the amount of annual rent and instalments determined, the tenant may be proceeded against by application, as in an execution proceeding for subsequent rents accruing upon the same tenure.

Addition and subtraction of lands, increase and decrease of the rental, transfers of holdings or tenures by operation of law or act of parties, are likely to make the plan suggested of not much practical utility. When the question of the amount of rental or of instalment is a *res judiciala*, the suit, I believe, does not prove very troublesome to the court or expensive to the suitors. I think it is not necessary to lay down any special or extraordinary procedure for such suits. The decrease in most of such cases may be executed at once on the oral application of the decree-holder under section 256 of the Civil Procedure Code. The introduction of this section into the Bill, with a little addition, will enable holders of rent decrees to have their decrees executed without any delay. And as most of these decrees will be final under section 168 of the Bill, no inconvenience will, in the majority of such cases, arise in taking out immediate execution.

CHAPTER XIV OF THE REVISED BILL.

4. *Section 160 of the Bill.*—I cannot agree with Baboo Mohini Mohun Roy in suggesting that "all rent-suits and applications under the Rent Act" may be made cognizable by the court of the Subordinate Judge. I believe there are many districts in which there are villages more than 50 or 40 miles distant from the Subordinate Judge's court. It would be very hard on suitors, especially poor suitors, to be compelled to carry on original suits at any season at a place so far off from their homes and the homes of their witnesses, although it may not be so very difficult for a zemindar or the holder of a permanent tenure to carry on litigation connected with the registration or sale of such a tenure at such a distance.

5. *Section 169 of the Bill.*—I agree with Baboo Mohini Mohun Roy in suggesting that the following clause may be added to the exceptions to the rule contained in this section, so far as relates to the courts of original jurisdiction:—"Or unless the decree or order has decided a question of the amount of annual rent payable by the tenant, or of the instalment in which it is payable." I may quote here what I stated in my last report regarding this section. It is as follows:—This section may be retained with the addition of the following to paragraph IV:—

or a question of the amount of rental payable by the tenant. Sometimes the question of the amount of rental payable by a tenant is as important as a question of a right to enhance or vary the rent. It may not be necessary to retain the proposed addition after the expiry of four or five years after the passing of the Bill, and the consequent operation of the sections regarding receipts (sections 70 and 71); but until that time the proposed addition is urgently required." For the reason stated in the preceding paragraph, and having regard to the other important duties of the Subordinate Judge, it would not be desirable to make him try small rent-suits. This section may be so framed as to make his judgment, passed on appeal, final, when the amount claimed in the original suit does not exceed Rs. 100, notwithstanding that his judgment "has decided a question of the amount of annual rent payable by the tenant, or of the instalments in which it is payable;" but it should not be made final if it has decided a question relating to title to land or some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant. The adoption of the proposal to make the judgment of the Subordinate Judge final in all cases of the value of Rs. 100 and under, excepting those referred to in paragraph 4 of section 168 would be simply extending the authority which the District Judge already has under the existing law [section 102 of Act VIII (B. C.) of 1869] to the Subordinate Judge.

6. *Section 163 of the Bill.*—I agree with Babu Mohini Mohun Roy in submitting that sub-sections (b) and (c) of this section are objectionable. I beg to quote here what I stated in my last report regarding this section:—"It would be better to give the defendant the option of putting in a written statement. It would not always be easy for a Moonsif in a heavy chowki to take down with due care the abstract of the defence on the first day fixed for the hearing of the case, when the case has to be postponed. As a rule, the defence in a rent-suit is more complicated than the defence in money suits triable summarily by the Small Cause Court.

"I beg to object to the application of section 189 of the Code of Civil Procedure to appealable rent-suits. It would be very difficult for a court of appeal, having to deal with facts, to come to a correct conclusion as to the merits of the case without having the entire evidence before it."

7. *Section 166 of the Bill.*—I do not agree with Babu Mohini Mohun Roy in saying that the principle of payment by instalments is inapplicable to rent decrees. It is true that "there is only accumulation of interest on other decrees for payment of money," and in the majority of cases of rent decrees the debt accumulates with interest and subsequent instalments of rent.

But it must be borne in mind that the raiyat's income depends on the produce of his land, and he has his bad year or consecutive bad years to meet. This section is a supplement to sections 164 and 165. I object to those sections themselves for the reasons stated in my last report (Extra Supplement to the *Calcutta Gazette*, October 15th, 1884, page 488), and I am humbly of opinion that the provisions of section 210 of the Civil Procedure Code should be made applicable to rent-suits.

8. *Section 174 of the Bill.*—I agree with Babu Mohini Mohun Roy in suggesting that the local enquiry contemplated by clause 2 of the section may be directed to be made by a Civil Court amin.

9. *Chapter XV of the Bill.*—I do not agree with Babu Mohini Mohun Roy in making the special procedure proposed in his draft for the summary sale of under-tenures applicable to sales for arrears under decrees. The adoption of the special procedure with regard to patni taluks and other permanent tenures is very likely to materially diminish the number of sales of such tenures for arrears under decrees. The procedure for sale for arrears under decrees will be chiefly concerned with the ryoti or occupancy holdings. It is said that there will be a greater concourse of people interested in land on quarterly sale days, and larger competition and greater publicity than on sale days spread over 12 months in the year. But I beg to submit that candidates for the purchase of ryoti holdings are generally people of the village where the ryoti is situated, or of villages adjacent. Such candidates come to bid for a particular holding or holdings lying near their homes. The presence of such people is not likely materially to be affected by the decrease of the number of sale days in the year. In the result I am not prepared to say that the advantages to be derived from the presence of a greater number of people on quarterly sale days are likely to compensate for the disadvantage to be undergone by the landlord in the shape of delay in recovering his money, and by the raiyat in that of accrual of interest on his debt.

10. In cases of small ryoti holdings it is sometimes more desirable to have the sale held at the spot than within the court premises.

11. I think it is better to authorize the High Court to make rules for the guidance of the courts in the exercise of their duties with regard to sale for arrears under decrees than to lay down in the Act any inflexible rules regarding the time and place of sales. The enactment of a section similar to paragraph 2 of section 287 of the Civil Procedure Code, enabling the Hon'ble Court to make different rules for different courts, according to local circumstances, is likely to prove beneficial to both the landlords and the tenants.

12. As the holding is hypothecated for rent (section 77 of the revised Bill), it is not necessary to make it compulsory on the part of the landlord to attach the holding. Delay may be avoided by expressly authorizing courts to issue the proclamation of sale in the first instance.

13. I agree with Babu Mohini Mohun Roy in making the provisions of sections X, XIII, XVI, and XVII of his draft applicable to sales for arrears under decrees.

14. I am also of opinion that the sections regarding registered and notified incumbrances may safely be eliminated from the present Bill.

15. In conclusion, I beg to state that the proposal made by Baboo Mohini Mohun Roy for the trial of all rent-suits by Subordinate Judges would, as indicated above, operate unfairly towards defendants in the suit. Besides, his suggestion to allow appeals in cases in which the question of title, &c., or of the amount of the rental, &c., is involved, from the Subordinate Judge's decision, would enormously add to the appellate work of the District Judge, who, on the other hand, would be deprived of a great portion of the assistance he now gets from the Subordinate Judge in consequence of that officer's time being occupied in the disposal of all original rent-suits. Furthermore, the engaging of pleaders in the Subordinate Judge's court in small rent suits would be more expensive and thus the plan proposed, far from cheapening litigation, would make it more costly. I am of opinion that the plan proposed of enabling landlords to apply for the recovery of arrears of rent under the rules for the execution of rent decrees, and of leaving the decision of objections to the execution department, is not likely to materially simplify matters, while it is likely to operate unfairly towards the tenant.

No. 481, dated Chupra, 21st November, 1884.

From—H. W. GORDON, Esq., District Judge of Sarun,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2425T—R, dated the 28th October 1884, and subsequent letter of the 4th instant, requesting me to submit an expression of my opinion on the views and proposals set forth in a pamphlet by Baboo Mohini Mohun Rai on the procedure sections of the Bengal Tenancy Bill, I have the honour to observe as follows:—

PART I.

2. The procedure proposed by the author in this part applies not to all tenures as defined in the revised Bill, but to permanent tenures only, such as *patnis* and the like, which largely

exist in the district of Bengal Proper. In Behar, I believe, permanent tenures, such as *mukarrari* tenures and the like, are not very numerous, and where they exist they are generally created by deeds, or are recorded in settlement proceedings in which the annual rental and instalments in which the rent is payable are clearly specified. The result is that disputes regarding these matters are exceedingly rare, and sales therefore of such tenures for arrears of rent seldom take place in this part of the country. Accordingly, the special procedure suggested in the pamphlet, even if it be accepted and adopted, would not materially affect Behar, or contribute to any appreciable extent towards the reduction of litigation.

3. Generally speaking, I cannot concur in the writer's proposals. I object to the civil court being made, so to speak, a court of registration, and so vested with executive functions. Further, these registration proceedings will, I believe, be mostly contentious. Disputes between the parties will have to be determined as in a regular suit, and after registration come the so-called execution proceedings in which the issue of payment will have to be tried and determined as between *zamindar* and tenure-holder. After sale other complications will arise, inasmuch as any person having an interest in the tenure voidable on sale may apply for compensation out of the surplus proceeds of sale, and all questions relating to the distribution of these proceeds will have to be dealt with and determined by the court. The procedure, instead of being simplified, will thus become cumbrous and complicated, and more time will probably be taken up in disposing of such questions than in the trial of separate suits. Instead, therefore, of reducing and simplifying litigation, the proposed procedure is, I fear, calculated to augment and protract it, as well as to increase expense. It is, I consider, a mistake to attempt to assimilate the special procedure of Regulation VIII of 1819 to the trial of ordinary rent suits. The *patnidar* is often a more wealthy and influential man than the *zamindar* himself, and there is little analogy between a *patnidar* and an ordinary raiyat. The summary procedure of Regulation VIII of 1819, which is embodied in Chapter XVI of the revised Bill, has, the author allows, hitherto worked very successfully, and no sufficient reason has, I submit, been made out for changing it. Indeed, in the interests of the *zamindars*, it ought, I think, to be retained.

PART II.

4. I am equally opposed to the procedure proposed in this part. That it will simplify matters and diminish litigation to any great extent I very much doubt. The court will merely have to enquire into and determine issues in the Execution Department, which would otherwise be disposed of in a regular civil suit. The question of payment of rent is not so unimportant a matter in a rent suit as the author thinks. In Behar especially, where printed receipts are at present rarely used, the controversy as to payment is in fact between the *patwari* on the one side, and the raiyat on the other, and it is no easy task to determine which of the two is speaking the truth. Such a matter ought not to be determined in the Execution Department. Further, other questions might arise between the parties, e. g., the raiyat might deny the landlord's title, alleging that the land had changed hands, subsequent to the passing of the decree (the *onus* would of course lie on the raiyat under section 109 of the Evidence Act to prove this), and this is a question which ought to be determined in the ordinary way in a civil suit, and not in the Execution Department. Such a procedure would be opposed to the whole theory on which the trial of civil suits proceeds. Again, a decree obtained by a landlord against a raiyat, in which the annual rental (disputes as to instalments are rarely or never raised in rent suits in Behar) cannot in all fairness to the raiyat be treated as *res judicata* in subsequent proceedings between the same parties; yet this is what the writer's procedure would amount to. Such a decree would no doubt be *prima facie* evidence against the raiyat in a subsequent suit, but he might allege, and with truth, that for some cause or other there had been a decrease in his rent since that decree was passed against him, and this matter, if tried at all, would, under the proposed procedure, have to be tried in the Execution Department in the same way as in a regular suit. Altogether, therefore, I am of opinion that the ordinary procedure by suit should be adhered to, otherwise the raiyats may be placed at a great disadvantage in defending their rights in an execution proceeding. There might perhaps be a saving of expense in the matter of court fees on plaints (these the writer thinks are small), but this would not compensate for the injustice posed procedure might slightly cheapen litigation so far as the parties are concerned, it is very doubtful whether it would shorten it.

5. As regards the writer's criticisms of certain sections of the revised Bill, I think section 168 should be left intact. It is desirable that the District Judge should be vested with revisional powers in suits in which there is no appeal. If it be objected that the applicant can subsequently move the High Court, this difficulty might be met by adding to section 168—“such order shall be final.” I am opposed to adding anything to the 4th paragraph of section 168. Disputes about instalments are rarely raised, and if appeals are allowed in all cases in which a question of the amount of annual rent payable by the tenant has been determined, then paragraphs (a and b) will be of no effect in checking appeals, as this is a question that is raised in most rent suits. I do not think sub-section (c) of section 168 should be struck out. If it be, then written statements might be filed in cases in which they

were not at all necessary. The court might be allowed to exercise its discretion in calling for a written defence, as suggested in paragraph 35 of my letter No. 320, dated 30th July 1884. Boundaries should, I think, be stated in the plaint as required by section 167. It will be to the advantage of both parties that this matter be decided between them once for all. I agree with the author that payment by instalments is not applicable to rent decrees. I also think the local enquiry referred to in paragraph (2) of section 174 might be better made by a Civil Court Amin.

6. The writer's comments on Chapter XV of the revised Bill do not appear to call for special remark. The procedure he suggests will not, I think, simplify matters much. Quarterly instead of monthly sales will not be of much advantage to the parties concerned.

7. I object to the writer's proposal to vest Subordinate Judges with exclusive jurisdiction in rent suits. The only point in its favour seems to be that it will prevent disputes as to jurisdiction. But such questions will not be often raised, and they can easily be decided as in title suits by the court in which the plaint is filed. To entrust exclusive jurisdiction to Subordinate Judges will be to cause needless expense to the State and a great waste of judicial strength. The courts of Subordinate Judges are also courts of appeal, and competent officers can decide four or five appeals in the same time as they would take to try two or three rent suits. Further, at outlying Munsifships there are no Subordinate Judges. To carry out the author's scheme Subordinate Judges would either have to be posted to these stations at an additional cost to the State, or else suitors will have to come long distances into head-quarters to file their plaints, thereby entailing great hardship and expense on the parties concerned, as well as on the witnesses who may be cited on either side. Munsifs of approved experience and judicial ability are now appointed to each district to try rent suits exclusively. This scheme, I believe, works well and should be retained.

8. My views in regard to the cheapening and shortening of litigation are in accord with those enunciated by the Hon'ble Judges of the High Court in Mr. Bayley's letter No. 1986, dated August 1884, to the Secretary to the Government of India. To avoid delay, it is desirable to increase the judicial staff whenever an accumulation of arrears occurs, and to cheapen litigation the court fees might be reduced to what they were before the transfer of rent suits from the Revenue to the Civil Courts. The annual revenue derived from court fees is greatly in excess of expenditure, so that the State might well spare some of it to achieve the desired objects.

Dated Serajunge, the 22nd November, 1884.

From—BABOO KAILAS CHANDRA MOJUMDAR, Moonsif of Serajunge,
To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2433T—B, dated the 23rd October last, forwarding, for an expression of my opinion, a pamphlet by Baboo Mohini Mohan Roy on the procedure section of the Bengal Tenancy Bill, I have the honour to submit as follows.

A mere summary procedure is really defective. Such a procedure is, as the writer says, often the prelude to lengthy litigation. The proposal to transfer the sales of permanent tenures to civil courts is

Part I of the pamphlet. therefore a move in the right direction. This will avoid summary sales being followed by regular civil suits, and it will be to the beneficial interest of landlords and tenants, if the questions which arise between them should once for all be tried by the civil courts.

The suggestion to entrust the work of registration of tenures to the civil court is also, in my humble opinion, a good suggestion.

Registration of the lands of a proprietor under Bengal Act VII of 1876 is no evidence at all upon the question of title of a proprietor so registered, and does not relieve a proprietor from the burden of proving his title in a regular civil suit; but it would not have been so if this were once for all done by the civil courts.

The registration of tenures by the civil courts will thus be a boon to tenure-holders, and if the disputes are settled once for all, it will relieve the tenure-holders of a great amount of trouble and expense.

To make the law complete in itself, these works should be transferred to the civil courts, and the division of jurisdiction between civil and revenue courts should, as far as possible, be done away with. The spirit of the proposals is therefore good, but the way in which the writer proposes to carry out the proposals is, in my opinion, objectionable.

The writer proposes to have these works done by the courts of the Subordinate Judge alone; but this will put poor tenure-holders, who live at a distance from the head-quarters of a district, to a very great disadvantage. The benefit of the law will, I fear not be availed of by these, and then the law I think will have practically no effect.

The difficulty which proprietors undergo in getting their lands registered under the Land Registration Act will be greater in the case of ordinary tenure-holders if they are put to the same trouble and expense in going to the Sudder and getting their tenures registered there.

The intention of the writer may, I think, be fairly carried out without any expensive machinery, if officers taken from the higher grades of Moonsifs are specially appointed for the purpose at every sub-division.

It will be convenient if the suggestion is modified in the above way.

The registration of tenures has been provided for to bring tenures under the provisions of the "special procedure for the sale of permanent tenures;" but to give landlords the benefit of section 122 of the Bill, the rules for the registration of tenures might with advantage be extended to ryoti holdings also.

A registration law well devised on the lines of the Land Registration Act would be the greatest possible blessing to the agricultural community, and I think that the registration of ryoti holdings should form a part of the suggestion made for the registration of tenures.

The other changes proposed call for no remarks.

Part II. With reference to this part, I have been called on to submit my opinion on two points—

(1). Whether the simplified procedure suggested for the trial of rent suits would operate unfairly towards the defendants in the suits; and (ii) whether it would shorten and cheapen litigation.

In my humble opinion the procedure suggested would operate unfairly towards the defendants, and that in this way.

In a simple suit for rent, the questions usually raised are not only the three mentioned by the writer, but there are others more intricate and important as mentioned in the ruling reported in I. L. R. 8, Calc. 238.

Even when in a civil suit a decree has been made for the rent of a holding or tenure, the defendants in subsequent suits are, under the law of evidence, not estopped from raising other questions, such as that the plaintiff's title has expired or has been defeated by a title paramount; that the defendant has been evicted by the plaintiff; that his occupation has been determined by relinquishment, and so forth.

If after a decree is obtained the landlord's title passes in to the hands of third parties, and a suit for rent for subsequent years is brought by a plaintiff claiming by a derivative title, the defendant is not even stopped from shewing that the title is really not in the plaintiff, but in some other person—vide the ruling cited above.

Thus it will appear that even after a decree is obtained the defendant is entitled to raise many intricate questions not taken notice of by the writer, and it will be to the disadvantage of the defendant if these questions are tried in the execution stage.

Any question tried in execution proceedings is usually tried hastily and perfunctorily. To have intricate questions tried in execution proceedings will therefore surely operate unfairly towards the defendants.

To abridge judicial enquiry in this way will not, in any opinion, be safe to the tenants.

The procedure suggested may have some application in cases in which the parties remain the same, and there is no dispute in other points; but the number of such cases is very few.

In a large number of cases, the simplified procedure will I fear lead to complication, and will be abused to the detriment of the interest of the defendants.

If the decrees are *ex parte* and unexecuted, which with designing landlords is generally the case, the suggestion is open to another objection, and that is, that these decrees cannot finally settle the question of rent. The defendants in such cases are entitled to dispute the rate of rent in subsequent suits—vide the ruling, I. L. R. 8 Calc. 275.

There is another suggestion of the writer which is most objectionable, and that is to make all suits and applications under the Rent Law triable by the court of the Subordinate Judge.

This may be good in a zamindar's point of view, but if the view be adopted, necessary litigation will also be avoided. Advantage will then be taken of the helplessness of the ryots, and the doors of justice will in a manner be practically closed to poor landlords and tenants.

The writer seems to have left out of consideration the condition of the people of the remote mofussil, and how cheaply the poor landlords and tenants get relief in the courts of Moonsifs.

The heavy expense which a party seeking to obtain relief in the court of Subordinate Judges is put to, in addition to other charges which he cannot count as "costs of the suit," will not only shorten litigation, which is necessary, but will I fear be an absolute bar to suitors getting relief in courts.

If the public are consulted they will agree with me in thinking that the writer is not right in saying that "it will be far more simple and far less costly to entrust the jurisdiction to Subordinate Judges, &c."

Taking the period of service the Moonsifs may be less experienced officers than the Subordinate Judges, but that they, as a class, do not possess general confidence, is an assertion which I cannot persuade myself to believe. There are many in the higher grades of Moonsifs who I think are equally competent to try rent cases with ability.

I should not say anything more on the subject, but this I cannot refrain from saying, that is, that the Moonsifs as a class cannot be said to be less efficient men.

In my humble opinion the execution procedure will present difficulty, and the defendants will not have a fair trial of their case if this procedure be adopted.

The agricultural class will have a greater difficulty if all suits and applications under the Rent Law are tried by the court of the Subordinate Judge alone.

These suggestions of the writer are therefore unworkable.

The procedure which I beg to suggest is—

(i) That suits for rent up to Rs. 1,000 will be tried by officers taken from the higher grade of Moonsifs, and to be specially empowered by Government to exercise jurisdiction in these cases.

(ii) That one of the special officers appointed will be placed at every sub-division.

(iii) That the ordinary procedure will be observed in rent cases of greater value and in cases in which issues are to be framed, but that simple suits up to Rs. 50 will be tried under the Small Cause Court procedure.

If possible, some Judges may also be made itinerant Judges.

(Suits for the rent of bastu lands and of lands situated in a town are now tried under the Small Cause Court procedure. This provision therefore might with advantage be extended to other rent-suits of smaller values, in which intricate questions are not involved.)

As a part of this a reduction of the heavy institution fees may be suggested, which will have the effect of changing plaints into petitions as proposed by the writer.

As difficulty does generally arise, specially at the time of sale, if a proper identification of the land held by the tenant is not given in the plaint, I think that it will be to the good of the tenants if in plaints the landlord give the boundaries, or state something which may identify the land held by the defendant as a tenant.

In cases in which the defendant pleads that he has been evicted by the plaintiff, or that his occupation has been determined by relinquishment, the question of boundaries of the land held by the defendant forms a very important question for trial in the rent-suit.

The other changes proposed may be accepted.

No. 34, dated Burdwan, the 22nd November, 1884.

From.—BABOO MOHENDRO NATH MITTER, Subordinate Judge of Burdwan,

To.—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letters Nos. 2429T—R and 1665—911, dated the 23rd October and the 4th November, respectively, forwarding for an expression of my opinion, a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill, I beg most respectfully to submit the following observations for the consideration of His Honour the Lieutenant-Governor.

2. Baboo Mohini Mohan Roy starts with the assumption that suits for rent against tenureholders form a large proportion of the rent litigation of the province, or at any rate, he believes that the aggregate amount of litigation in, and resulting from, this class of rent-suits is quite equal to the aggregate amount of litigation in, and resulting from, the class of suits for rent against ryots. This has led him to give undue prominence to his especial procedure for the sale of permanent tenures for arrears accruing thereupon, and one of his principal reasons for suggesting it seems to be that almost every Regulation VIII sale is followed by a harassing suit for setting aside the sale.

3. To show that Baboo Mohini Mohan is entirely wrong in his assumptions and statements, I have collected the following facts and figures from the sherista of the Maharajah of Burdwan, who has a great deal more to do with patni tenures than any other zemindar in Bengal.

Applications for the sale of Patni Tenures in the District of Burdwan made by the Maharajah of Burdwan in the years 1288, 1289, and 1290.

The years in which applications were made.		Number of applications.	Number of sales.	Number of suits for setting aside sales.
1288	Applications for sale at the beginning of the year	594	19	1
	Ditto in the middle of the year	815	17	1
	TOTAL	1,409	36	2
1289	Applications for sale at the beginning of the year	660	9	1
	Ditto in the middle of the year	777	20	1
	TOTAL	1,437	29	2
1290	Applications for sale at the beginning of the year	570	19	0
	Ditto in the middle of the year	810	27	2
	TOTAL	1,380	46	2
GRAND TOTAL		4,226	111	6

The above statement clearly shows that Regulation VIII of 1819 has worked very satisfactorily, and that the percentage of suits for setting aside patni sales during the last three years is less than six. In my last report I have already stated that this law ought not to be incorporated into the Tenancy Bill. It ought to be left as it is, and that if any amendment is necessary, it is only in regard to the service of notice of sale. The uncertainty that hangs over this matter, and the controversy that usually takes place as to whether the persons attesting the service of a notice are substantial persons within the meaning of the law, may all be put an end to, if a separate sale notice paper be printed and published by Government twice a year for each district or Commissioner's division. The bulk of the existing Government Gazette will be periodically increased if these notices be inserted therein, and people interested in the notices only will feel it a grievance to subscribe to the Gazette for them. It would be desirable, therefore, that a separate sale notice paper should be issued by Government, and as many copies as may be subscribed for should be sent to each district or division by post. Four to eight annas annual subscription for a copy, besides the charges for the insertion of the notices, would re-imburse Government for all the expenses that may be incurred in the publication, and patnidars and other under-tenureholders, whose interest it will be to protect the superior tenure from sale, and intending purchasers, will be obliged to subscribe and will ungrudgingly subscribe, if it be enacted that the publication of notice in that paper shall be conclusive evidence of service. This is the only amendment that is required in the patni law in the interests of both the zemindar and his under-tenureholders.

4. There cannot be the slightest doubt that suits for rent against tenureholders form a very insignificant proportion of the rent litigation of the province. Such suits are mostly, owing to their value exceeding one thousand rupees, brought in the courts of the Subordinate Judges, and their number is very small compared to that of suits brought against ryots in the Muasifs' courts. I will take, for example, the district of Burdwan as its figures are at hand—

MUNSIFF'S COURTS.				SUBORDINATE JUDGES' COURTS.		
Year.	Instituted.	Disposed of—		Instituted.	Disposed of—	
		Contested.	Ex parte.		Contested.	Ex parte.
1881	6,106	1,446	4,597	44	9	32
1882	6,971	1,408	5,619	28	13	17
1883	6,639	1,354	5,644	44	15	29
TOTAL	19,716	4,208	15,860	116	37	78

It will be seen from the above table that Baboo Mohini Mohan's comparison between the two classes of suits is quite erroneous. He is also wrong in saying that ryots are seldom sued except when there is ill-feeling between them and their landlord. The large number of *ex parte* cases decided every year shows that ryots are sued even where there is no combination among them. They either neglect to pay their rents, or are, from various causes, unable to pay them.

5. The suggestions for simplifying the procedure for the trial of rent-suits made in part II of the pamphlet will practically prove ineffectual so far as the delay in the disposal of those suits and the harassment caused thereby are concerned. The writer simply objects to the proceeding that shall be held to hear and determine the ryots' objections on presentation of petition for recovery of arrears by the zemindar being called a suit. Such a procedure, moreover, would operate unfairly towards the ryot. It would be in the power of an unscrupulous landlord to oppress, harass, or ruin his tenant by not causing the notice to be served. The proposal for making all rent-suits and applications under the rent law cognizable by the court of the Subordinate Judge, set forth in page 32 of the pamphlet, cannot be seriously entertained. The present number of those Judges will have to be increased ten times to cope with the work, and the cost would be immense.

6. I am not prepared to recommend a novel and untried procedure for the sake of a change. It is far better that we should proceed on sure and tried ground. In my last report I have stated that the provisions embodied in sections 163, 165, and 168 of the revised Tenancy Bill will meet most of the requirements of both the landlords and their tenants. I would most respectfully invite attention to paragraphs 25, 27, and 28 of that report. There seems to be some difference of opinion in regard to the retention of clauses (e) and (f) in section 163 of the revised Bill. In my humble opinion if those clauses are struck out, the very essence of expedition would be destroyed.

7. The only other suggestion that I have to make for expediting the disposal of rent-suits is that the present judicial staff should be increased and their establishments strengthened.

No. 9, dated Barisaul, the 24th November, 1884.

From—BABOO BENI MADHUB MITTER, Subordinate Judge of Backergunge,
To—The Officiating Secretary to the Government of Bengal, Revenue Department.

With reference to your predecessor's letter No. 2431T—R (Revenue Department), dated the 24th October 1884, and with reference to your letter No. 1667-913 L—R, dated the 4th November 1884, I have the honour to state most humbly that the special procedure for the realization of arrears of rent from the permanent tenure-holders, suggested by Baboo Mohini Mohun Roy in Part I of his pamphlet, appears to be objectionable, in my humble opinion, on account of the following reasons:—

(a).—In a district like Backergunge, where there are about 15 grades of permanent under-tenures, and where there are many under-tenures which lie under three or four different superior tenures or under tenures as the case may be, it will be a very difficult and tedious affair to prepare registers like those proposed in the pamphlet.

(b).—The procedure which is not equally applicable to all classes of tenants does not appear to be a fair one.

(c).—If the special procedure mentioned in Part I of the pamphlet be introduced then the zemindars would be able to realize the rent due to them from the permanent tenure-holders very easily, but those permanent tenure-holders who are to realise rent from under-tenants who hold ryoti holdings, or whose tenures are other than permanent tenures, would be thrown into a great hardship, for their tenures would be sold if they fail to pay their rent speedily to their superior landlords, but they would not be able to realize so soon the rent which they would get from their under-tenants. It may be said that the summary procedure for selling the patnis under Regulation VIII of 1819 has been in force for a long time, and the patnidars have never complained of any hardship resulting from that procedure. Then why should the other classes of tenure-holders complain of any hardship if the proposed procedure, which in certain respects would be better than that prescribed by Regulation VIII of 1819, be introduced? But the patni tenures cannot be compared with the other classes of tenures. The patni tenures are created by the zemindars solely for the purpose of collecting rents, and the zemindar at the time of granting the patni allows some profit to the patnidar out of his own profit.

The under-tenures which exist in this district were originally created for the purpose of clearing the jungles and of making the waste land culturable, and the tenure-holders had to devote their labour and capital for the purpose of making the jungle-covered lands culturable, that being so, the position of these tenure-holders should be better than that of the patnidars.

(d).—Under the special procedure, the tenure-holder would be obliged to deposit under section VIII the amount of the landlord's demand in order to stay the sale, although he might have already paid the greater part of that amount. It is not improbable that some unscrupulous landlord might apply for selling the tenures of their under-tenants, ignoring the receipt of the money paid by the tenure-holders.

(e).—The provision of section XIII would be very injurious to the tenure-holders, for if all sales be liable to be set aside indiscriminately, then very few bidders would come forward to bid, and consequently the tenures would be sold at a very low price.

2. The simplified procedure suggested for the trial of rent-suits appears, in my humble opinion, to be also objectionable because it would sometimes throw the defendants to a great hardship, for section III of part II proposes to give the courts power to issue process for sale of the defendant's tenure or for the attachment of the moveable and immoveable property belonging to him simultaneously with the issue of notice to the opposite party to show cause why the amount claimed should not be levied from him. It might happen that some unscrupulous landlord, in order to injure his tenant with whom he might be on bad terms, would sue for the rent which might have already been paid, and would throw obstacles in the way of his defending the suit by attaching his properties or by issuing a process of selling his under-tenure simultaneously with the issue of notice to the defendant. In some cases the tenure or the holding of the under-tenant would be sold even before he could be aware of it, if the notice be not served upon him properly.

3. If the latter part of section III of part II (which proposes to give power to the court to issue process for sale of the tenure of the defendant or for attachment of the moveable and immoveable properties of the defendant simultaneously with the issue of notice to the opposite party to show cause why the amount claimed should not be levied from him) be abandoned, then the proposed procedure might be introduced. It would materially cheapen litigation, and to a certain extent it would shorten it.

No. 75, dated Noakhally, the 24th November, 1884.

From—BABOO CHANDRA KUMAR ROY, M.A. and B.L., First Munsif of Sudharam,
To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your letters Nos. 2434T—R and 1670-916L—R, dated 23rd October last and 4th November current, respectively, I have the honor to submit the following notes on Baboo Mohini Mohun Roy's pamphlet on the procedure sections of the Tenancy Bill.

2. My views on the summary sale and special procedure chapters of the revised Tenancy Bill were expressed in my report submitted on the 28th July last, published in pages 510-9 of the extra Supplement of the *Calcutta Gazette*, dated 15th October last, and need not be repeated here.

3. The Part I of the pamphlet (procedure for the sale of permanent tenures) should, in my opinion, be extended to the transferable holdings also; and in order to benefit the petty tenure-holders and ryots in districts of Chittagong Division, where the head-quarters is not within easy reach from all parts of the country, the place of registration and sale should be transferred to Munsif's Court, when their annual rent is not above Rs. 100. The sale and registration of larger tenures may take place in the court of the Subordinate Judge or District Judge, where there is no Subordinate Judge as in this district. I am very much against the sale of small tenures and holdings at the head-quarters far away from the homes of the persons interested in them merely for the convenience of the zamindars, in order to relieve them of the petty costs and trouble of engaging an agent or pleader in every mofussil court. It is practically seen that the same tenure fetches much higher price in the execution of decree sale held in Munsif's Court than in sale under Regulation VIII of 1819 in the Collector's office. The reasons are apparent.

4. On the simplified procedure suggested in Part II of the pamphlet, I beg to add that the petition mentioned in section II (page 28) for realization of subsequent arrears should either be verified or supported by an affidavit, and any wilful mis-statement in it should be subjected to summary punishment by the court to which it shall be made. This section may be extended to tenures and holdings created by registered deeds.

No. 1980—1024 L.R., dated 3rd December, 1884.

From—Officiating Under-Secretary to the Government of Bengal,
To—Secretary to the Government of India, Legislative Department.

In continuation of the letter from this Office No. 1906 T. R., dated the 15th September 1884, I am directed to submit copies of the letters noted below, regarding *utbandi* tenures:—

- (1) Letter from the Commissioner of the Presidency Division, No. 21 R. L., dated the 17th September 1884.
- (2) Letter to the Commissioner of the Presidency Division, No. 2113 T. R., dated the 3rd October 1884.
- (3) Letter from the Commissioner of the Presidency Division, No. 28 R. L., dated the 30th October 1884, and its enclosures.

No. 24 R.L., dated 17th September, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,
To—The Secretary to the Government, Bengal.

WITH reference to your telegram of the 31st ultimo, I have the honour to give below an analysis reports of the district officers regarding *utbandi* tenures.

2. Mr. Stevens gives the following account of the *utbandi* tenures in the 24 Parganas. Such tenures prevail only in the northern part of the district, where lands in the khas possession of landlords are leased out to cultivators under verbal agreements. The tenancy ceases at the end of either the season or the period of the lease. The usual term is a year, after which the land may lie fallow on account of the exhaustion of its strength or because no one has come forward to take it. Hence the origin of the name *utbandi*. No occupancy-right grows in such tenures, and before the crop is reaped the landlord makes sure of the rent by watching that it is not taken away from the fields before his dues are satisfied. These tenures are known in the south of the district as *karfa* or *thika*.

From the very nature of tenures the ordinary incidents of a raiyati tenure cannot, Mr. Stevens thinks, apply to them, as there is an express understanding sanctioned by custom that the landlord will enter after the expiry of the term. But as land is becoming improved, and as there is an increasing demand for land amongst the cultivating classes owing to increase of population, the area hitherto classified as *utbandi* is daily becoming less and less, since landlords are quite open to make settlements with raiyats offering favourable rents.

Mr. Stevens does not think that the account of such tenures given by Dr. Hunter in his Statistical Report of Nuddea, as they stood in 1872, is in any way defective, but that the tendency is now towards a decrease in the arrears of such lands.

It is the opinion of Mr. Stevens that, so far as *utbandi* and similar tenures in his district are concerned, the saving of customary conditions provided for in the Bill (section 214) is sufficient.

3 In Nuddea the *utbandi* systems prevails to a large extent. A full account of these tenures is given in Dr. Hunter's Statistical Account. Mr. Tayler reports thus on these tenures: "The *utbandi*—the system under which uncultivated lands are brought under cultivation—and the actual area cultivated is measured and paid for at the rate prevailing in that

part of the country. Cultivators who take such lands are not obliged to cultivate them a second year, but as a rule they can keep them for certain for three years if they elect to do so. Generally the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so. There being more lands in the district than are required by the cultivators, they prefer to take lands which have been lying fallow for a term of years, and which are consequently likely to yield the more, to retaining the same land and cultivating it for once 12 years. The zamindars, on the other hand, are reluctant to allow cultivators to retain such lands for any length of time, both with the view to prevent their acquiring occupancy-rights and to prevent deterioration of such lands. In some cases zamindars get *salami* when allowing new cultivators to take such lands.

Before the introduction of Act X of 1859 raiyats were in the habit of taking any portion of such lands without permission of the landlord, but now they give notice and commence cultivation after sanction has been received.

The lands available for *utbandi* cultivation include—

First, *Khamar* lands, which include all lands in estates under the direct control of the zamindar, whether cultivated or not and all waste lands.

Second, *naksau* or *jamai* lands relinquished by raiyats and not re-let to fresh raiyats.

Third, all new *char* lands. The rate of rent is fixed for each village, except in the case of the third kind, for which the rate is fixed by agreement between the landlord and tenant. Tenants holding *jamai* lands sometimes, when unable to cultivate the whole area settled with them, let them in *utbandi* at somewhat higher rates.

During the cold weather months, and sometimes after the crop has first made its appearance, amins are deputed to measure the lands thus cultivated, and subsequently the *gumashtas* collect the rents.

The system is very well known and apparently appreciated by the raiyats. At first sight it might be thought that these raiyats are not so well off as their neighbours who own *jamai* lands, but such is not really the case. They are continually cultivating renovated lands that require no manure, and have to pay for the area actually cultivated, whereas those holding *jamai* lands have to pay for their holdings, whether cultivated in whole or in part or not at all; and, if they cultivate the whole, they must generally go to the expense of manuring, or else expect poorer crops. There are zamindars who have extensive tracts of such lands, which they would be very glad to let in *jama*; but few can be induced to take them, notwithstanding that the rate of rent may be as low as 10 annas per bigha.

The Collector also refers to Dr. Hunter's Statistical Account of Bengal, and to the note made by Jogendra Chunder Mowlik under section 6 of Act VIII of 1869.

4. *Jessore*.—There are few tenures of this description in this district. They are generally confined to waste lands and *bhil* lands, which are for the whole or the greater part of the year under water, and which are cultivated by the raiyats under special contract generally from year to year. These lands are taken at fixed or progressive rates of rent on terms agreed to by the raiyats. The landlord cannot, or at all events does not, enhance the rent, which should be payable in proportion to the quantity of land reclaimed and cultivated. The same raiyat can have the same lands for any number of years, but the custom is that he does not acquire a right of occupancy. As a matter of fact, the raiyat is not disturbed as long as he pays his rent and behaves himself well. The landlord does not enhance the rate originally agreed to if the raiyat refuses to pay such increase; but if there are conditions in the lease or conditions verbally agreed to, the rate is enhanced. The raiyat can be ejected at the will of the landlord, as the tenures are not *kaimi* or *pucca*.

The zamindar claims no rent for any year for land not cultivated, though it remains in the possession of the raiyat. The land is gradually cultivated by the raiyat, and after the crops are harvested the land is measured and the rent is assessed. The assessment is of course made at the rate originally agreed to.

With regard to applying the principles of the proposed rent law to *utbandi* tenures, the Collector is of opinion that the customs of the country are pretty certain to be good for the country itself. The people have done well enough with their customs, and, if there was not something radically good and sound in these customs, they would not live. He does not think that anything has been shown to justify interference with the usual customs in regard to *utbandi* lands and the extension of the principles of the Bill to them. He would let them stay as they are, and he does not think that much good can result from preventing the people concerned, who are the most interested, making their legal bargains in their own way.

5. *Kinlha*.—The *utbandi* system is known only in one pargana (Khoraria), where the land is bad. The tenure is not a favourite one with the zamindar, as the sole risk is with him.

6. *Moorshedabad*.—*Utbandi* does not prevail to any great extent in this district, and is to be found only on the east side of the Bhagiruthi, chiefly in pargana Goas. The cultivator under this system, who has no rights whatever, either of occupancy or otherwise, takes the land by verbal permission of the zamindars, no written agreement being entered into, after which the holding is measured and assessed at the local rate as soon as it has been sown down and without any reference to the prospects of the crop. The rent so assessed is realized then and there, and this custom is observed in *do-fasli* lands each time the crop is sown, that is, twice in the

year, the reason being that the cultivator if left to himself would disappear immediately after harvest.

The Collector would deprecate any attempt at legislative interference here on the ground that the zamindar does not want it, and that if the cultivator is to be turned into a privileged person, possessing rights, and only to be ejected with difficulty, the result will be that the land will be allowed to remain waste to the mutual detriment of both parties. The arrangement is a fair and natural one; it is well understood, and the burden of proof is surely upon those who would replace it by something new, and not on the supporter of the perhaps antiquated policy of "let well alone."

No. 2113T.-R., dated 3rd October, 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government, Bengal,
To—The Commissioner, Presidency Division.

I am directed to acknowledge the receipt of your letter No. 24R.L., dated the 17th September 1884, with which you submit an analysis of the reports regarding *utbandi* tenures from the officers in charge of the districts of your division.

2. In reply, I am to call your attention to the manifest discrepancy between the account of those tenures now given by the Collector of Nuddea and that quoted from the same officer in the report of the Board of Revenue on estates under direct management in 1882-83. The Lieutenant-Governor is surprised that the latter account, which directly contradicts the former, should have been submitted to Government without any attempt being made either by yourself or by the Collector to reconcile the severe condemnation of the *utbandi* tenure contained in the one with the distinct approval recorded in the other. I am, therefore, to request that Mr. Tayler may at once be called upon to explain this, which is by no means a matter of slight consequence.

No. 28R.-L., dated 30th October, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,
To—The Secretary to Government, Bengal.

With reference to your No. 2113T.R. of the 3rd instant, I have the honour to enclose copy of the correspondence noted in the margin.

Collector of Nuddea, to Commissioner, Presidency Division, No. 1577G., dated 21st October 1884.
Commissioner, to Collector, No. 94R.L. of 24th October 1884.
Collector, to Commissioner, No. 1644 of 25th October 1884.

2. Mr. Tayler's remarks quoted in the Board's report on Government estates for 1882-83 were transmitted by my predecessor. Mr. Tayler's explanation is, practically, that the remarks quoted were written by him with reference to his *khás* maháls only, and from the point of view of a proprietor anxious to have all the lands of his estate tenanted. In his

letter, the substance of which was given by me, he reported such facts with reference to the system as a whole as existed generally throughout the district.

3. In the descriptions of the *utbandi* system itself there is very little difference between the two accounts. In the latter letter the effects of the system on the land are not noticed at all. In the former letter Mr. Tayler says that the prevalence of the system has resulted in the inferiority of the soil. It is of course possible that, under a system of regular cultivation, with adequate drainage, irrigation and manure, the lands might be improved; whether under present circumstances they would repay the outlay is another question. It appears to me perfectly clear that it is the character of the soil, and the style of cultivation suitable to it, that have brought about the *utbandi* system, and not the system that has resulted in bringing about the character of the soil.

4. As the increasing demand for produce and rising prices permit the regular extension of cultivation to lands that will not now repay regular and steady cultivation, the *utbandi* system will be gradually replaced, wherever possible, by the ordinary system, just as in frontier districts lands formerly used by aboriginal tribes for jooming are now in many places steadily cultivated.

No. 1577G., dated 21st October, 1884.

From—W. V. G. TAYLER, Esq., Collector, Nuddea,
To—The Commissioner, Presidency Division.

With reference to your memorandum No. 86R.L., dated the 9th instant, have the honour to report that the account given by me, which has been quoted by the Board in their Report on Estates under *Khás* Management in 1882-83, had special reference to the *khás* maháls in this district under my management, and notably to those in the sub-division of Meherpore, and not to the system as a whole; that my No. 1854G., dated 6th ultimo, referred to the system generally, and even in it I reported that there were zamindars who would be glad to let in *jama* lands now held under the *utbandi* system.

2. In our *khás* maháls, and especially in those within the Meherpore sub-division, all the lands of the mahál are of an inferior quality, and great portions almost unfit for cultivation, and consequently raiyats are unwilling to take such portions in the place even of those which, though fit for cultivation, have been cultivated for some years, and consequently unfit lands are allowed to remain unfit. In zamindaris, on the other hand, these tracts are more or less cultivable. More pressure is likely, too, to be brought on raiyats than would be the case in lands under Government officers, and hence more or less changes occur even from good to less good lands.

3. In the one case I gave expression to my views as to the adaptability of the system to a particular class of lands, while in the other I simply reported such facts with reference to the system as a whole, as existed generally throughout the whole district.

No. 94R.-L., dated 24th October, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,
To—The Collector, Nuddea.

Your letter No. 1577G., dated the 21st instant, on the subject of the *utbandi* tenures. It seems to me that the explanation furnished by you is not altogether satisfactory. Taking for granted that the account previously given had reference to *utbandi* tenures in *khás* maháls only, your observations as quoted in paragraph 36 of the Board's Report on the administration of Government Estates for the year 1882-83 indicate that the *utbandi* system generally was condemned. You wrote—"The prevalence of the *utbandi* system in this district has resulted in the inferiority of the soil." But according to the present account this system "is appreciated by the raiyats." I request that you will reconcile more clearly the discrepancies between the two reports by *return of post*.

No. 1644G., dated 25th October, 1884.

From—W. V. G. TAYLER, Esq., Collector, Nuddea,
To—The Commissioner, Presidency Division.

With reference to your letter No. 94R.-L., dated the 24th instant, I have the honour to state that the sentence quoted by you has not been completed; it should be "has resulted in the inferiority of the soil and the consequent neglected state of such maháls under *khás* management." This sentence refers only to such maháls under *khás* management, and not to the district in general.

2. In the district as a whole the system is appreciated by raiyats, especially in zamindaris, for the reasons already given; but I am still of opinion that in most of our *khás* maháls it would be better to introduce the *jama* system, and, as I before stated, there are even zamindars who are of the same mind as regards tracts of land within their zamindaris.

3. I am at a loss to know what further explanation to give, and would only therefore state that, what is appreciated by the raiyat is not necessarily good for a mahál in a zamindar's point of view.

No. 52, dated 3rd December, 1884.

From—SUBYA NARAIN SINGH, Secretary, Bhaugulpore Landholders Association,
To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward in a separate cover ten copies of a memorial (one copy of the memorial is signed by the president of the meeting) and notes on the Bengal Tenancy Bill on behalf of the zamindars and other landholders of the Bhaugulpore Division, in accordance with a Resolution passed at a public meeting held on the 25th July last, and five copies of the Resolutions passed at the said meeting, for the favourable consideration of His Excellency the Viceroy and Governor General in Council.

Dated 1st November, 1884.

To—The Right Honourable the Viceroy and Governor General of India in Council.

The humble memorial of the Zemindars and other Landholders of the Bhaugulpore Division—

MOST RESPECTFULLY SHEWETH,—That your memorialists presented to Your Excellency a memorial, dated 9th January 1884, on the Bengal Tenancy Bill of 1883, in which they set forth their grievances against the provisions thereof.

2. That since the presentation of the said memorial the Select Committee which sat on that Bill have submitted their Report, together with an amended Bill known as the revised Bengal Tenancy Bill.

3. That your memorialists regret to observe that although the officers consulted by Government on the Bill of 1883, many consisting of Commissioners of Divisions, Collectors and others, had given their opinion that it contained provisions most revolutionary in their character and injurious to the interests of the landholding class the said provisions have been retained only with slight modifications in the revised Bill, and that other provisions have been added which tend to make the position of the zemfudar very uneasy and worse.

4. That your memorialists beg to submit that the result of the deliberations of the Select Committee could not have been otherwise than it has been, when it is borne in mind that the members of that body supporting the views of the zemíndárs were numerically weak and could be outvoted on any proposition having for its object the furtherance of their cause. Under these circumstances your memorialists pray that the said body may be so constituted as to remove the disadvantage which the zemíndárs necessarily labour under from its present constitution.

5. That with regard to the provisions of the revised Tenancy Bill your memorialists do not propose to enter here into a detailed examination of them, as they crave leave to annex hereto notes setting forth their views on the said provisions.

6. That as to the general feature of the revised Bill your memorialists beg to submit that it, like its predecessor, the Bill of 1883, tends to unduly interfere with the cherished rights of the zemindárs conferred and confirmed by the solemn enactment of 1793, to oust the Civil Courts of their jurisdiction, and to centralise more power in the hands of the Revenue authorities against the express declaration of the Code relating to the Permanent Settlement; while it contains unworkable provisions and others which would lead to strife between landlords and tenants, it fails to secure the good of the actual cultivators of the soil by encouraging the growth of the middlemen class; and lastly, while fettering distraint with so many restrictions as to make it practically useless, it affords no facility to the zemindárs for the speedy realization of arrears of rent.

7. That from the meetings held in various parts of the province it is apparent that neither landlords nor tenants are satisfied with the said Bill.

8. That under the circumstances humbly set forth in this memorial your memorialists pray that Your Excellency would be pleased to direct that the Bill be withdrawn.

9. That should Your Excellency in Council be still pleased to proceed with the Bill your memorialists beg to submit that, in so intricate and important a matter as the land questions, grave leave to urge that such enquiry has not been made. In the present instance, your memorialists, disparage the labours of the Bengal Rent Commission or the value of the official and other opinions obtained on the two Bills, your memorialists feel constrained to state that the said Commission did not proceed in the way generally adopted in such cases. The diversity of opinions expressed by responsible officers of Government and the non-official community and by public bodies and the press on the merits of the proposed legislation, and the need for further information felt by the Select Committee, as appears from their Report and also from the letter of the Government of India dated 5th May last, and of the Bengal Government dated 24th May 1884, fairly show that there is yet room for further enquiry, and the means heretofore adopted, namely, asking Government officials to report, is not the best plan of conducting such enquiry. Under these circumstances your memorialists pray that Your Excellency would be pleased to appoint a Commission consisting of non-official European and Native gentlemen with power to take evidence, and to suspend the proposed legislation until the said Commission shall have made its report.

10. That your memorialists have every reason to believe that the result of such enquiry would show how utterly unfounded are the charges generally preferred against them by those who advocate the present legislation, and would enable Your Excellency to do them that justice which they have a right to expect and which guides the British Government in its dealings with the various subject races that have been placed by Providence under its rule.

And your memorialists, as in duty bound, shall ever pray.

Notes on the Revised Tenancy Bill, 1884 by the Committee of the Bhagalpur Landholders' Association.

CHAPTER I.

Sec 3, Sub-Sec. I.—It appears that the definition of "Estate" is taken from the *Cess Act* of 1880 B. C., where in section 4 Estate is defined to be "land included under one entry in the general Registers of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the Land Registration Act of 1876 B. C. and any similar law for the time being in force."

The word proprietor is defined in the Bill to mean a person or a number of persons owning an estate.

The proviso attached to sub-section (1) is rather invidious. If Government cannot be called proprietor with reference to its own lands, then the position of the tenants under it would be most anomalous. A person holding land under Government will not be a raiyat within the meaning of the Bill, and will not enjoy the privileges of a raiyat, *vide* sec. 5, sub sec. 3. Again, if a person takes a farm of a Government mehal what would be his position? He cannot be called a tenure-holder as defined in the Bill, because a tenure-holder is one who derives his right from a proprietor or another tenure-holder, and as shown above Government is not a proprietor, neither is it a tenure-holder. The position of tenants holding under the Government lessee would be worse. They cannot be raiyats, because in order to be a raiyat a person must, according to the Bill, hold under a tenure-holder or a proprietor, and the Government lessee is neither the one nor the other. Consequently the position of tenants in Government estates would be rendered most deplorable.

Sec. 3, Sub-Sec. 2 & 3.—Would rent-free holders, whose lands are not registered in the Collectorate, be deemed to be proprietors or tenants or tenure-holders? They are not proprietors as they do not own an estate. They are not tenants as they do not hold under another person. Probably such persons are included in the definition of tenure-holders, but what if the rent-free holding should be anterior to the Permanent Settlement? What if the lakherajdar should himself be cultivating the land all along or now? In the latter case would the lakherajdar be a raiyat?

Sec. 3, Sub-Sec. 8.—The Fusli year commences in Asin, but for agricultural purposes in districts where the Fusli year prevails the year practically begins in Asar and ends in Jeyth. Hence under the present law all notices of enhancement are required to be issued in or before the month of Jeyth.

CHAPTER II.

The provisions of this chapter are liable to the following objections :—

(a) They will give rise to endless complications in the relation existing between landlord and tenant.

(b) They will tend to increase the number of middlemen.

(c) Sec. 37 instead of checking sub-letting will have the effect of encouraging it and will ultimately create a number of petty middlemen whose existence was previously unknown, and whose principal business will be to fatten on the soil at the expense of the actual cultivators. It is now proposed to deal with all these points together. It is said that difficulty is often felt in deciding whether a tenant belongs to the class of raiyat or tenure-holder, and hence the necessity of defining the position of these classes. The number of cases in which the question arises whether a particular tenant is a raiyat or a tenure-holder is not large; granting that such questions frequently come before the courts, it is inexpedient to lay down hard and fast rules by which the decision of the court is to be guided. When a question of this nature comes before a court for trial, the best thing it can do is to decide it according to facts that may be proved before it in connection with the case. The suggestions on this point made by Babu Surja Narain Singh, B. L., in this letter to the Commissioner of Bhagalpur, published in page 78, Vol. II. of the Report of the Bengal Government on the proposed amendment of the law of landlord and tenant are worthy of consideration. The definition of tenure-holder as given in the Bill may be correct in a certain sense, but it is hardly a definition in the proper sense of the word. It is true that a tenure-holder generally collects rent and does not himself cultivate the land, but at the same time it should be considered that a tenure is not granted simply that the grantee might collect rent. Mr. Beames, whose views, it appears, have been adopted by the Select Committee in the framing of the definition of tenure-holder, says that "when a zamindar lets land to a tenure-holder, he considers that he is granting, and the tenure-holder considers that he is obtaining, the right to collect rents from a number of cultivators already actually in occupation of the land so granted." But it is submitted with deference that this view of the origin of a tenure is not exhaustive. A tenure carries with it rights and privileges of a valuable nature and not a mere right of collecting rent, and it may be that this right of collecting rent might not have been in the estimation of the parties when the tenure was created. People generally speak of a Lakheraj tenure, Mocutaree tenure or a Brahmoote tenure. But it is very doubtful, whether when a particular tenure, say a Lakheraj tenure, was originally granted, the grantor simply meant that the grantee should make collections from the raiyats in occupation. It might have been the case that the land demised was not originally in occupation of tenants. The lakherajdar might have cultivated the land himself. Subsequently he might have settled the land with raiyats. Therefore it is not always the fact that tenure-holder means a person who has acquired the right from a proprietor to collect rent. That in a majority of cases he collects rent may be true, but that is no reason why the fact of collecting rent should be made the basis whereon to ground the definition of a tenure-holder. Of course in deciding whether a person is a tenure-holder or a ryot, the fact whether he collects rent or not may be among other circumstances taken into consideration. But no such inflexible rules as prescribed in the Bill should be laid down.

In the next place it is submitted that the provisions of section 37 will scarcely be sufficient to prevent sub-letting. On the contrary when occupancy raiyats see that by sub-letting more than half of their holding they would be able to enjoy certain immunities and privileges which

they could not have enjoyed as occupancy raiyats, they would all the more be encouraged to sub-let. The mere fact that certain rules may be framed for subjecting their holdings to summary sale procedure is nothing compared to the advantages that are held out to them. Then again suppose an occupancy raiyat of 2 bighas of land sub-lets $1\frac{1}{2}$ bighas, he is immediately turned into a tenure-holder. This, of course, is absurd in the very face of it. A tenure-holder of 2 bighas is opposed to ordinary ideas on the subject. Lastly, the provisions in question will operate injuriously to zemindars, for an occupancy holding converted into a tenure will escheat to the crown on failure of heirs, which it would not have done had it remained a raiyatty holding.

The forcible conversion of raiyatty holdings into tenures is opposed to the customary law of the country, and has been almost universally condemned. The reproduction of such a provision, though in a modified shape, in sec. 5, sub-sec. 5, is highly objectionable. It will be better to cite here the remarks of Mr. Reynolds on the corresponding section of the Rent Commission Bill:—"The really valid objections to the principle of the measure lie on the surface. It is an arbitrary rule overriding custom and contract and placing a number of persons in a position which they never desired or intended to fill. It trenches upon the rights of the zemindar by creating tenures without their consent. It cuts the knot instead of untying it and sets aside the present law and existing engagements in order to provide for a class of cases which cannot after all be very numerous." The presumption created under sec. 5, sub-section 5, is not warranted by existing circumstances. Undue encouragement should not be afforded to the increase in the number of tenure-holders. Why should the relation existing between the landlord and his tenant undergo a change solely by the act of one of the parties without the consent of the other party, namely the landlord.

But the principal objection to the provisions of this Chapter and to sec. 37 is that they will increase the chain of middlemen between the proprietor and the actual cultivator of the soil. The position of the under-raiyats will be pitiable in the extreme. Of course, it is admitted on all sides that it is inexpedient to put a stop to sub-letting altogether, but that is no reason why facility should be given to the growth of so many sub-tenures of a novel kind.

CHAPTER III.

Sec. 7, Sub-Sec. 1.—The use of the word "customary rate" in this sub-section would create much confusion. As a matter of fact, customary rate, as it was understood in the Regulations, does not exist. It would be better to substitute the words "prevailing rate."

Sec. 7, Sub-Sec. 3.—The existing law relating to enhancement of rent of tenures should be affirmed. It is not expedient nor necessary to make any change in it.

Sub-Sec. 3, Clause (a).—It would be unjust to the landlord to apply the provisions of this clause, where the tenure was originally granted for clearance of jungles, and in consideration of which a low rent was fixed. In this case when a landlord subsequently demands an increase of rent it would not be fair to take into consideration as to who cleared the jungles, because the tenant took the tenure with condition that he would bring it into a state of cultivation, and for this he got a very low rate fixed.

Clause (c).—Would the cost of collection mean the actual cost incurred by the tenure-holder or the ordinary cost of collection generally incurred by landlord? If the former, it would not be just to the proprietor or the superior tenure-holder.

Secs. 8, 9, & 10.—These sections are very hard and unjust towards the zemindars. Tenure-holders are generally influential classes of persons, and they can well afford to pay the increase demanded. Besides, where a very low rent was originally fixed, as in the instance given in note on Sec. 7, Sub-Sec. 3 (a), it would be very unjust to limit the zemindar to double the original rent.

Sec. 11.—In the heading of the section are the words "other incidents of tenures," but the section deals with only permanent tenures. What are permanent tenures? Are they tenures contemplated in section 6 of the Bill? The Bill defines tenure-holders. Are they also define what are permanent tenures, at least give illustrations of them. Permanent tenure as understood in this country is generally a tenure that is held in perpetuity and at fixed rents, and descends from generation to generation. Some such definition or description is necessary in order that raiyats converted into tenure-holders by provisions of the Bill may not put forward frivolous claims to be considered as permanent tenure-holders.

Sec. 15, Sub-Sec. 1.—"On the joint application of the transferer and the transferee."—Provisions should be made in case where, as between the transferer and the transferee, one party is willing and the other is not willing to apply to the zemindar for registering the transfer.

Sec. 21.—"Or any share thereof."—Section 26 of the present Rent Act (Act VIII of 1869 B. C.) guards against the division of rent which may be caused by the transfer of a portion of a tenure, by enacting "that no zemindar or superior tenant shall be required to admit to registry, or give effect to any division or distribution of the rent payable on account of any such tenure nor shall any such division or distribution of rent be valid and binding with-

out the consent in writing of the zemindar or the superior tenant." Section 97 of the Bill also makes provision against the transfer of a portion of a holding. The definition of the word "holding" would seem to include a tenure, but this should be made clearer.

CHAPTER IV.

Raiyats holding at a fixed rent or rate of rent.

It is unjust to promote these raiyats to the position of tenure-holders. It has been held by the High Court that the status of these tenants is not higher than that of the occupancy tenants. The only superior advantage they enjoy is that by the operation of the rule of presumption they are entitled to sit at fixed rates. In other respects their status is the same as that of occupancy tenants.

CHAPTER V.

S. S. 25, &c.—It is important to remember how these sections came to be engrafted on the Bill of 1883. The Government of India originally proposed that occupancy right should attach to all raiyatty land and should be enjoyed by all settled raiyats, nomad raiyats and under raiyats being excluded (*vide* its letter to the Secretary of State for India, dated 21st March 1882, para. 62.) This most revolutionary principle was of course not sanctioned by the Secretary of State for India, who, in his letter, dated 17th August 1882, despatched to the Government of India, thus observes:—"Your proposal, in the first place, annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the raiyats their original position and rights, appears to me anomalous and undesirable." Then the Secretary of State proceeds to state how legislation on this point might be made without sacrificing the principle of Act X of 1859, and makes the suggestion that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years. It was thus that the above sections came to have a place in the said Bill. While every credit is due to the Secretary of State for India for his laudable desire to preserving the long standing distinction between khudkasht and pyekasht tenants, it must however be observed that this distinction is practically done away with in the Bill. The suggestions made by the Secretary of State himself are scarcely sufficient enough to keep the distinction, and of this the Government of India was well aware, for it thus observes in its letter, dated 17th October, 1882:—"Nor do we conceive that our proposal differs more widely from the principle of Act X of 1859 than that which your Lordship has submitted for consideration. That proposal, equally our own, ignores (all distinction based on residence." Here it must be observed that the object of the Secretary of State was not to ignore the distinction, although the suggestions he makes to carry out that object has the effect of ignoring the distinction. It is not proposed here to discuss the rights and status of khudkasht ryots. It is a subject on which much can be said from the zemindars' point of view; besides it is admitted on all hands that whatever rights they had, have been lost in obscurity and now it is almost impossible to trace those rights. Mr. Justice Steers in the great rent case observes thus:—"To be a khudkasht ryot at all, implies that the ryot must not only be a cultivator of lands belonging to the village in which he resides, but he must be a hereditary husbandman. A khudkasht right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, been laid down what exact length of holding gives a title to a tenant to consider himself a khudkasht ryot." Mr. Mackenzie who takes so much pleasure in ridiculing Mr. Justice Steer, admits that "it is perhaps in the present day impossible and useless to attempt to rehabilitate the khudkasht or resident ryot." Then he says some prescriptive test of residence must be adopted, but in his opinion long time is not the essence of khudkasht ryot's title. What is necessary to see is that the ryot "gives reasonable evidence of his intention to cultivate permanently," and that three years is sufficient to raise the presumption of such an intention. So the right which in the opinion of Justice Steer is not acquired in a day, and which Mr. Mackenzie modestly says must take at least three years to acquire, is under the sections of the Bill given to a ryot the moment he touches the land. As to the opinion of Mr. Mackenzie, it is sufficient to quote what Sir John Shore, afterwards Lord Teignmouth, says on this point. Regarding questions of this nature, the opinion of one who wrote his minute only 28 years after the East India Company had acquired the Dewany should be more valued than that of a gentleman occupying the position of Mr. Mackenzie. Sir John Shore in paragraph 389 of his minute of June 1789 given in Vol. I of the Fifth Report thus says of the khudkasht ryot:—"It is, however, generally understood, that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property." But Mr. Mackenzie cites another passage from the minute of Sir John Shore, which occurs in paragraph 225 and is to this effect:—"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 rent." Mr. Mackenzie lays much stress on the words "other" and contends that time is not essential to the acquiring of khudkasht tenure; but he does not explain what the "other cause" is, and

well might he omit to give any explanation of it, for the very affirmation of the existence of some other cause precludes the supposition that mere residence was enough for the conferring of the right of occupancy. The other causes not having been explained or being untraceable, the only ostensible ground whereon the right is known to exist is prescription. It appears from Mr. Mackenzie's quotations that pottahs to the khudkasht ryots, or those who cultivated the land of the village where they resided were given without limitation of period, the reason being that pottahs prescribing time would have been regarded, as Sir John Shore says, as diminishing the force of prescription which had established a right of occupancy in favour of the ryots. It is therefore wrong to say that length of time is not the essence of the right. This length of time was cut down to 12 years by Act X of 1859. Mr. Mackenzie was for shortening the period to three years, and the present Bill swept away time altogether.

VILLAGE.

Sections 25 & 27.—Mr. Justice Field thus remarks in his notes appended to the Rent Commission:—

"The village community, if it ever existed in Lower Bengal, has long been broken up, and the definition of a 'village' would raise insuperable difficulties. Doubtless this was felt by the framers of Act X of 1859, and influenced them to abandon the element 'residence in the village.'"

The definition given by the Bill of the word "village" does not remove the difficulties referred to by Mr. Justice Field. It would create a good deal of confusion. It might happen that the area of two or three villages belonging to different zemindars might be included in a village map of the revenue survey and thus form one village. The result would be that a ryot holding for 12 years ryotty land in a village belonging to one zemindar would acquire right of occupancy in the land of another village belonging to a different zemindar from the moment of his taking settlement of such land. Again the provision empowering a settled ryot in an estate to acquire right of occupancy to all lands held by him in that estate would create great difficulties, specially where large estates are concerned. The select committee are aware of this difficulty. It is submitted that the words "estate and village" in sections 25 & 26 be omitted, and in their place the word "*manza*" be substituted.

Section 26, Sub-sec. 2.—In this sub-section it is laid down that a ryot should be presumed to be an occupancy ryot until the contrary is shown. In letter No. 54, dated 17th August 1882, already referred to, the Secretary of State condemned in strongest terms the proposal of the Government of India to attach occupancy right to all ryotty lands. According to the Secretary of State such a proposal was against the ancient custom and the existing law of Bengal; yet the Revised Tenancy Bill adopts it in a somewhat modified form. If according to the Secretary of State a provision which lays down that all ryotty tenures are occupancy tenures, is against the customary and settled law of Bengal, then a presumption to the same effect is equally so. Besides it will not be easy for zemindars to rebut such a presumption considering that under the Bill, the holding of lands under other landholders included in the same estate, or in a common village map, or in different estates created since the 1st of January 1853, for a period of 12 years, would confer the status of a settled ryot.

Section 31, Clause (a).—This is a very wide provision. The powers given under it should be clearly defined. Suppose a ryot take land for the purpose of cultivation, can he grow orchard upon it? It would seem as if under this clause, he could—but this would be injuring landlord's interest, and unduly favoring the ryots. The zemindar is deprived of his half share of the fruits which he could have got had he made settlement of the land for orchard purposes; he could also have got a higher rate of rent if the settlement had been a *Nukdee* one. It may be useful to cite the words of Sir John Shore on this point—speaking of the khudkasht ryots, he says that these "ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon and the zemindars demand and exact the difference." *Vide* the minute of Sir John Shore, paragraph 406, pp. 162—53, Vol. I. Fifth Report. One species of cultivation may be changed for another without rendering the land unfit for the purposes of tenancy, but this would be interfering with the rights of the zemindars.

Section 31, Clause (f).—Mr. Reynolds admits that "there are historical grounds for saying that the right was not originally transferable by sale, by gift, or by will, though no doubt the reservation made in 1793 would fully justify the legislature in declaring it to be so transferable now, if good reasons for the change could be assigned." The latter part of the passage is not based on valid reasoning. If the ryots had not originally a particular right, and the creation of it in their favor would affect the landholding class, ought not the latter to be compensated, and ought the right to be created unless there be very cogent reasons for it? It is said that it is for the good of the ryots that the right should be given to them, and that the Legislature is empowered by the reservation clause in the Permanent Settlement Code to confer the right. But there are many things which might do good to ryots, and yet it would not be reasonable or just to bring them about by legislation, specially when such legislation would trench upon the rights belonging to another class of the community. In the memorial submitted to Government from this Division in January last, the clause in question was

discussed, and therefore it is not necessary to dwell upon the subject in these notes. Granting that the Government has the power claimed by Mr. Reynolds in its behalf, it may be asked, is it good for the ryot that he should have this power given him. The arguments adduced by the Rent Commission against the power to mortgage apply with equal force to the power of sale. It is admitted that the ryot is improvident in his habits, that a wedding or a *sradh* turns his brain. "A bad season, sickness, or not uncommonly his own improvidence prevents him from repaying the loan, which is rapidly swelled by interest." Besides, from the Supplement to the *Calcutta Gazette* of July last, it appears that sale of occupancy jotes by Sonthal ryots is bearing disastrous fruits in the Sonthal Pergunnahs; and there is not the least doubt that the evil effects will be felt throughout Bengal and Behar if occupancy ryots are given power of transfer.

Section 31, Clause (h).—"His right of occupancy shall be extinguished."—Why not retain the words of the Bill of 1883—"his right in the land shall go to the landlord."

Section 32, Sub-section 2.—The words "and any other particulars which it is necessary the purchasers should know," should be added after the word "incumbrances."

As a restriction on transfer, it may be provided that no holding should be transferred in respect of which arrears of rent are due.

Section 32, Sub-section 4.—The words "on plain paper" should be inserted after the word "application."

The latter part of the sub-section is objectionable. It is difficult to see why all the procedure laid down in the former part of the section should be resorted to, if the ryot is simply made to abstain from selling the land.

Section 34.—The tenant, before he mortgages his holding to a third party, should be required to give notice to the landlord, so that the landlord might, if he so wishes, advance the money on the security of the holding. The notice should state why the money is required, and such particulars as a person advancing money should know, should also be inserted.

Section 35.—The landlord, as was provided in the Bill of 1883, should be given the power to purchase the holding from the donee.

Sections 37—38.—Remarks on "restrictions on subletting" have already been made, therefore it is not necessary to repeat them here.

ENHANCEMENT.

Sections 39—50.—The observations made on this head in reply to the letter of the Commissioner of this Division are reproduced here:—

"While the Committee admit that the omission of the gross produce limit is an improvement in the Revised Bill, they at the same time are bound to say that the effect of the improvement is rendered *nil* by the provision which would limit the percentage of increase. This limitation is against the customary law of the country. It has always been the practice that lands when they are in a state of reclamation, are let out at very low rates, but when cultivation is developed, full rates are charged for the same. Again, it appears from the minute of Lord Cornwallis that an assurance was given to the zemindars that they would reap the benefit of an increase which they might expect to derive by inducing the ryots to grow more valuable crops. But the Bill breaks the pledge by imposing an arbitrary limit on the percentage of increase. Again, by fettering the freedom of contract, the Bill prevents ryots, who would have most gladly agreed, in many instances, to an increase beyond the limits contemplated by the Bill, from doing so. All that a Court of Justice need see is whether a ryot is a free agent in any contract of enhancement. If in transactions of more complicated nature, a court can arrive at a satisfactory conclusion on this point, it is not probable that there should be any great difficulty when the contract relates to matters of rent. The Committee fail to see why the legislature which would leave freedom of contract to poor and ignorant coolies when they engage to transport themselves to foreign and out-of-way places, should deny the same in case of ryots (many of whom, it is admitted, are more powerful than the zemindars) who would but gladly agree to an increase of rent in consideration of the profits they derive from their land. The Committee do not approve of the provisions laid down in sections 49 & 50. These would make enhancement practically impossible, regard being had to the already too many restrictions laid down in the previous sections."

In connection with this subject of the percentage of increase, it may be interesting to state how Government deals with its own tenants. The following will show what the rate of Government assessment is:—In reply to a question put by Mr. Woodal in the House of Commons on the 18th of August 1883, to Mr. Cross, the latter gentleman stated thus: "the average percentage increase of assessment effected by the revision is about in the North-West Provinces 14 per cent., in the Punjab 7 per cent., and in Bombay 32 per cent. * * *

* * * In Upper India, that is, the North-West Provinces and the Punjab, the assessment is a proportion of the rental value of the estate. Under the expired settlement the proportion was two-thirds. Under the revised settlement it is half of the rental value. But the rental has increased so much that the lower proportion now yields more revenue than the higher proportion yielded formerly. There are three reasons for this increase—Extension of cultivation, rise of prices, and improvements such as canals made by the Government."

If the Government is entitled to reap the advantages of the conditions set forth in the concluding portion of the above extract, why should not a private person be similarly entitled.

Section 34, Clause (b).—To regulate rents with reference only to prices of staple food-crops would be very unfair to zemindars. The minute of Lord Cornwallis has already been referred to. There occurs the following passage in his minute dated 3rd February 1790:—

"The rent of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce and to clear the extensive tracts of waste land which are to be found in almost every zemindary of Bengal." As a matter of fact, sugarcane and other valuable articles are grown in this district on lands producing staple food-crops; in such cases it would manifestly be unjust to the zemindar to make the adjustment of rents depend upon the rise in price of staple food-crops.

The second ground of the present law has been divided into clauses (b), (c), and (d) of the Bill. But these clauses do not exhaust all cases; hence the omission of the latter part of the second ground of the present law, namely the words: "Otherwise than by the agency or at the expense of the ryot" is inexpedient. The Full Bench case of Poolin Behary Sen *versus* Watson & Co., reported in 9, Weekly Reporter, 150 F. B. gives instances governed by the latter portion of the 2nd ground of the present law. There it is said that an enhancement of rent can be had under the clause in question "where the increase has resulted from additional productiveness in the soil arising out of fertilising deposit or from increased facilities for disposing of the produce arising out of the construction of protecting embankments, or the introduction of railways, or the rise of new markets, or the generally increased facilities of communication which are caused by construction of ordinary metalled roads." It may be said that increase due to fertilising deposit is covered by clause (d) of the Bill. But what of the other illustrations given? Clause (c), section 134 of the Bill would hardly cover such cases, for its application is restricted to tracts where a table of rate is in force, and not to tracts where enhancement would be sought in the ordinary course. Therefore it is unjust to deprive the zemindars of the profit which they might expect to derive in cases not covered by clauses (c) and (d) of section 43 of the Bill. Such cases could come within the latter portion of the second ground of enhancement in the present law, and it is not fair to omit it in the Bill without inserting in its place any adequate substitute.

Sec. 44, clause (a).—Supposing an occupancy tenant pays 1 rupee per bigha, the prevailing rate is Rs. 2 per bigha; then why should the Court be debarred from decreeing more than 1 rupee 8 annas per bigha.

Sec. 46.—Cases might happen in which ryots would willingly pay higher rents if their landlords were to construct a particular work of improvement for instance, the digging of a canal or the raising of an embankment. In such cases it would be an act of grossest injustice to limit the landlord to the rate provided in section 41. As to section 46, sub-clauses (iii) and (iv) of clause (b) would not certainly encourage landlord to undertake extensive works of improvement. It would but be a poor requital for all the trouble and expense he had undergone, to be told that the land is not capable of bearing a higher rent, or that the tenant has incurred so much cost for utilising the improvement.

Sec. 49.—The provision about progressive increase is a new one. If a tenure is legally enhanceable, there is no reason why the enhancement should be made to extend over five years till the limit prescribed by law is reached. There never occurred any case in which any such difficulty as contemplated by the section had been felt. No ryot ever made a defence in any enhancement suit to this effect, that he would be most glad to pay enhanced rent demanded, only that the Court might order him to pay the full rate in the fifth year. Of course now that the section is framed, there will be plenty of such defences. In short, this section creates difficulty where there was none.

Sec. 50.—15 years is too long.

PRICE LISTS.

Sec. 52.—Considering the fluctuation of prices and that the same crop that is sold for a certain price in a particular market is sold at a different price in another market only a few miles off from the first one, it will not always be safe to base enhancement on price lists. Besides, any attempt to verify the price lists of the last 15 years is not likely to be successful.

Sec. 53, sub-sec. 1.—No commutation without the consent of both landlord and tenant should be allowed.

Sec. 53, sub-sec. (a).—It is unfair to the landlord that in fixing the money-rent, regard should be had to the average money-rent payable by occupancy tenants for land of a similar description. This will tend to lower the rent which the zemindar used to receive before the commutation; when a long average is taken one does not see the propriety of referring to the money-rent payable by occupancy ryots for purposes of comparison.

CHAPTER VI.

NON-OCCUPANCY TENANTS.

The principles underlying this chapter, like those of the preceding chapters of the Bill, are opposed to the customary law of the country. The Bill gives the tenants-at-will power which they never enjoyed under the ancient laws of the land. The relation between this class of tenants and their landlord was always left to be governed by mutual contract. In the Statement of Objects and Reasons appended to the Bill of 1883, it is stated that "it is desirable to interfere as little as possible between tenants of this class and their landlords;" yet it is seen that the Bill interferes as much as it can between them. It is observed in the said statement further on that they (the tenants in question) should not be exposed to arbitrary rack-renting and evictions at the hands of their landlords. But where is the proof that these tenants are exposed to such treatment at the hands of their landlords? As to the charge of rack-renting hurled against Behar zemindars, the Committee would refer to the following extract which appeared in a local newspaper on the occasion of the visit of His Honour the Lieutenant-Governor to this district in 1883. "A good deal has been said about rack-renting and the down-trodden and miserable condition of the peasantry in Behar. It would be satisfactory if His Honour were to make personal enquiry on these points by visiting the estates of some of the principal zemindars in Behar; the archives of the Bengal office contain more than one resolution of the time of his predecessor regarding rack-rent in the estate of Kharackpur belonging to the Baneli Raj, but we are informed by Moulvi Abdul Majid, the present Settlement Officer of that estate, who is a Government officer of much experience in settlement works and a native of the district of Burdwan, and also connected with landed property there, that rents in Kharackpur are not higher than in that district. And it is a well-known fact that rents are very low in North Bhagalpur, where there is a demand for cultivators, not for land. His Honour should know something, too, about the extensive estate of Dharampur in the district of Purneah, belonging to Raj Darbhanga, in order to decide whether there is need for a new Rent Law in this division."

Again, the provisions relating to compensation for disturbance which were inserted in the Bill of 1883 for the protection of tenants from the so-called arbitrary evictions were universally condemned. If they had been subjected to evictions, such an opposition to a provision meant for a check to eviction could not have been raised. Are these tenants in a worse position than their brothers in khas mehals? On the contrary, their position is infinitely superior. The opinions given by the officers of Government and other independent persons on the Bill of 1883 do not establish the necessity of legislation for this class of tenants. Of course if the Government wants to give rights of occupancy to any and every person who happens to take settlement of an inch of land, it is at liberty to do so. But why not say this in plain terms; why have recourse to such complicated devices as the provisions relating to compensation for disturbance or judicial lease are in order to create rights of occupancy? The whole of this chapter teems with provisions which are serious encroachments on the rights of the zemindars.

Sec. 60, sub-section 7.—The words "unless he has acquired a right of occupancy" should be omitted. The growth of the right of occupancy should be in abeyance during the period of five years prescribed in the section. Under the Irish Land Law Act, an ordinary tenant holding for 80 years under a judicial lease continues to be a tenant from year to year on the expiration of his term. It would be impracticable on the part of the zemindar to eject the tenant if occupancy right is allowed to accrue during the period prescribed in the section.

CHAPTER VIII.

It is now generally admitted that the rule of presumption laid down in section 4 of the present law and reproduced in Chapter VIII of the Bill works hard on the zemindar. It is now too late to insist on its total abolition, but it should be modified on the lines suggested by Mr. Reynolds. Most of the judicial officers of this district are of opinion that the presumption works very hard on the zemindars, who find it in many instances very difficult to rebut it, and that in the majority of enhancement suits the plea of 20 years' uniform payment is falsely set up by the tenant.

Section 64, sub-section (3).—With regard to section 64 (3) it is necessary to point out that as the presumption of 20 years is applicable to produce rents, it is worthy of consideration what the effect of commutation (section 53) at the instance of the tenant or at the instance of the landlord would be on the power of the latter to seek enhancement in the future. A tenant applies for commutation, but the zemindar is not willing that the produce rent should be commuted in money, the prayer is however granted; when produce rent was paid, the landlord used to benefit to the extent of his share by an increase in produce as well as by an increase in prices; the commutation having been made on the basis of prices and produce as obtaining in the past, would the landlord suffer for deterioration in the value of money, through the commuted rent being deemed to be non-enhanceable in future, or would an enhancement be permitted? If the produce rent had not been commuted, the landlord would have reaped the benefit of increased prices and increased produce. He should not lose this benefit because the grain rent has undergone commutation in money.

PAYMENT OF RENT.

Section 67 (2, 3, 4).—Provision should be made for the exemption of such areas from the operation of these rules, where the ryots and the landlords jointly apply to be so exempted. In the majority of cases the parties find it to their own convenience to settle the instalments in which rent is to be paid, and any inflexible rule framed by Government may work great hardship in such cases.

RECEIPTS AND ACCOUNTS.

These rules will tell hard upon petty landed proprietors. It is absurd to expect that a poor and ignorant Brahmin owing 25 bighas of brohmutter land would be able to comply with the provisions of these sections.

Section 72 (3).—This sub-section should be omitted. If a landlord does not keep a counterfoil, it will be to his own injury when a ryot pleads payment in a rent suit and produces fabricated receipt in support of his plea. This will be sufficient punishment for the zemindar, and he need not be fined at all.

DEPOSIT OF RENT.

Section 73.—The provisions of this section will encourage hostile tenants to harass their landlords with frequent deposits, even where there exists no real ground for making such deposits. The ryot should be required to put in a verified application for making deposit so that he may be prosecuted if the statements made in the application prove false.

Sections 81 & 82.—The provisions of these sections create innumerable difficulties in the way of realizing rents in kind. Of course when a new provision is made, people will not be found wanting to take advantage of it. But the question is whether there is any necessity for these provisions. As far as this division is concerned, disputes as to howli rent are not frequent. Landlords and tenants settle these matters among themselves. If any difference arises, of course they go to the Civil Court; but the present provisions do not pretend to make a final settlement of such disputes. On the contrary, it is seen that under section 82 (5) the Collector may refer any such dispute to a Civil Court. Then why all this expense for carrying out the provisions of sections 81 & 82? Let the matter be litigated once for all in the Civil Court; and if necessity arises, the Civil Court may send an Amin to make a division, or depute any other person to carry out its order. As to apprehension of disputes, it may be interesting here to cite the following from the report of Mr. Kemble, Collector of Gya, dated 20th January 1881. "As regards dispute about division of crop, no one has ever raised that objection to me. Disputes arise, no doubt, but I do not think they are so numerous or of so serious a nature as to be made a reason for changing a system."

Section 83.—A penal clause should be added if the tenant removes any portion of the crop before actual division. *Sub-section (4)* is not sufficient for the protection of the interest of the landlord.

CHAPTER IX.

IMPROVEMENTS.

Regard being had to the fact that all substantive improvements are made by the landlords the sections relating to improvements are not necessary. But as giving encouragement to tenants to undertake works of improvement, the Committee would retain the sections, but with modifications. The non-occupancy tenants who have no permanent interest in the soil should not in any case be allowed to make improvements without the permission of landlord. The occupancy tenants and tenants with fixed rates should, when they are desirous of making any improvement, apply to the landlord for permission to make such improvement. In case permission is not given, the tenant may apply to the Collector or any officer to be appointed by Government in this behalf for such a permission. The Collector or such other officer on receipt of the application shall call upon the landlord to show cause within a certain period why such a permission should not be given. If the landlord on the appointed day appears and shows sufficient cause why permission should not be given; the Collector or such other officer shall refuse permission; but if on that date the landlord fails to appear, or after appearing fails to shew any sufficient cause, the Collector or such other officer may grant permission to the tenant to make improvement. But in every case, whether permission is given by the Collector or by the landlord, the tenant should be required to furnish a substantial security to the landlord for any injury or damage that might happen to the land. For instance, the tenant in a fit of zeal might set to constructing a water-course or embankment, or digging a tank or well. After a short time his zeal subsides, or he happens to be short of funds, and he leaves the work incomplete, thus permanently injuring the land. Such contingencies, the Committee think, should be provided for, and the provision given in the Bill empowering the Collector to decide whether a particular work is improvement or not is not sufficient for the purpose stated above.

In this district the principal works of improvement are artificial water-courses and embankments, and these are invariably constructed by the zemindars, the ryots neither having the means nor inclination to undertake the same.

Section 87 (2) d.—When a ryot takes settlement of a land, it is but natural that he would, for the purposes of cultivation, reclaim any portion which was lying waste, or clear the jungle, or construct fences for security of the crops; and to give him compensation for this would simply be absurd—he might as well claim compensation for ploughing or watering his fields.

Section 87 (2) f.—How is dwelling-house an improvement? It does not fall within the list of improvements given in the North-Western Provinces Rent Act. Under the present law as interpreted in a long series of decisions of the High Court, a tenant cannot build without the permission of his landlord; but the Bill gives even the non-occupancy tenant power to build pucca houses without the permission of his landlord. This is highly unjust, and will entail loss on the zemindar, who might have given a building lease of that land to another person at a more favourable rate.

Section 91 (1).—Although the word "may" occurs in this sub-section, this section read along with section 46, clause (a), makes it virtually compulsory on the landlords to register improvements. It would be very hard upon zemindars if they are required to register improvements made long before the commencement of this Act.

ABANDONMENT.

Section 96 (3).—This section leaves the zemindar completely at the mercy of his tenants. The tenant may go away at any time he chooses; may again come back to claim possession. This of course will be harassing the zemindar and entailing loss upon him. The latter part of the sub-section will be hardly sufficient to protect his interests. Besides the payment of compensation, the recusant tenant should invariably be required to pay a certain sum of money as fine to his zemindar for re-entry, if the section should stand.

MEASUREMENT.

Section 99.—Why should not the landlord be entitled to measure his own lands except once in ten years? This is certainly unjust. Occasions may arise when it would be necessary, for him to measure the land; for instance, when a neighbouring proprietor encroaches upon his land, or that his own tenants claim more land than what has been originally settled with them. In such cases it may be necessary to measure the lands.

Section 101 (3).—Provision should be made to enable the zemindar to file any objection to the rules, and move the Local Government for the alteration or amendment of any such rules.

MANAGERS.

Sections 102-109.—If the co-owners cannot agree among themselves they have remedy by applying for partition. It would be unjust to appoint a manager at the instance of one or more co-owners against the wishes of the other co-owners. The latter would be but too glad to manage their own shares. These sections interfere with the right of enjoyment of property. If any difficulty is felt by the tenant in the way of paying rent, he may avail himself of the sections relating to deposit of rent. So there is no necessity for these sections. There would be constant friction between the manager and the co-owner or co-owners against whose wish he may be appointed, and the estate would after all go to ruin.

CHAPTER X.

RECORD-OF-RIGHT AND SETTLEMENT OF RENT.

The Committee would remark that there can be no reasonable objection to the provisions relating to the preparation of record-of-rights, provided the expenses be borne by the applicant. of applicants, at whose instance the record is to be prepared, or by the State. As to the particulars given in section 3, the Committee would suggest that in cases of tenure-holders, the description of the tenure might be added. For instance, whether it is a *mocurrures*, *punti*, or any other kind of tenure, or whether it is a tenure so created by reason of an occupancy tenant subletting more than half of his holding; also whether any improvement, as defined in the Bill, has been made on the land or not should be stated, and if any, by whom. As to the procedure laid down in case of disputed entries, it is in the opinion of the Committee rather a complicated and expensive one. It will necessitate on the part of the Government the maintenance of separate establishment, and add to the cost of the parties. All this might be prevented if power is given to the parties, in case of disputed entries, to bring a suit in the Civil Court for the rectification of any entry which they think to be wrong. The Civil Court have in many cases already to decide on many of the particulars stated in section 3; and in cases where personal investigation is necessary, the Court may send an Amin. The record should be amended according to the decree of the Civil Court, or the decree finally passed on appeal, where such appeal is preferred.

The provisions relating to settlement of rent are quite unnecessary. They will in many cases encourage litigation. The revenue officers are vested with large powers. It would

appear that under sub section 3, section 118, a revenue officer can lower existing rent. This is unjust and will tell hard on the zemindars. When the settlement officer comes to a particular area to settle the rents, the ryots are surely to apply to him to get their rents lowered, and this would lead to friction with the zemindars, who on their part would try to get the rent enhanced. It is unsafe to vest executive officers with judicial authority in such matters, especially where there are already provisions in the Bill for enhancement and abatement of rent. The Committee strongly disapprove of this dual procedure which would give concurrent jurisdiction to the revenue officers with the Civil Court in such important matters as settlement of rent, and would ultimately increase litigation and embitter the feelings of the zemindars towards their tenants and *vice versa*.

Section 118, sub section 3.—As has been remarked above, the revenue officer can lower existing rent if he thinks the lower rate to be fair and equitable. This is, of course, arming the revenue officer with extraordinary powers. What serious loss it would be to the zemindars if the revenue officer were to go on reducing the rents of entire villages.

Here also, instead of maintaining special Judges, power may be given to parties to get the order of the settlement officer amended, altered, or set aside by the Civil Court.

CHAPTER XI.

The provisions relating to table of rates have been declared by the Local Government in its letter dated 27th September 1883 to be unworkable. This chapter should be omitted from the Bill.

CHAPTER XII.

This chapter contains provisions revolutionary in their nature, inasmuch as they materially affect the proprietary rights of the zemindars. The plea for enacting these provisions set forth in the Statement of Objects and Reasons, appended to the Bill of 1883, is as follows:—“Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country, under the existing law to get into their own hands as large an amount of the ryotty land as possible and convert it into khamar land, it has been thought necessary to make it clear by the definition that the existing stock of khamar land cannot hereafter be increased, and further to enact (section 6) that all land which is not khamar land shall be deemed to be ryotty land, and that all lands shall be presumed to be ryotty land until the contrary is proved.”

“In Behar, owing to large extent of the khamar or as it is there termed ‘zeraat’ land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance.”

Two things are alleged in the above extract:—

(1) In some parts of the country, efforts are made by landlords to convert ryotty land into khamar land.

(2) That this practice largely obtains with the Behar zemindars.

Now as regards the first allegation, it is admitted that only in some parts of the country the practice complained of prevails. Then why make the chapter general in its application? The Bill in the Bill framed by them. Chapter XII lays down some special provisions for Behar; but even that chapter does not lay down any distinction, or make any presumption, as is found in chapter XII of the Revised Tenancy Bill. After giving full consideration to the suggestions of the Behar Rent Committee, the Rent Commission in paragraph 156 of their report thus observe:—“It appears to us that the most important objects of legislation for Behar are to protect the ryots from illegal distraint, illegal enhancement, and illegal cesses, to enable them to protect the ryots rights of occupancy, and to suppress various modes of oppression incident to the collection of rent in kind. * * * We think that special provisions for Behar contained in chapter xii effectuated by legislation.” Had there been a dominant practice on the part of Behar zemindars to convert ryotty land into khamar land, it would not have escaped the observation of the Rent Commission. But there is no device in their Bill to prevent a zemindar from lawfully increasing the stock of his khamar land. The definition they give of ziraat land (*vide* section 81 of their Bill) certainly does not go that length. These revolutionary principles were first introduced by the Bengal Government in its Bill submitted to the Government of India (*vide* section 19 expl. iv. clause (f) proviso and section 75 of the Bill). In justification of the introduction of these principles, the Lieutenant-Governor, in paragraph 25 of his letter, dated 27th July 1881, submitting the Bill to the Supreme Government, thus observes:—“Now there are in many estates lands which are recognised as the proprietor's private lands known as khamar, nij-jote, or sir land in Bengal, and as zeraat in Behar. In these lands, under the present rent law, a ryot may not acquire a right of occupancy so long as the zemindar chooses to let him the land only for a term, or year by year. In such lands the zemindar can always prevent the accrual of rights of occupancy without making any special stipulations against this. Naturally, therefore, the zemindar would be glad to have as much of land in his estate as possible classed as khamar or private land. But there is nothing which village feeling resents more bitterly than the absorption of ryotty lands into khamar. So generally is the custom of

the country recognised in respect of such lands, that if a zemindar wants a plot of land in the occupation of a ryot for a garden or a house, he takes a formal sub-lease of it from the occupant, or purchases the right of such occupant, and enters himself in village papers as the ryot (not as zemindar) in respect of such plot or ground. The bold assertion now-a-days of high English notions of proprietary rights makes it, however, desirable to throw the shield of positive law over the ryotty lands of the village, and this has been done in the present Bill.” Now this extract goes to show that the zemindar *would be glad* to convert ryotty land into khamar if he could. But any such act is bitterly resented by the people; and so jealous are they of their rights that when the zemindar wants a plot of ground for his house or garden he has to take settlement of it, or purchase it from the occupant, and then to enter himself in the village paper as ryot, not zemindar; and that the assertion of high English notions of proprietary rights has rendered the introduction of such a measure necessary. This testimony is of the greatest value, as it shows that as a matter of fact the zemindars do not convert ryotty lands into khamar, but that the provisions are laid down, in order to baffle any such future attempts on their part. Besides in the minutes written by the officials of the Patna Division which are published in the Report of the Government of Bengal on the proposed amendment of the law of landlord and tenant in that province with a Revised Bill, Volume II, pages 228-68, no such allegation is made against the Behar landlords. Thus it has satisfactorily been shown that the justification for chapter xii as given in the Statement of Object and Reason wholly fails. There may be some instances of unlawful ejectment and absorption of the holding into *zeraat*, but unless the practice were to be very general extending over all the districts, it would not be worth the while of the legislature to lay down any special provisions on the subject. This Division is classed with Behar for certain purposes, but the charge of changing and chopping the holdings of ryots and their conversion into khamar lands is not applicable to it.

The Revised Tenancy Bill has omitted some of the objectionable provisions of chapter ii of the Bill of 1883, but it retains in a modified shape the presumption laid down in section 6 of that Bill. Section 138 (2) of the Revised Tenancy Bill lays down that the Revenue officer “shall presume that land is not a proprietor's private land until the contrary is shown.” Now it will be necessary to refer again to the Bengal Government letter dated 27th July 1881 from which extracts have been already cited. In paragraph 25 of that letter, His Honour thus observes on the origin of khamar land:—“Khamar was the waste unreclaimed or surplus land of the village which the zemindar was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with Government, but which, as cultivators settled on it, became part of the ryotty land of the village. * * * There is no doubt that most of what is now admittedly ryotty land was originally khamar.” So it is admitted that all lands were originally the zemindar's khamar or private land, although there is no authority for holding that the moment a ryot takes settlement of such land, it turns ryotty. Next it may be observed that sections 52 of Regulation VIII of 1793 gives absolute power to the zemindar to dispose of the “remaining land” in any way he pleases, meaning lands “remaining over and above the land held by the mukarraridars, istemraridars and dependent talookdars.” Lastly, it should be seen what view the Government of India took in 1815 of the powers of zemindars in respect of such lands. In Revenue letter dated 7th October 1815, addressed to the Court of Directors, this observation occurs:—“In like manner, the zemindar in this country, in holding his estate subject to certain restrictions with respect to the right of the resident ryots, does not the less enjoy the power of managing those lands on which no resident ryots are established in any mode he may judge proper, of collecting the rents of the whole through what channel he may deem best suited to his convenience, of providing for the cultivation of waste lands, of improving the general condition of the estate, and finally of enjoying the surplus revenue, whatever it may be, after paying the regulated assessment to Government.” Now if the Lieutenant-Governor admitted in 1883 that all lands were originally the private lands of zemindars, if the Government of India conceded in 1815 the absolute power of the zemindars over all lands not held by resident ryots, if the Permanent Settlement Code of 1793 gave absolute power of disposal to the zemindars as to these lands, why should the Revenue Officer presume that such lands are not the private lands of the zemindars? Lastly, the definition given in section 138 (1) of khamar lands is opposed, as is shown from the foregoing extracts, to the customary and settled law of the land. If the zemindar is the *malik* of all such lands situate within the zemindari, why should cultivation by him for 12 years be required to give them the character of khamar lands?

CHAPTER XIII.

DISTRAINT.

The committee think that there is no necessity for changing the present law on distraint. There are sufficient safeguards in the present law against any abuse of the power of distraint; if they are held not sufficient, more stringent rules can be made. The procedure laid down in the Bill is a cumbrous one and partakes of the nature of a regular suit. First, an application for distraint is to be made, it is to be signed and verified as a plaint, the applicant is to file documentary evidence and is to be examined. All this is preliminary to the admission of the application. This lengthy procedure would by its delay defeat the object of distraint. The Rent Commission have not given facts and figures to show in how many instances powers of distraint

have been abused. The Behar Rent Committee originally proposed the abolition of the law of distraint, and it may be interesting to state under what circumstances they did it. Some members were for simplifying and amending the law, but Mr. Gibbon proposed that the law of distraint be entirely abolished. The question put to the vote was whether in case a summary procedure for realisation of rent be extended to Behar, the power of distraint should altogether be abolished; and the majority were for abolition. So it was distinctly understood that a summary procedure was going to be introduced. Now in the Bill there is no summary procedure, and yet the law of distraint is practically abolished as the fetters and restraints imposed upon it would make it altogether useless.

CHAPTER XIV.

JUDICIAL PROCEDURE.

The Committee think that in suits for arrears of rent against ryots other than occupancy tenants, the zemindars should be allowed to sue any number of tenants residing in the same mouzah by means of a single plaint. Further, the Committee would suggest that instead of making it compulsory on the landlord to grant receipts in the form prescribed in section 70 and to keep counterfoils of them, the granting of receipts and keeping of counterfoils in the form prescribed ought to be permissive, and an inducement ought to be held out to landlords to have more frequent recourse to registered kabulyats and grant counterfoil receipts, by allowing them the advantage of obtaining decrees on the very day of filing the plaint on *prima facie* proof that the balance is due by production of the kabulyat and counterfoil receipts, and by examining one or two persons in support of the claim, and on proof that before the suit was brought a notice had been issued on the tenant, that the arrears were claimed 15 days before the institution of the suit, and that no reply contesting the claim had been received. If, however, in such cases the tenant should contest the claim by the issue of a counter-notice, the Court instead of decreeing the claim should issue a short-date summons on the defendant and decide the case on the date fixed in the summons.

Section 168.—There should always be an appeal from the judgment of the Munsiff, whatever may be the value of the suit.

Section 170 (1).—"Reasonable time"—the time should be specified.

Section 171 (b).—Why should interest be paid on the value? The tenant is ejected through no fault on the part of his landlord.

Section 172 (2).—Express provision should be made in cases where the amount payable by the tenant to the landlord exceeds the amount payable by the landlord to the tenant. In such cases the court should pass a decree for the excess amount against the tenant, and it should be laid down that unless the amount decreed be paid at once, the tenant should not be able to enjoy any of the benefits promised under section 171, clauses (a) and (b), but be forthwith ejected. At the same time such a provision should not be a bar to the landlord to his recovering the amount decreed by execution or any other means provided by law for the realisation of decrees.

CHAPTER XV.

This chapter contains a most cumbrous and dilatory procedure, which will interfere with the speedy realisation of rent-decrees. The tenure should be sold free of all encumbrances except those that are protected. There is no reason for any change in the existing law on the subject.

Section 186 (c).—Suppose the tenant under section 171 (d) remains in possession of the land for more than six months after the decree, any rent due from him for this period should not be affected by the present clause.

CHAPTER XVII.

CONTRACT AND CUSTOM.

This chapter proposes to fetter freedom of contract. This is most unjust and unnecessary. By the Contract Act every person of age and of a sound mind is competent to contract. There is no reason why a ryot should be disqualified from contracting. Granting that he is ignorant of his rights, and if left to his own free will may do what is not proper for his interest, still it is not a case for the legislature to interfere; for if the legislature were to interfere in cases of this nature, where would it stop? It would have to dog the steps of every private individual and see that he does nothing against his own interest. The remedy for this state of things is diffusion of education, and not legislative interference. But is it true that the ryots are so ignorant that by contract they are made to forego their occupancy rights? Certainly not. The late Hon'ble Kristo Das Paul in his speech on the occasion of the debate on the Tenancy Bill thus observes:—"The 12 years' rule, under Act X of 1859, has practically given fixity of tenure to the bulk of agricultural population of this country. Some estimate it at 90 per cent. &c. In Behar, too, though the ryot does not fully appreciate the right, the right is practically enjoyed by the ryot, as appears from the report of Mr. Finucane."

Section 214.—The tenures called *Sarabadi* and *Hustboodi* which exist in some parts of this district are allied to, *Hal Hasili* and *Utbundi* tenures. The characteristic of these tenures is want of fixity, inasmuch as both land and rent vary every year. Rent is paid per crop at specified rates on the land that yields a harvest, and in some parts a deduction is allowed at certain percentage on the area measured in favour of the tenant. Every year, or rather every harvest, measurement is made, the crop grown is noted down in the khusra paper, and is then transferred on the rent-roll, and rent is charged at rates which exist in the village for the kind of crop which is cultivated. In such cases it is not possible to ascertain the quantity of land or the year's rent which a ryot has to pay until the year is over; and in face of the existence of these tenures, it is hard to see the propriety of the provisions occurring in section 70, which make it imperative on landholders to grant receipts in the form prescribed.

Section 216.—Leaving the incidents of homestead tenures to be governed by custom is a wise provision. The custom relating to such tenancies is, so far as this district is concerned, clear and well-defined, and it is hardly possible that any confusion or dispute can arise regarding the same.

Section 221.—The word "landlord" used in this section should expressly include a manager appointed under section 104.

Section 222.—The provisions contained in section 222 would work with great hardship on shareholding landlords. At present they can sue separately and do all other acts separately, provided the collection of their rent is separate from the other shareholders. The proposed section would work a revolution in the management of coparcenary villages. The result would be a complete dead-lock of work, as it would not be easy for all the shareholders to join in the appointment of a common agent. The existing law as explained in the decisions of the High Court should not be changed.

No. 2085-1075 L.R., dated 10th December 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to the Government of Bengal,
To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

* Letter, dated 3rd December, 1884, from the Additional Judge of Bhagulpore.

Letter No. 1200, dated 1st December, 1884, from the Superintendent and Remembrancer of Legal Affairs.

In continuation of my letter No. 2013-1041 L.R., dated 4th December, 1884, I am directed to submit, for the consideration of the Government of India, the accompanying papers noted on the margin* containing further opinions on a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill.

Dated Bhagulpore, the 3rd December 1884.

From—BABOO AMRITA LAL CHATTERJEE, Additional Judge of Bhagulpore,
To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2431T—R (Land Revenue), forwarding to me copy of a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill for opinion, I beg most respectfully to submit the following observations.

PART I.

I fully agree with Baboo Mohini Mohan in the general observations which he has made regarding the shortcomings of the summary procedure, and the risk which attends the service of the notice of sale, if such service is left in the hands of the proprietor. It would certainly be better if all questions arising out of such sales could be finally decided between all the parties concerned by a competent and efficient civil court. For certain purposes the Court of the Subordinate Judge of the district would very well do; but I doubt much if the Court of the Subordinate Judge, situate at the sudder station of a district, would be the one most convenient to the parties if all descriptions of tenures of a permanent character were brought within section 194 of the Bill; for tenures of a permanent character are not invariably in all cases large tenures yielding large profits. There are many small tenures of a permanent character situate in the interior of a district, the profits arising out of which are too small to attract the notice of purchasers residing at a distance from the places where the tenures are situate; and if the sales of such tenures were invariably to be held at the sudder station, purchasers from the locality where the tenures are situate, and who are likely to know the value and nature of the properties, would seldom think of attending such sales in consequence of the cost and trouble attended upon a distant journey. This would necessarily affect the price which the tenures would fetch at the sales, to the prejudice alike of the landlords and of the defaulting tenure-holders.

The Court of the Subordinate Judge located at the sudder station of the district will not, in my humble opinion, suit the convenience of the parties in cases of small tenures situate beyond the limits of the local jurisdiction of the sudder munsiff of the district.

If all small tenures of a permanent character be intended to be brought within section 194 of the Bill, the best course would be to select some of our most efficient munsifs, and to appoint them as rent-munsifs in the interior of a district, and to vest them with powers to act under this section, where the amount of arrears due in respect of the tenure is below a certain amount.

It looks very well on paper when it is said that questions arising in connection with the sale of tenures can be finally decided, once for all, when proceedings are commenced before a civil court. Generally speaking summary procedure is defective, only because the investigation allowed under it is short and its scope narrow. I do not think that it is defective because the investigation is conducted by a Collector, and not by a civil court. Summary investigations from their very nature will be defective, whether they are conducted by a civil court or by a Collector. The investigation to be satisfactory must occupy time and embrace all the necessary points. I have some doubts on the point whether the procedure can be short and at the same time satisfactory. The writer sees his difficulty and tries to avoid it.

In section 8 of the proposed draft, the writer says that the court, on receiving a written statement from the tenure-holder, shall appoint an early day for hearing, and try and determine the issues on the appointed day; but that no sale shall be stayed by reason of the pendency of such trial, unless the tenure-holder deposit in court the amount of the landlord's demand.

I submit that the last clause is unfair to the tenure-holder. I do not see why in equity he should be compelled to deposit the amount of the landlord's demand before the sale is stopped, unless the landlord's demand is proved to be correct. The procedure proposed is here summary, and is therefore unsatisfactory.

Now, supposing that the tenure-holder is unable to deposit the amount of the landlord's demand, and, in consequence, the tenure is sold, and the trial of the issues takes more than 30 days after the date of the sale, but subsequently it is decided that a portion of the arrears claimed is due, and that the remainder is not justly due to the landlord—what is the remedy proposed? So far as I can see, none, for the last paragraph of that section provides that such decision will not interfere with, or affect the sale of, the tenure.

It is quite possible that a small amount of the arrears claimed is due, and that the tenure-holder was, either under a mistake of law or of fact, *bonâ fide* under the impression that no portion of the arrears claimed was due. Is it either fair or equitable to the tenure-holders that the sale should not, under these circumstances, be cancelled if the tenure-holder pays in the amount?

Even if it were to be enacted that the sale would, under such circumstances, be liable to cancellation, would not the risk of the sale being liable to cancellation enter into the calculation of the intending purchasers in regulating their bids? Would not that circumstance tend to lower the price which the sale would fetch?

If one wants to do away with the summary procedure altogether, he must not bring it in when it would suit the convenience of the landlord and affect prejudicially the tenure-holder.

Although the writer calls the initiatory application an application only, it is virtually a plaint in a regular suit, and the question arising in that suit ought to be decided at least by one court before the sale could take place. I therefore strongly object to the last sentence of paragraph 1 of section 8 of the draft.

I have no objection to the proposal for registration of tenures in a civil court.

Section 13.—Five per cent. appears to be too high. All that the purchasers can reasonably claim as compensation is a fair rate of interest. When the tenure-holder or any other person is required to pay within 30 days from the date of sale, 1 per cent. will be a fair compensation to the purchaser. If the landlord and the purchaser be both guilty of fraud, I do not see why a suit for cancellation of sale will not lie.

Section 17 of the draft.—Any person interested in the tenure will not, however, be precluded from bringing a regular suit for compensation within the time prescribed by the Limitation Act. The questions involved in such suits are not unoften complicated, and it may very well be that in many cases the period of two months is not a sufficient time for the collecting of materials necessary for properly conducting such cases.

If, however, such person does apply under this section, and his application is tried on the merits, it is proper that he should not be allowed to bring a fresh regular suit for the same subject-matter.

Section 207 of the Bill must be retained. It is not clear why this section has been omitted from the draft.

I think it proper to observe here that in all cases of arrears of rent due in respect of a transferable tenure, it should be incumbent upon the landlord to proceed against the tenure itself, in the first instance, if such tenure is in the possession of the judgment-debtor.

The draft is in a crude form. If it is approved, it will have to undergo some amendments in its language and details.

The draft does not say what course will have to be followed if the sale of the tenure does not satisfy the landlord's demand. Some provisions are necessary to enable the landlord to put up the defaulter's other properties to sale.

PART II.

The writer calls the application for enforcing the claim of the landlord for rent in certain cases "an application as in an execution proceeding," and thinks that by so giving it a name the procedure will be shortened. My impression is that suits for arrears of rent, in which the annual jumma is admitted or proved by former decrees, are, as a rule, decided within a very short time, and that for such suits no special procedure is needed. I would not, however, quarrel with the writer, if he would be satisfied with calling the plaint an application for execution.

Would the procedure proposed avail the landlord where a question of abatement of rent is raised by the defendant on the ground of diluvion or the like? The decision of questions like these will necessarily take time, and the application for execution will not enable the landlord to put up the ryot's property to sale before these questions are decided.

I have no objection to the proposal to make all rent suits triable by the Court of the Subordinate Judge exclusively, except this, that the cases are numerous in which the amount claimed is small, and which are not contentious, and it will be sheer waste of time of a highly paid officer like the Subordinate Judge if such cases be made exclusively triable by him. Again, the percentage of appeals from the decisions of munsifs, in suits for arrears of rent, where no question of the amount of jumma is involved, is, I believe, very small. I think that, under such circumstances, all suits for rent should not be made exclusively triable by the Subordinate Judge. In my humble opinion, the best course would be to select some of the most efficient munsifs to try suits for rent falling within the pecuniary jurisdiction of the munsif.

Chapter XV of the Revised Bill.—There can be no serious objection to extending the sections contained in the special procedure to execution sales for arrears of rent due by ryots in respect of transferable holdings, so far as they can be applied. But I do not think that any sufficient ground has been made out for omitting the provisions regarding registered and notified encumbrances. The procedure is, no doubt, cumbrous in a certain degree; but the provisions contained in the sections, which the writer of the pamphlet wishes to omit, are intended to serve a useful end, and I submit they ought not to be abandoned simply with the view of shortening the procedure.

No. 1200, dated Calcutta, the 1st December, 1884.

From—C. B. GARRETT, Esq., Officiating Superintendent and Remembrancer of Legal Affairs,

To—The Secretary to the Government of Bengal, Revenue Department.

Referring to your No. 2426T—R and No. 1632—908LR, dated respectively the 23rd October and 4th November 1884, regarding the Bengal Tenancy Bill, I have the honour to send the report therein called for.

2. Baboo Mohiny Mohan Roy's suggestions seem to me, on the whole, very good, and certainly approach to a successful solution of the extremely difficult problem of how to give the zemindars a simpler and cheaper means of realizing their rents from those tenants who can pay, and wont pay—facilities, which I think it is everywhere admitted, they ought to have without at the same time placing in the less reliable and scrupulous members of the class a weapon which they will certainly abuse to oppress and harass their tenants. The only thing, I fear, is that Baboo Mohiny Mohan Roy, whom I shall hereafter call the author, takes somewhat too roseate a view of the difficulties inseparable from the situation. The first 13 pages of the pamphlet are occupied with introductory matter. I propose shortly to make a few remarks on the matters dealt with therein.

3. I agree with the author in the remarks he makes about summary procedure. Summary procedure is, in my opinion, only an euphemism for a perfunctory and careless procedure. Every summary decision is, in general, pregnant with lengthened "regular" litigation, and such decisions generally serve only to embarrass suitors and add to the expenses of litigation. If, therefore, a system of registration of tenures is adopted, I trust that the officers appointed to carry it out will be invested with power to hear and decide finally all questions arising under it, and that none such will be open to be contested in any more formal suit.

4. I think also it is a good suggestion of the author that the system should be carried out by officers of the class of Subordinate Judges. It is obvious that, for some time at least, the introduction of a system of registration will lead to a very considerable increase of litigation, and will necessitate the employment of a large number of extra officers. It is, I think, highly desirable that these officers should have had a judicial training.

5. To entrust these duties to officers holding the position and drawing the salary of District Judges would be enormously expensive. In the Subordinate Judges we have an excellent judiciary, who command fully the confidence and respect of the people who are trained to very hard and careful work, and whose numbers might easily be enlarged by selection from the experienced munsifs of the new school.

6. Coming now to the details of the scheme set forth at page 13 *et seq.*, there are certainly some points on which I do not agree with the author. In the first place, it must be remembered that a summary sale for arrears is bringing up defaulting tenure-holders with a very round turn indeed. It would, I think, be a considerable hardship for a tenure-holder to feel that his tenure was liable to be put up to sale once in every three months.

7. It may be argued that this is the measure which the Government itself metes out to the zemindars, to which I can only reply thus—The zemindars in Bengal have got a very cheap bargain, far cheaper than most tenure-holders have; and that when people have got a very cheap bargain, they usually have to pay prompt cash. Instead, therefore, of permitting zemindars to apply for the sale of their undertenures once a quarter, I would propose that they should have this power of summary sale only when the rent for half a year was in arrear. As a matter of administrative convenience, I would allow such applications to be made in the first month of any quarter, but I would permit them only to be made when the zemindar could certify that not less than the rent of the last two preceding quarters was in arrear. Indeed, I think the author himself seems to feel that it is somewhat a hard case, for he says that practically no estate can be put up for sale more than twice in a year.

8. I do not quite follow the reasoning by which the author seeks to establish this proposition, for, inasmuch as such an application can be made in the first month of the quarter, an application may be made on the 1st Bysack. The estate might be lotted for sale on the 28th Sraban; but if the rents for the quarter, Bysack—Assar, were at all in arrear at the end of Assar, I see nothing to prevent the zemindars applying for sale on the 2nd or 3rd of Sraban, and getting it again lotted for sale on the 28th Kartick. If, therefore, before the 28th Sraban the tenure-holder had paid in everything due up to Bysack, he will still find his estate liable for sale on the 28th Kartick. This might be made a means of greatly harassing any weak tenure-holder.

9. I also deprecate the idea of extending the special and summary remedy to demands other than those for the current year. If you make it possible for a zemindar to allow a tenure-holder to get into his debt for two or three years' arrears of rent, and then suddenly to launch the claim on him with a power to sell up the tenure, if the tenure-holder cannot discharge the debt in three months, you permit him to store up a thunderbolt to crush the tenure-holder with. I would therefore strictly limit such special remedies to the recovery of the balances of the current year. It will probably be argued that by this means the zemindar will be forced into litigation for every trifling arrear, and that you will debar him from giving time and showing mercy to the tenure-holder if the latter be in pressure or difficulty. As regards the first argument, I would reply that if the zemindar did put the tenure up for sale for a trifling arrear, he would be very foolish, and the tenure-holder would probably find no difficulty in raising the money. To the other argument, I would reply that tender mercies, which simply consist in giving the tenant time until he is hopelessly involved and then closing on him, are cruel.

10. When a tenant is becoming unable to pay his rent, it is far better that the zemindar should sell him up at once, unless the zemindar intends to see him through his difficulties, which, *ex hypothesi*, the zemindar will not do in his case.

11. As regards the stamp fee leviable upon such application, I think it certainly ought not to be fixed as low as 8 annas. In the first place, 8 annas is not an equivalent for the work to be done: in the next place because, if fixed so low, I fear it might soon grow to be a custom for tenure-holders not to pay unless such an application was made solely in order to acquire by payment into court independent proof that they had paid the rent due. I would recommend that the stamp fee should be fixed at one-eighth of that necessary for instituting a suit with a minimum of 8 annas, but no maximum.

12. *Section IV.*—I agree with the author that the service of notices should be made through the court, instead of, as at present, on the responsibility of the zemindar. I think, however, that such notices should be served at least six weeks before the sale day. If notice was not served until 20 days before the sale day, a tenure-holder might find it very difficult to raise the money to protect his tenure.

13. *Sections V, VI, and VII.*—I have nothing to say on these sections.

14. *Section VIII.*—If summary sales are to be permitted for more than the arrears of the current year, rather say the rent of one year in all, I should most strongly deprecate making it a condition precedent to contesting the zemindar's demand that the tenure-holder should deposit the amount of claim. If not more than the rent of a single year is thus permitted to be realized, I think there might often be cases in which such a condition should be insisted on, that is to say, cases in which the tenure-holder was plainly disputing the claim simply to gain time.

15. I do not think any hard-and-fast rule should be laid down on this point. I think the courts should always have a discretionary power to hear such an objection without requiring a deposit of the amount claimed.

16. *Sections IX, X, XI, and XII.*—These sections call for no particular remark.

17. *Section XIII.*—I approve of the principle of this section, which gives the tenure-holders a sort of *locus penitentiae* in case he fails to pay the amount of the claim. It will also, as the author points out, enable tenure holders to protect themselves from a ruinous sacrifice of their property by buying it back before the sale becomes absolute. I do not think, however, that there is any necessity for compelling the tenure-holders to deposit 5 per cent. on the purchase-money as compensation to the purchasee for the loss of his bargain. It is not much hardship on a purchasee if he is uncertain for 30 days whether he will get the estate or not, and practically I do not believe that such a condition would in any way deteriorate the value of the property; while, on the other hand, it would certainly be some hardship on the tenure-holder (who presumably would be a man in difficulty) to have to raise so much more on a tenure, perhaps already encumbered up to near its full value. I would propose therefore that the sale should be cancelled on repayment of the purchase-money, expenses, and interest on the whole at 6 per cent. per annum, and, in addition thereto, the payment of the zemindar's claim with expenses and interest subsequently accrued. Purchasers buying at such sales would understand that their titles were, so to speak, "ambulatory" for a month, and this once established it would have, I think, very little effect on the prices obtained at such sales. In one way I fear that this section may not work satisfactorily. Its provisions may have the effect, to some extent, of inducing dishonest people not to pay their rents even after an estate has been lotted for sale, trusting to being able to do so within the 30 days of grace.

18. *Sections XIV to XVI.*—No remarks.

19. I observe that the author entirely omits section 205. In a country where there is so much fraudulent and collusive litigation as in Bengal, it would not, I think, be at all safe not to provide some possible remedy for third parties injured by sales collusively brought about.

20. *Section XVII.*—This section is a slight modification of section 206 of the recent Bill. So far as it goes, it only substitutes an application for the suit permitted by the section. I think it is certainly doubtful whether it is any advantage to the sub-tenure-holder to have his remedy limited to the sale proceeds, and I do not think he will get his remedy more quickly. Whether you call it an application or suit, it must be regularly tried out, and the order of the first court made open to appeal. All things considered, I should prefer to retain section 206 unaltered.

21. I now come to deal with the sections laying down rules for the registration of tenures. Registration of tenures is evidently the keystone of the proposed procedure. The author himself proposes to make it applicable only to talooks which are registered, and if the proposed powers of summary sale were given without this restriction, it would be giving a most dangerous power to the zemindars.

22. I agree with the author that the register he proposes will be sufficient for the purposes of this chapter. But the author has again omitted to provide any method for the investigation of the claims of third parties. It is, I think, a very appreciable danger that fictitious tenures will be registered collusively, and if there is no means provided by which third parties affected by such leases could come in and contest their genuineness, I fear a great many fraudulent and collusive leases would get registered, and much false evidence created, which it would be necessary for the persons affected to institute proceedings to set aside.

23. Especially I think would this be the case in the registration of leases and counterparts. Moreover, the author seems to suggest, at the top of page 24, that all disputed leases and tenures should be excluded from registration. The result seems likely to be that only those tenures will be registered which it is least necessary should be registered, namely, those in which the lessor and lessee are acting in unison, and in which there is consequently little reason to suppose that there will be any willing default in the payment of the rent.

24. It does not seem to me advantageous to introduce a system of partial registration, and if we are to attempt the Herculean task of registering all tenures and all leases, we ought, I think, to make the registration complete, so that all questions arising with regard to registration, whether disputes between the ostensible parties to the registration, or raised by third parties, may be decided before the tenure or lease is brought upon the register. This will of course make registration a much more troublesome matter, but I see no advantage in an incomplete system of registration, which shall register only documents either admitted, or such that their genuineness cannot be contested, and shall exclude from registration documents about which there is contention.

25. *Section XXIII.*—This section makes it a condition precedent that the parent estate should be registered under the Land Registration Act. Of course in the case of a landlord, if he does not register under Act VI (B. C.) of 1876, he has only himself to blame if he is unable to register his undertenures: the remedy lies in his own hands, but what remedy has the under-tenure-holder, who desires to have his tenure registered against his landlord's wishes in a case where the landlord has not had his own name registered under Bengal Council Act VI of 1876? The question is perhaps of less importance, as I fancy tenure-holders will be forward to have their tenures registered.

26. *Sections XXVI and XXVII.*—I must say that these sections appear to me somewhat one-sided, and wholly in favour of the zemindars. Suppose a zemindar applies for the registration of a tenure, alleging it to be of a specified description. It may be that the tenure-holder may have the most valid objections to the description of the tenure as given by the zemindar, and in fact it may be impossible to permit it to be registered without a contest, nevertheless all the court will enquire will be—

1st, as to the admissibility of the tenure to registration;

2nd, as to the amount of annual rent payable thereupon;

3rd, instalments in which the rent is payable.

Now it is quite possible that on these points there may be no substantial contest, and the consequence will be that the tenure will be registered as a tenure saleable summarily, although the tenure-holder may, with the greatest justice, contest the correctness of the landlord's description in every point except these. This would, I think, be extremely unfair to the tenure-holder. I think the only fair course under such circumstances would be, when there was contention, either not to register the tenure until the dispute was decided, or to register it provisionally on the terms admitted by the non-applicant without prejudice to the applicant's rights to prove the tenure to be of a different character.

27. I now come to discuss the second part of the author's proposals—the procedure to be adopted for a more speedy realization of rent from ryots. The author's proposals seem modelled on the measures which he has already suggested in respect of tenures, substituting for registration a decree of court. The proposals are in themselves, I think, good and practical, that is to say, they would secure the object they aim at, and they are fair enough if they can be fairly worked. There appears to me, however, to be two very serious objections to extending this summary process to the case of ordinary ryots. The first is the vast mass of litigation with which it will flood the courts. Every ryoti holding, before it can be brought under the summary process, must be made the subject of a suit; and as it will be very much to the interest of the zemindar to be able to put this summary remedy in force against the ryots, it is reasonable to suppose that every ryoti holding will soon be passed through the courts. In the next place, there is another objection, which I shall state roundly and without euphemism. It is notorious that zemindars do not very unfrequently induce ryots to sign *kabuliyats* or admit *jummabundies*, and so forth, at rates above those actually paid, promising the ryots that the rate admitted shall not be enforced; and no doubt so long as the ryots are obedient, the rates are not enforced. But if the ryots ever attempt to assert any right against their zemindar, or, as it is blandly put, become rebellious, the *kabuliyats* and the enhanced rates are promptly demanded, and it becomes extremely difficult for the ryots to establish the true state of the case.

28. The new scheme proposed, involving as it does a judicial decision on the amount of rent payable by every tenant, and the instalments in which it is payable, cannot fail to be an immense temptation to zemindars to resort to practices such as those described above. If, as I apprehend, a mass of suits will be brought against ryots by zemindars in order to detain the judicial decision which is a necessary preliminary to applying the summary procedure to their tenures, it is probable that a considerable number of them will be decided *ex parte* or by confession. As regards the decrees which will be given in these cases, it appears to me that there really is ground for great apprehension whether they will represent rent actually payable by the ryot, or some rates which the zemindars have prevailed on them to admit. It may be said that it will not be difficult for the ryots to rip up the transaction and expose the fraud if the zemindar ever tries to enforce rent at such rates; but the ryot will have to get rid of his own admission in the first place, and practically will, I think find great difficulty in resisting the zemindars' claim. If all cases could be contentiously decided, which is impossible, I should not see any objection to the author's proposals; but, on the whole, it seems to me that things are not yet ripe for the extension of the summary sale procedure to ryoti holding, and, on the whole, I deprecate the proposition. The case of tenure-holders is different; they are probably sufficiently able to take care of themselves; at least to take care that their tenures are properly registered. But in the case of ordinary ryots, I do not think that this could be generally expected, and I think that it is therefore undesirable to introduce the system of summary sales at least at present. I may add that, but for this difficulty on the threshold, I should have been much disposed to accept the author's propositions, and that I see little else to object to in them. I note a few points which occur to me.

29. Referring to provisos I and II, I should not allow this summary remedy for more than the arrears of one full twelve-month, nor would I allow more than a single application in any period of a twelve-month.

30. I understand section IV to mean this, that if any objection is made by the ryot to the zemindar's claim, the proceedings will take the form of an ordinary rent-suit, and no further execution will be allowed until the question at issue has been finally decided.

31. Coming now to the author's criticisms on Chapter XIV of the revised Bill, I agree with him that it is not advisable that a District Judge should have the power of calling for and revising the proceedings of a Subordinate Judge. If the author's scheme of a summary

procedure is adopted, it is certainly very essential that the addition he proposes to make to section 168 should be made. Otherwise it is not very important, as an ordinary rent decree at present decides nothing as to the future rate of rent.

32. *Page 36, Section 163.*—I agree with the author that on the whole it would be best to leave the requirements of the law *in statu quo* as to the descriptive particulars which the plaintiff ought to contain. I agree with him that if the boundaries and extent of the holding were necessary to be given, collateral issues would be raised needlessly in rent cases, which would only perplex and encumber the suit. I agree with the author also that sub-section "e" might be struck out.

33. *Section 166.*—I do not, however, agree with the author in thinking that the courts should not have power to order the payment of a rent decree by instalments.

34. In the case of a ryot indebted, as of any other indebted person, it may be possible for him by care, economy and self-denial to pay off his debt by instalments; it may be absolutely impossible for him to pay it off in one lump. I do not see that the fact that rent is accruing in respect of a subsequent occupation alters the case in either way. I agree with the author that there is nothing to be gained by transferring these enquiries from civil to the revenue courts, and that it is advisable that they should be conducted by the civil court *amens*.

35. I have now come to the last chapter of the author's pamphlet. This contains the author's criticisms on Chapter XV of the draft Bill. On the whole, I dissent from the author's views. I agree with him that the sale procedure laid down in that chapter is somewhat cumbersome, but it seems to me that this cannot be helped.

36. At a sale for arrears, either of a transferable tenure or an occupancy holding, it is not sufficient to provide simply for the interests of the head landlord, or even the first tenure-holder. Subletting is so interwoven with the land system of this country that it is absolutely impossible to allow sales of tenures for arrears without providing some sort of security for the numerous under-tenants of different kinds whose interests will be affected by the sale; and considering the number and complexity of their interests, it seems impossible that the machinery for protecting them should be other than cumbersome. No doubt the procedure proposed by the author is simple and more expeditious, but their advantages appear to me to be gained by the sacrifice of the interests of all tenure-holders below the "protected" class. I say "sacrifice," because it appears to me to afford no efficient protection to many classes of subordinate holders who ought to be protected to provide that they can save their tenures by paying up the arrears before sale, or paying them up after the sale with a fine of 5 per cent. *Ex concessis*, these tenure-holders are not to blame; they have paid their own rents. No laches on their part has brought about the sale, and in such circumstances it is, I think, very hard on them to say that they can protect their tenures only by paying up the arrear of rent due to the principal landlord. This may be relatively to the resources of the tenure-holder a large sum, and it may be impossible for him immediately to raise it, in which case his tenure must be inevitably sacrificed. On the whole, therefore, as the simpler and speedier procedure proposed by the author is only detained by a sacrifice of interests which ought to be protected, I think that it is preferable to preserve the more cumbersome, but more equitable procedure laid down in Chapter XV.

37. I do not think I have any more remarks to offer on this pamphlet, which is herewith returned.

Dated 1st December, 1884.

From—RABU BEPIN BEHARI SIRCAR,

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

I have the honour to submit a few copies of a memorial adopted by the tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Sub-Division Goalundo, District Furreedpore, and request the favour of your submitting them before the Members of the Legislative Council.

Memorial of certain tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Furreedpore District.

To His Excellency the Viceroy and Governor General of India in Council.

The humble memorial of the tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Sub-Division Goalundo, District Furreedpore.

MOST HUMBLY SHEWETH,—That your memorialists and other persons belonging to the high castes in this part of the country hold tenures, which are called *jotedari* tenures, under the *pargana zamindar*.

That many of these tenures are very old, while there are other tenures of comparatively recent dates, which also, resembling the old *j-tedari* tenures as regards the class of persons who hold them and the circumstances under which they are held, rank with the orderly tenures.

That many of the tenures mentioned above have no title-deeds to support them, and that even as regards their age and antiquity, it is not easy for the holders of the tenures to adduce sufficient and clear proof in all cases.

That as regards the question of uniform payment of rent for 20 years or upwards, even that is not within the means of many such tenure-holders to prove, as living in thatched houses which are exposed to fire and cyclone and such other accidents, they seldom can preserve all their *dakhilas*.

That notwithstanding the above difficulties, these tenures have remained hitherto undisturbed and intact.

That in fact a strong belief that such tenures are not disturbable has always existed in the minds of all concerned, and that by custom they have been treated as transferable and hereditary.

That the present Tenancy Bill has, however, filled Your Excellency's memorialists with anxiety and alarm as regards the security of the tenures mentioned above.

That while section 51 of the Regulation VIII of 1793 protected these tenures from enhancement, section 6 of the Bill, which is substituted for it, would not protect them unless they were proved to have been in existence at the time of Permanent Settlement.

That again supposing the rent of a certain tenure was liable to enhancement, the present law not having contained any clear provision for the enhancement, the zamindar hardly thought of taking his chance by going into Court for the purpose; but the Bill in a manner invites the zamindar to enhance the rent of tenure-holders by declaring his right to enhance such rents almost without limits.

That then again the present law had no provision declaratory of the zamindar's power to eject tenure-holders of any description excepting farmers; but the Bill, by sections 11 and 12 of it, by implication gives this power to the zamindar in all cases except those in which the permanent character of a tenure will be shown on the face of it by documents, or where such a character will be admitted.

That in cases where the tenure-holder himself occupies any portion of the land included in his tenure, the present custom is to regard the tenure-holder to have, in respect of such lands, at least all the rights of an occupying raiyat; but the Bill hardly makes any provision to recognize this custom, on the contrary, by sub-section (4), section 7, it ignores this custom.

That having submitted the above as regards the points on which, as rent-payers, Your Excellency's memorialists feel aggrieved by the Bill, they will, in the next place, mention one or two points to which, as rent-receivers, Your Excellency's memorialists think it their duty to draw Your Excellency's attention.

That Your Excellency's memorialists may not object to occupancy-rights being enlarged and being made general; but your memorialists feel bound to say that as sections 25 and 26 of the Bill stands, they will not only create confusion and chaos, but will be actually suicidal.

That Your Excellency's memorialists can understand that a khudkasht raiyat has rights of occupancy to lands which are included in his khudkasht tenure, that is, in the tenure in which his homestead is situated; but if every raiyat is to have rights of occupancy to every bit of land which he may casually or temporarily plough, this will be a fruitful source of confusion between raiyat and raiyat, and the result will be people will attach no value to the rights of occupancy.

That besides it should be remembered that it very often happens that when a khudkasht holding, with the homestead land appertaining to it, is vacated, the landlord makes a temporary settlement of it, pending the arrival of a new khudkasht raiyat to occupy the holding. Now, if the man with whom the temporary settlement is made be empowered to retain possession of the land when he is asked to make it over to a newly-coming khudkasht raiyat, that is, if he be empowered to refuse to act according to the contract made with him to that effect, the result will be that a few raiyats will monopolize the rights of khudkasht raiyat, while others will be homeless wanderers, and the zamindars shall not have it in their power to assist such homeless men.

That as regards the novel rules about enhancement, Your Excellency's memorialists will leave the task of criticising and discussing them to zamindars, who will be better fitted to do so.

That Your memorialists will humbly say one word with reference to section 48. This section is meant to give relief in cases in which the preceding sections might operate hardship to raiyats.

That if the legislature has misgivings as to the previous sections operating equitably with all cases, your memorialists humbly submit that the said misgivings should be extended towards the interests of the rent-receivers too.

That Your Excellency's memorialists can assure Your Excellency that there are cases in which the rent is so low as two annas per bigha or four annas per bigha. In such cases an increase of 25 per cent. of the rent will be nothing, and a landlord will be cruelly punished for the leniency and kindly feelings which actuated him in allowing the rent to remain so low.

Your Excellency's memorialists venture to submit that in view of such cases, section 84 should be worded so as to leave it to the power of the court to disregard the preceding sections in extreme cases of hardship to both the tenant and the landlord.

Your Excellency's memorialists will humbly pray that Your Excellency in Council will be pleased to consider their humble representations and to redress their grievances as set forth above.

Your memorialists as in duty bound shall ever pray.
(Signed) BEPIN BEHARI SIRCAR and 58 others.

No. 2091—1077 L. R., dated 10th December 1884.

From—H. H. RISLEY, Esq., Offg. Under-Secretary to the Government of Bengal,
To—The Secretary to the Government of India, Legislative Department.

With reference to the marginal note to paragraph 14 of the report from this Government

Letter to the Commissioner of the Patna Division, No. 1725T—R, dated 4th September 1884, with endorsement.

Letter from the Commissioner of the Patna Division, No. 98R, dated 3rd December 1884.

Letter from the Opium Agent of Behar, No. 553, dated 29th November 1884.

No. 1906T—R, dated 15th September 1884, on the Bengal Tenancy Bill, I am directed to submit for the information of the Government of India, a copy of the correspondence noted on the margin. I am to observe that the real point at issue was whether the holdings of cultivating ryots who themselves cultivate the land are usually so large as 100 bighas (33 acres) in Behar. The letter No. 98R, dated 3rd December 1884, from the Commissioner of the Patna Division, seems to establish that such holdings are as a general rule less than 100 bighas.

No. 1725T—R, dated Darjeeling, the 4th September, 1884.

From—A. P. MacDONNELL, Esq., Secretary to the Government of Bengal, Revenue Department,
To—The Commissioner of the Patna Division.

I am directed to call your attention to paragraph 4 of your Conference Report on the Tenancy Bill, in which the opinion is expressed that a ryot holding 100 bighas (33 acres of land) seldom sublets. That opinion is opposed to the general opinion expressed on the point in other portions of the country; and seeing that in most districts of Behar population is denser than in the majority of other districts, the opinion of the Patna Conference would seem to need either support or reconsideration. I am therefore to request that the various district officers may be instructed to make special enquiries on the point. It is hoped that your report communicating to Government the results of these enquiries may be submitted before the 1st December next.

No. 1726T—R.

Copy forwarded to the Opium Agent, Patna, with the request that he will, after consulting with his Sub-Deputy Agents, and after such careful examination of the records of each sub-agency as may be required, report to Government, before the 1st December, whether in the Opium Department the experience is that ryots holding 100 standard bighas of land do usually cultivate the entire holding or sublet portions of it.

No. 98R, dated Bankipore, the 3rd December, 1884.

From—F. M. HALLIDAY, Esq., Commissioner of the Patna Division,
To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 1725T.R., dated 4th September last, I have the honour to submit the following.

2. In paragraph 4 of the Conference Report of this Division, on the Tenancy Bill, the opinion was expressed that "a ryot holding 100 bighas (33 acres of land) seldom sublets." With reference to this opinion, the Government have observed that it is opposed to the general opinion expressed on the point in other portions of the country, and seeing that in most districts of Behar population is denser than in the majority of other districts, the opinion of the Patna Conference would seem to need either support or reconsideration, and have directed that the several district officers may be instructed to make special enquiries on the point and report the result.

3. The following is the substance of the reports received from the several district officers on the point:—

The Collector of Patna sends a note on the subject by Mr. Grierson, and states that the information he has received from other sources is to the same effect, the general opinion (in which he agrees) being that few ryots in the district hold so much as 100 bighas, and that, of those who have holdings of such extent, few sublet their lands.

In his note Mr. Grierson points out, in the first instance, that the Collector of Patna did not make such a sweeping statement. He said distinctly "except in the case of dearah lands." In dearah lands, Mr. Grierson says, subletting is certainly common. He still

adheres to the statement made in paragraph 4 of the Conference Report. It is the result of his own enquiries. The Court of Wards' Manager and Moulvie Abdul Jubber agree with him on this point. The reason is that subletting is rare because the landlords take such heavy *salams*. No doubt, Mr. Grierson continues, in a district where the rent is principally paid in kind, and where the laborers who cultivate and cut the crops are paid by allowing them to take a certain portion of the crop as their share, it is difficult to say when a man ceases to be a laborer and becomes an under-tenant. But the idea of under-tenancy is perfectly well known in the district, and has special names such as *sikmi* or *kurthouli*, and the people quite understand the difference between a *sikmi* tenant and a *jan* or *banihar*, who is allowed to take a fixed proportion of the crop as his pay.

In the case of tenants paying rent in kind, he does not pay them to sublet. The landlord takes generally $\frac{1}{10}$ ths of the cleaned grain and the ryot takes the straw, the refuse grain, and $\frac{7}{10}$ ths of the clean grain. But this is not $\frac{9}{10}$ ths or $\frac{7}{10}$ ths of the whole crop, for before division a certain proportion of the whole crop is first set apart for the village gods, village servants, &c. Thus the tenant really gets a little over $\frac{7}{10}$ ths (including the refuse grain and straw) and the landlord less than $\frac{9}{10}$ ths of the gross produce. This $\frac{7}{10}$ th is the smallest proportion which it will pay a man to cultivate land for, and if he sublet it, the actual cultivator would have to give him something and get less than $\frac{7}{10}$ th himself; no one will take a sub-lease on *bhauhi* land, and hence again subletting is rare in the ordinary rice lands in Patna.

Mr. Grierson, as Officiating Collector of Gya, in the same way writes that it is rare in that district for tenants holding 100 bighas to sublet. Land in this district is held principally on the *bhauhi* system, and as the landlord gets as rent usually $\frac{9}{10}$ ths of the net grain produce (after deducting expenses), it does not pay to sublet, as few sub-tenants would take land which gave them less grain profit than $\frac{7}{10}$ ths of the crop. In the Government estates in this district only two instances have come to Collectors' notice. In one case the tenant sublets his land because he had become old and poor and could not manage it himself, and in the other case the tenant did so because he had a very large holding in another village. Mr. Grierson adds that as in the case of *bhauhi* holding the laborers are paid a fixed proportion of the crop, it does not require the capital to cultivate it that is necessary in the case of a *nugdi* holding.

Mr. Nolan from Arrah states that he dissented from the resolution of the Conference as to removing from the Bill the presumption as to holdings of more than 100 standard bighas. He has seldom come across holdings of so large a size except where the tenant is an indigo-planter. Known the circumstances of the country, it is almost certain, Mr. Nolan thinks, that where as much as 100 bighas is entered against one ryot's name, he either sublets, or the land has been so distributed among members of his family as to be practically cultivated as several holdings. *Guzashla* tenures of 100 bighas are not very uncommon, and these are almost always sublet in part.

Mr. Norman reports that, except on dearah lands ryots, holding 100 standard bighas and upwards are exceedingly rare in the sudder and Hajepur sub-divisions; so rare that probably they might be counted on the fingers. The cause is doubtless the pressure of the population and the great competition for land. In the Seetamarhi sub-division ryots of this description are not common, not being found at all in the majority of villages; but a much larger proportion of such holdings occurs there than in the other two sub-divisions.

Ryots with substantial holdings (including the few which amount to 100 standard bighas) very rarely sublet, and in the few exceptional cases where they do so, they have either sublet their whole holdings to indigo-planters on *kurthouli* leases, or have sublet small amounts, from 10 cottahs to 2 bighas, on the *bataya* system, to their own servants for good services rendered, or in lieu of wages. The exception to the above remarks is the case of the dearah lands, where subletting a large holding amounting to 100 bighas is common enough. Considerable portions of such holdings are sublet on annual *bhauhi* agreements, frequently to low-caste laborers on condition of services. In this district the subletting ryot is generally the small holder who has to eke out his means by service or trade.

The Collector of Durbhunga reports that enquiries show none of the ryots having holdings of 100 bighas or more have sublet either a portion or the whole of their holding. Not a single ryot of this description who had given a sub-lease could be discovered. The enquiries made by the sub-divisional officers were naturally of a general character owing to the short time available for enquiry. In the main the enquiries made by them support the view held by the Patna Conference.

Mr. Price adheres to the opinion expressed by him at the Conference that ryots holding 100 bighas or more do not necessarily sublet part of their holdings. Subletting is perhaps more common in Lower Bengal than in Behar. The Government presume the prevalence of sub-leases of ryoti holdings in Behar from the existence of density of population, but it is in consequence of this pressure of population that men in direct possession of land in any capacity cling to it tenaciously and are loth to part with it under any circumstances.

Well-to-do ryots sometimes grant small pieces of land to their laborers to prevent their going to other employers, as notwithstanding the pressure of population, demand for labor becomes very great in particular seasons of the year. Ryots who have large holdings and cannot for some reason or other defray the expenses of direct cultivation, let out their lands in whole or in part temporarily in *bataya*; such cases are, however, rare. *Kurthouli* leases to indigo-planters are an exception to the general rule.

The Collector of Sarun, in the first place, observes that the number of such holdings is surprisingly small. In the large Hutwa estate there are only 14 such holdings, while in other fairly-sized zemindaries there are only a few individual instances. Of the 11 ryot holdings in the Hutwa estate above referred to, two of the ryots are said to have sublet any portion of their holdings; eight of them are reported to themselves cultivate the whole of their lands, while in the remaining four cases the holding is divided by private arrangement between the ryot in whose name it stands and his relatives.

The general consensus of opinion among other zemindars is that a holding of the size referred to is beyond the cultivating means of a single tenant (thus being at variance with the facts stated by the Hutwa Raj), and that unless the members of his own family or other near relations are sufficiently numerous to till the whole land, the holder sublets portion of it, sometimes to his own farm labourers and sometimes at *bhatai* or enhanced money rents to other sub-tenants. Judging from the reports, other than that of the Manager of the Hutwa Raj, which the Collector had received, he is inclined to say that the last is, in practice, the usual plan.

The Collector of Chumparun reports the result of the local enquiries held by him shows that 238 ryots have been discovered (in 15 out of 32 tuppas in the district) with holdings of 100 standard bighas or more. Of these 238 ryots, only 12 sublet. It further appears, the Collector says, that 9 out of these 12 subletting ryots held, until within the last few years, their land as *jaghir birt* or *mukarari* tenures. But the Maharajah of Bettiah having examined their title-deeds, and found them to be defective, resumed their lands as rent-paying, and settled them on favourable terms with the former occupants, some of whom reside in another district. It would appear from these enquiries that of actual cultivating ryots holding 100 standard bighas or more, less than two per cent. sublet their lands in this district.

No. 553, dated 29th November, 1884.

From—W. KEMBLE, Esq., Opium Agent of Behar,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 1726T—R, dated 4th September, 1884, I have the honour to report that I have made enquiries through my Sub-Deputy Opium Agents on the point raised.

From all districts the same report has been received, that raiyats holding as much as 100 bighas as a rule sublet a portion of their holdings, as they found they cannot themselves manage to cultivate such a large area.

A Review of the Procedure sections of the Bill (No. 11), and a few Suggestions for the simplification of Procedure, by Bâlt Mohini Mohan Roy.

PART I.

ESPECIAL PROCEDURE FOR THE SALE OF PERMANENT TENURES FOR ARREARS ACCRUING THEREUPON.

Rent-suits may be divided into two classes, namely, suits for rent against raiyats, and suits for rent against tenure-holders.

Suits for rent against raiyats are generally for small amounts and in batches of large numbers. It generally happens that there is some common point in each batch of such suits the decision of which practically disposes of the batch. The reason why this is so is that raiyats are seldom sued except when there is ill-feeling between them and their landlord; and then we usually find they form combinations, withholding their rents in a body and resisting their landlord's claim on some common or analogous ground. There is not much execution of decree in this class of rent-suits. In a large proportion of cases the raiyats make peace with their landlord after judgment and amicably pay rents, and then the decrees are let alone. In other cases, where the raiyats hold out, the percentage of successful executions is by no means large. Some well-to-do raiyats are able to pay, and made to pay; of the rest it is commonly found, their good friend the mukhtâr, who had volunteered his services against their landlord, had absorbed their little substance. They might now be lodged in the civil jail and entertained at the expense of their landlord; but an ordinary Bengal landlord would seldom be so hospitably disposed. He would not care to lay out more money upon his thankless raiyats, but would rather serenely contemplate with great inward satisfaction that he had obtained decrees in a Court of Justice under the British Government. In short, it seldom pays to sue raiyats. When raiyat and landlord fall out, suits have to be brought, and are brought. The process is necessary, and also useful in that it settles some question or point in issue between them, and tends to promote ultimate reconciliation by teaching lessons to, and partially ruining, both; but as a means or machinery for enforcing payment of rent from ordinary raiyats the process is, and will always be, a failure in a financial point of view. If there were no ulterior objects to achieve, a landlord would find it cheaper to forego his rents and let alone his recalcitrant raiyats.

It is widely different, however, in the other class of rent-suits. It does pay to sue tenure-holders,—that is to say, holders of permanent tenures. The rents are comparatively large and

the tenures valuable. The rents of some tenures are realized by summary process under Regulation VIII of 1819, but of the great majority the rents are realized by suit and proceedings in execution. The suits are wholly independent of each other and generally undefended, but there is execution in almost every case which has to be pursued through all stages leading to the sale of the tenure. In nine cases out of ten the amount of the decree is paid up, but rarely before the issue of the sale-proclamation. In a few instances sale takes place and then a proceeding or suit for setting it aside invariably follows. This class of rent-suits forms a large proportion of the rent-litigation of the Province. It is unsafe to hazard a comparison in the absence of accurate statistical data, but the writer has always believed that in districts where the relations between landlords and raiyats are not exceptionally strained the aggregate litigation in, and resulting from, the one class of rent-suits is quite equal to the aggregate litigation in, and resulting from, the other class.

Can this litigation be reduced?

Yes, as regards tenure-holders it admits of very considerable reduction. The revised Bill, however, has done very little in this direction. On the contrary, many little things and formal matters have been invested with undue importance and made the *nuclei* of litigation wholly unknown before. There is a great deal of "pomp and circumstance" in the programme of the Bill. It seems that the ordinary civil tribunals are not sufficient, and the following high functionaries will take part in the administration of justice between landlord and tenant—

- (1) His Honour the Lieutenant-Governor (section 130);
- (2) special judges (section 115);
- (3) special revenue officers (sections 44 and 110);
- (4) the Collector of the district (section 195);
- (5) the Board of Revenue (section 129).

But the country does not care for a pageant. What the country requires and cares for is that justice between landlord and tenant should be efficiently administered at the least cost and trouble to them and at the least cost to the tax-payer. The framers of the Bill do not seem to have been fully alive to the importance of simplifying procedure and relations between the two parties they are legislating for. Their Bill, certainly, has a tendency the other way, and has rather complicated and embroiled what it ought to have simplified. It is calculated to promote and increase litigation, and increase of litigation means increase of perjury.

But there is little use in making general charges. The writer will now proceed to specifically point out what is faulty in the procedure sections, and how they might be framed. He will commence with the procedure for enforcing payment of rent from holders of permanent tenures. If a short and simple procedure be found for this class of rent claims, it will greatly reduce the rent-litigation of the province and be a boon to both landlord and tenant. By a short and simple procedure the writer means a procedure which, possessing the qualities of shortness and simplicity, should at the same time be a really efficient one for finally and effectually determining all matters or questions arising, or likely to arise, between the parties to the proceeding, and should leave no room or pretext for a future regular suit. A mere summary procedure is objectionable, because it does not really shorten litigation, but is often the prelude to lengthy and protracted litigation. Our Statute-book at one time was full of summary procedures, but most of them were swept away by the memorable Acts of 1859. We have now remaining Regulation VIII of 1819, which, it must be confessed, has worked very successfully. The secret of this success may be traced to the fact that, under the *in terrorem* process of the Regulation, patnidars generally pay up their rents and very few sales take place—scarcely one in five hundred cases. If the sales were more numerous, there would soon be an outcry for amending the Regulation. Anybody who has studied the law literature of the country will readily understand what a Regulation VIII sale means. It means a heavy and harassing suit for setting aside the sale which is fought pertinaciously through all the Courts and all the stages of appeal. Almost every Regulation VIII sale is followed by such a suit, and our Law Reports teem with cases of this class. The service of the notice of sale being left to the zamindar, there is no presumption that there has been proper service; and the defaulting patnidar, who generally has some influence over his tenantry, can bring any number of them and his own amla to swear to non-service. The purchaser, on the other hand, takes prompt action for obtaining possession, and tries to bring as many of the resident tenants under his control as he can. The zamindar, who has to pay costs and refund the purchase-money in the event of the sale being set aside, generally sides with the purchaser; but he cannot do much to influence the result. He brings his peon, and sometimes a second person as having accompanied the peon, to swear to the service of notice; but the issue chiefly depends upon the testimony of the resident tenants. Here the fight is between the defaulting patnidar and the purchaser, and each side produces a long array of witnesses to outswear his adversary on a single question of fact. A great deal of doubt and uncertainty hangs over the result, and it is an even chance with any sale under Regulation VIII whether it would stand good or be set aside. This state of things necessarily enters into the calculation of a purchaser and influences the price; and the low price fetched becomes again an incentive to the defaulting patnidar to sue for the reversal of the sale. Curious points of law sometimes crop up in such suits. In one case, reported in 2 Weekly Reporter, page 188, the point was raised whether a tailor was a "substantial person" within the meaning of section 8, Regulation VIII of 1819 (section 196 of the revised Bill), which requires that the serving peon shall obtain the signatures of three substantial persons residing in the neighbourhood in attestation of the service of notice. Two

learned Judges of the Calcutta High Court held that a tailor was not a "substantial person" probably upon the principle that nine tailors make a man, although this obvious ground is not specially mentioned in their judgment.

The writer has studied the subject long and carefully. He begs to offer, for the consideration of the legislature and the public, a draft of an especial procedure for the sale of permanent tenures for arrears, in lieu of the sections contained in Chapter XVI of the revised Bill. This procedure will apply to permanent tenures of every description and all matters or questions arising between the parties will be finally determined thereunder as in a proceeding for the execution of a decree. Its outline is as follows:—

1. Any permanent tenure may be registered on application made either by the landlord or the tenant to the Court of the Subordinate Judge of the district, who shall prepare and keep a register for this purpose and enter therein the amount of annual rent, the instalments in which it is payable, and other particulars. Registration is left optional and not made compulsory.
2. Application may be made to the Subordinate Judge for the periodical sale of a tenure registered as above for arrears accruing thereupon. Registration of a tenure in the manner aforesaid in a Civil Court has practically the same effect as a declaratory decree, that the tenure is liable to pay as annual rent a certain amount in certain instalments. Any question of payment that may be raised by the tenant shall be tried and determined by the Court as in an execution-proceeding.
3. The service of the notice of sale shall be made by an officer of the Court and not left to the landlord.
4. When a tenure is sold, the question whether the sale shall be confirmed or set aside shall at once be determined and finally set at rest.
5. When a sale is confirmed, all claims for compensation by under-tenants for the avoidance of their under-tenures, and other questions relating to the distribution of the surplus sale-proceeds, shall be tried and determined by the Court as in the case of an execution-sale.

The above sketch is a very bare outline of the scheme. The writer hopes every reader who takes an interest in the subject will carefully go through the sections in the draft, and the notes appended thereto explanatory of their objects and reasons. It will not be more than an hour's reading, which it has cost many days to the writer to think out and put into presentable shape.

One essential feature of the scheme is that everything should be done by the Civil Court, and done once for all. The acts being of a judicial nature, they would be more efficiently performed by the Civil Court than by the Collector of the district. His functions are multifarious and leave him little spare time. If you give him extra work, it is just possible that it may be ill-done, and may at the same time act like the proverbial last straw upon the camel's back. Act X of 1859 invested him with jurisdiction to try suits between landlord and tenant. The experiment proved a signal failure. The Collector's decision never did, and never will, inspire confidence. There is another very serious objection to his being entrusted with judicial functions in any class of cases between landlord and tenant. You cannot give him power to decide finally. His orders and decisions will necessarily be open to revision in a civil suit, and the same work will have to be done over again in the Civil Court to the great cost and harassment of the parties. This was the state of things before 1859. The Collector tried summary suits for rent under Regulation VII of 1799, and held summary sales of patni taluqs under Regulation VIII of 1819. Regulation VII of 1799 has been repealed, but the Collector continues to exercise the power of holding summary sales under Regulation VIII of 1819. The evils and defects of a mere summary procedure have already been pointed out, and they would be greatly aggravated if it were, without large modifications, extended to the other classes of permanent tenures. As our special procedure is not a mere summary procedure, but one under which all matters in contest between the parties would be finally decided, it follows that the Civil Courts alone could be entrusted with jurisdiction under the said procedure. But it must be a Civil Court possessing the following qualifications:—

- (1) that it is presided over by an experienced Judge;
- (2) that it possesses a record-room;
- (3) that it has a public treasury close at hand.

The Court of the Subordinate Judge may fairly be said to possess all these qualifications. It is true he has not generally a separate record room of his own, but shares that of the District Judge. But this may be easily set right by allotting him a separate room in the court-building for his records. The Court of the District Judge does, no doubt, very well answer to our description; but the machinery is too costly to be put to such ordinary use. An Additional District Judge, if required, would cost three times as much as an Additional Subordinate Judge. Besides, according to our especial procedure, the services of the District Judge should remain available for certain purposes of appeal and general supervision. The Court of the Subordinate Judge, which is the principal Court of original jurisdiction in the Mufassal and commands general confidence, may safely be trusted to exercise jurisdiction under the especial procedure. It will involve a slight increase of ministerial establishment, and, in some districts, it may necessitate the appointment of an Additional Subordinate Judge; but this outlay will be counterbalanced by saving one or two extra Munsifs in each district, for the special procedure

will greatly reduce rent-litigation, and it may be confidently affirmed that two years after its passing there will scarcely be any suit for rent against a tenure-holder.

The writer will, in a future paper, review the other procedure sections of the revised Bill, and will now, without further preface, introduce the reader to—

A Draft of an Especial Procedure for the Sale of Permanent Tenures for Arrears accruing thereupon (in lieu of Chapter XVI of the revised Bill).

Section 1.—If default is made in the payment of the rent due in respect of a tenure registered under this Act in the manner hereinafter provided, the landlord may, in addition to any other remedy given him by law, apply by petition in the Court of the Subordinate Judge for the sale of the tenure in accordance with the rules contained in the following sections of the chapter.

NOTE.—This is section 194 of the revised Bill slightly altered.

Section 2.—Such petition may be presented four times in the year, during the first month of each quarter, shall be duly verified and shall contain the following particulars:—

- (1) name, description and address of the landlord;
- (2) name, description and address of the tenure-holder;
- (3) name of the tenure, its annual rent and registry number;
- (4) name of the village and thana in or adjacent to which the tenure or a part thereof is situated, and where the notice of sale shall be served;
- (5) specification of the balance due up to the end of the last preceding quarter;
- (6) Statement of the instalments of rent and other demands (for example, public cesses) recoverable as rent, payable during the current quarter and up to the date of sale;
- (7) prayer for the realization of the aggregate amount with interest and costs by the sale of the tenure.

Proviso I.—No such petition shall claim rent at a higher rate than that entered in the Register.

Proviso II.—No such petition shall include arrears of rent barred under the rules of limitation contained in Schedule IV of the Act.

Proviso III.—No such petition shall be entertained unless it shews that a balance for the period preceding the commencement of the current quarter exists at the date of the petition against the tenure-holder.

NOTE.—The sales were half-yearly under Regulation VIII of 1819. The reason for making them quarterly is that it will distribute the work of the Courts more evenly and prevent a rush at certain seasons.

Under Regulation VIII of 1819 petitions were presented on the first days of Baisakh and Kartik, just one month before sale. Petitions may under this procedure be presented on any day during the months of Baisakh, Sraban, Kartik and Magh, from three to four months before sale. The object of making this change is to allow ample time to the Civil Court to examine the petitions, to issue and serve the requisite notices, and to determine before the day of sale any question of payment that may be raised by the tenure-holder. It should be noted, however, that although petitions for sale may be presented during the first month of each quarter practically a tenure cannot be proceeded against oftener than twice in the year, for a proceeding commenced in one quarter will run into the next, and prevent a second petition being put in until a fresh arrear shall have accrued at the end of the next quarter.

Under Regulation VIII of 1819 petitions could be made only for the rents of the current year. This provision was made at a time when the limitation for a civil suit for rent was twelve years. The period of limitation is now three years—and short enough. There is no object now in prescribing a different and shorter period of limitation for petitions under this chapter. Suitors ought not to be compelled to resort to a Court of law more frequently than they consider it necessary or convenient. Under Regulation VIII of 1819, if the patnidar was in balance for a few rupees at the end of the year, the landlord was obliged to institute proceedings at once or to forego the summary remedy altogether. This is found extremely inconvenient.

There is one very important point for consideration in connection with this section, being a question of judicial finance. A petition in the Subordinate Judge's Court ordinarily bears a court-fee stamp of eight annas. Should a heavier stamp-duty be imposed upon petitions under this section? The writer believes that the eight annas stamp-duty will be sufficient to cover all additional expenditure; but, if it be deemed necessary to impose any special stamp-duty, it should be one-fourth of the stamp for plaints, with a maximum limit of ten rupees and a minimum limit of eight annas.

Section 3.—The days for the sale of tenures under this chapter shall ordinarily be the twenty-eighth day of the month following each quarter of the year during which the petition is presented; but if the twenty-eighth day of the month be a Sunday or a close holiday, the sale shall take place on the next open day.

NOTE.—The sale days will be the 28th Sraban, the 28th Kartik, the 28th Magh and the 28th Baisakh respectively, for petitions presented during the month of Baisakh, Sraban, Kartik and Magh.

The sale should take place during the first month of the next quarter and the title of the purchaser date from its commencement. This will prevent any complication of account between the landlord, the outgoing tenure-holder and the purchaser. The twenty-eighth day of the month has been selected as allowing ample time for the service of notice and trial of any questions that may be raised by the tenure-holder, and also as approaching closely the well-known sale days under Regulation VIII of 1819.

Section 4.—On the presentation of the petition, the Court shall register it, appoint a day for the sale in accordance with section 3, and, on the payment of costs by the petitioner,

cause to be served and affixed in conspicuous positions at the following places, not less than twenty days before the day appointed for sale, notices for the sale of the tenure:—

- (1) in the court-building;
- (2) at the dwelling-house of the tenure-holder;
- (3) in the village in or adjacent to which the tenure or any part thereof is situated;

Provided the Court, instead of proceeding as above, may, at its discretion, return for amendment or reject the petition, if it is not framed in accordance with section 2 or if it is in contravention of proviso III of the said section.

NOTE.—A form of the notice should be given in a schedule. Among other particulars it should contain, for the information of the tenure-holder and the public, sections 6, 7 and 13 quoted *in extenso*.

Section 5.—On a return being made of the service of notice, the Chief Ministerial Officer of the Court shall forthwith take the affidavit of the serving peon and make a report in each case. If there shall have been no proper service in any case, the Court may order re-service of notice, if there be time for re-service, or stop the sale.

Section 6.—The tenure-holder may at any time before sale pay into Court the arrears due up to the date of payment with interest and costs. Upon such payment being made the Court shall record a proceeding and stop the sale of the tenure.

Section 7.—If the tenure-holder desire to contest the demand made in the petition, he shall within fifteen days of the service of notice file in Court a verified written statement of his case, together with all receipts and other documentary evidence in support thereof; but the Court may, upon good cause shown, allow such written statement to be filed after fifteen days of the service of notice.

Section 8.—The Court on receiving a written statement from the tenure-holder as aforesaid shall appoint an early day for the hearing of the case, give notice of the same to the landlord and try and determine the issues between them on the appointed day; but no sale shall be stayed by reason of the pendency of such trial, unless the tenure-holder deposit in Court the amount of the landlord's demand.

If the Court decide that there was no arrear due at the date of the petition, it shall dismiss the petition and stop or cancel the sale of the tenure, as the case may be.

If the Court decide that any part of the arrear claimed was not due, or that the tenure-holder has established no case for reducing the arrear claimed, it shall record its finding and reduce or uphold the landlord's demand accordingly. Such decision will not interfere with or affect the sale of the tenure.

NOTE.—See section 198 of the revised Bill.

Section 9.—The decision of the Court under the last preceding section shall be final, if the amount in dispute between the parties do not exceed Rs. 500. If the amount in dispute exceed Rs. 500, an appeal shall lie as an appeal from a decree to the District Judge or to the High Court, as the case may be.

NOTE.—The matters in dispute between the parties will thus be finally determined.

Section 10.—At the time of the sale, the tenures, with the exception of those which shall have been exempted from sale under any of the preceding sections shall be successively called up according to the order of the petitions for sale and put up to sale by public auction.

No lot shall be withdrawn from sale without the consent of the landlord, unless the whole amount of the arrears with interest and costs shall be paid into Court or to the landlord by the tenure-holder or any person who possesses an interest in the tenure which would be voidable upon such sale.

The sales of the tenures shall be continued from day to day until all the lots shall be sold.

Section 11.—Every one except the tenureholder shall be free to bid at such sale. The officer conducting the sale may refuse to accept a bid, unless he is satisfied that the amount required to be deposited is in hand for the purpose or will be produced within two hours.

NOTE.—Section 201 of the revised Bill.

Section 12.—Fifteen per cent. of the purchase-money shall be paid immediately after the lot is knocked down, and the remainder of the purchase-money on the eighth day.

If the landlord becomes the purchaser, he may set off the amount due to himself against the purchase-money.

If the fifteen per cent. is not paid in cash or Government securities within two hours of the sale, the lot shall be re-sold on the same day.

If the remainder of the purchase-money be not paid on the eighth day notice of re-sale to take place on the tenth day, shall be given on the following day by proclaiming the same by beat of drum through the bazar of the sadar station.

The lot shall be re-sold on the tenth day, as notified, at the risk of the first purchaser, who shall forfeit the deposit of fifteen per cent. and be further answerable for any sum in which the proceeds of the second sale may be short of the previous sale; such deficiency to be levied by the process for the execution of decree.

The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

NOTE.—The second paragraph of this section enables the landlord, if declared purchaser, to set off the amount due to himself against purchase-money as in execution-sales. With this exception the section is section 201 of the revised Bill re-produced.

Section 13.—At any time within thirty days of the sale, the tenure-holder, or any person who possesses an interest in the tenure which would be voidable upon such sale, may pay into Court the amount due to the landlord, together with costs and interest and a sum equal to five per cent. of the purchase-money.

Provided that where the landlord is the purchaser the tenure-holder shall not pay five per cent. compensation on the amount which the landlord has set off against the purchase-money.

Upon such payment being made, the Court shall cancel the sale and forthwith refund to the purchaser that amount of the purchase-money, together with five per cent. on the said amount as compensation.

If no such payment be made, the Court shall, on the expiration of the time allowed therefor, declare the sale to have become absolute, and grant a certificate to the purchaser specifying the tenure sold, and stating that the purchase shall have effect from the commencement of the quarter.

Except as provided above, no sale under this chapter shall be cancelled or set aside by suit or application; but nothing herein contained shall debar the tenure-holder from obtaining equitable relief or damages against his landlord on proof of fraud in a civil suit or against any other person party to such fraud.

NOTE.—This section introduces a very important change. The evils of a future civil suit to set aside the sale have already been pointed out. The Code of Civil Procedure enables a judgment-debtor to set aside an execution-sale upon proof of two things, namely:—

(1) that there was material irregularity in publishing or conducting it;

(2) that he has sustained substantial injury by reason of such irregularity.

This last clause has been interpreted to mean that the property has been sold at an inadequately low price. The proceeding for setting aside the sale, which has to be commenced within thirty days and is generally brought to a speedy conclusion, is not so costly and harassing as a regular suit. But if we examine the principle of such proceedings and suits, it will appear that they rest upon a purely artificial basis. The purchaser is dragged into this litigation, which turns upon the service of the notices of sale and the market-value of the property sold, and in which there is commonly a great deal of perjury on one side or the other. It is intelligible that the debtor's property should not be sacrificed, and that a sale should be set aside which involved a sacrifice of the property. But then, why render it necessary for the debtor to prove non-service or irregularity in the publication of the sale and raise an issue so prolific of perjury?

The object of the provisions made in this section is to relieve the tenure-holder of the necessity of proving irregularity and to put him upon practical proof of inadequacy of price. It is by no means easy to ascertain the exact market-value, which varies from ten to twenty per cent., according to circumstances and according to the necessity of the seller and the eagerness of the buyer. It cannot be said that a property has been sold at an inadequate price which has been sold within ten or twenty per cent. of the price at which it can be sold under private contract. If the price fetched at auction be really inadequate, the tenure-holder ought to be able to raise money within thirty days by mortgage or sale so as to be able to pay five per cent. as compensation to the auction purchaser. The tenure-holder, again, ought not to get the sale cancelled without paying up the arrears due to the landlord. Thus we give the tenure-holder an opportunity of recovering his property, without lawsuit and perjury, at a cost to himself of five per cent. upon the purchase-money, and deprive him of the questionable advantage of instituting a suit or proceeding to set aside the sale and spending ten times as much money on a doubtful issue.

There can be no doubt that the purchaser ought to be fully and sufficiently compensated for his risk, trouble, expense and detention of money. This should be fixed at not less than five per cent. upon the purchase-money, and not left to the discretion of the Court. Both the tenure-holder and the auction-purchaser ought to be certain about terms upon which a sale might be cancelled. Purchasers will readily come forward if the law secure them five per cent. upon their money without dragging them into a costly and harassing litigation. In short, purchasers should not receive shabby treatment, as such treatment will ultimately injure the tenure-holders themselves by deterring people from purchasing at such sales.

Section 14.—The purchaser of a tenure under this chapter shall acquire the tenure with power to avoid, in the manner prescribed by section 184 for the avoidance of encumbrances, all liens, sub-tenancies, easements and other rights or interests created in the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(a) a right of occupancy;

(b) a right conferred on an occupancy-ryyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(c) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

NOTE.—Section 202 of the revised Bill.

Section 15.—The purchaser may apply for delivery of possession, and the Court shall thereupon put him in possession of the tenure in the same manner as in the case of a sale in execution of a decree.

NOTE.—See section 203 of the revised Bill.

Section 16.—The provisions of section 188 and, if the person making the payment is a tenant inferior to the tenure-holder, the provisions of section 189 also shall apply to payments made under section 10 or under section 13 by any person who possesses an interest in the tenures which would be voidable upon the sale thereof.

NOTE.—Section 204 of the revised Bill.

Section 17.—When a tenure has been sold under this chapter, any person having an interest therein which is voidable upon such sale may within two months of the date of the sale apply to the Court to be paid compensation out of the surplus proceeds of the sale, if any:

Provided that no tenant inferior to the tenure-holder shall be entitled to make such application, if at the time of the sale any arrear was due from him.

NOTE.—This is section 206 of the revised Bill slightly altered. There is no necessity for separate suits in respect of the claims to the surplus sale-proceeds. They may be dealt with by the Court on application, as in the case of an execution-sale.

Section 18.—When any day specified in the chapter is a Sunday or holiday, anything required or authorized under this chapter to be done on that day may be done on the next following day, not being a Sunday or holiday.

In this chapter "quarter" means a quarter of the agricultural year, each quarter consisting of three months reckoned from the commencement of the year.

Rules for the Registration of Tenures.

Section 19.—The following registers shall be kept in the Court of the Subordinate Judge:—

- (1) a general register for each parganá of permanent tenures situated therein;
- (2) an intermediate register for each parganá of changes affecting entries in the general register;
- (3) a register for each parganá of leases creating permanent tenures or qualifying the terms thereof;
- (4) a register for each parganá of counterpart leases creating permanent tenures or qualifying the terms thereof.

NOTE.—Of all local divisions, parganá divisions are the best known and least subject to change. The name of the parganá occurs in every lease and every rent receipt. For facility of reference, some division of the registers is necessary, and division according to parganá seems to be most suitable. Thánás and sub-divisions are subject to frequent changes and unsuitable for our purpose.

Divisions according to class of the tenure will be attended with great difficulty. There are tenures which will not come under any class. Changes occur also in the class of the tenure, for example, a darpatni is commonly a tenure of the second order, but becomes a tenure of the first order on the proprietor purchasing the patni.

Section 20.—In the general register of permanent tenures the following particulars shall be entered:—

- (a) name of the parganá;
- (b) serial number of the tenure;
- (c) name and address of the landlord;
- (d) name and address of the tenure-holder;
- (e) name by which the tenure is known in the landlord's papers;
- (f) the amount of annual rent;
- (g) the instalments in which the rent is payable;
- (h) name of village and tháná in which the tenure is situated;
- (i) reference to the register of leases and counterpart leases;
- (j) reference to entries made in the intermediate register after the preparation of the general register.

NOTE.—The above particulars will be quite sufficient. People should not be troubled for particulars not necessary for the purposes of this chapter.

Section 21.—In the intermediate register all changes in the names of the landlord and tenure-holder, changes in the amount of annual rent, whether by contract or decree of Court, and changes in other particulars shall be recorded in a convenient form.

Section 22.—In the register of leases and counterpart leases, the following leases and counterpart leases relating to tenures registered under this chapter shall be entered and authenticated by the seal and signature of the Subordinate Judge:—

- (a) leases and counterpart leases which have been registered under any law for the time being in force for the registration of documents;
- (b) leases produced by the tenure-holder which shall be admitted by the landlord or correspond to the counterpart leases produced by him;
- (c) counterpart leases under similar conditions;
- (d) leases and counterpart leases found to be genuine by a judgment of the Civil Court binding upon the landlord and tenure-holder;

and no others.

Such registers shall be "public records kept in British India of private documents" within the meaning of sub-section 2, section 74 of the Indian Evidence Act, 1872.

NOTE.—A register of this description is greatly needed. It will save time and trouble to the Court and to the parties, who will be relieved from producing and proving their documents in every rent-proceeding. It will afford protection to the heirs and transferees of both landlord and tenure-holder, who cannot always obtain the original documents. This register, together with the general register of tenures, will offer full and reliable information to intending section-purchasers, who need not now buy in the dark.

But care should be taken to exclude spurious documents. The opportunity of registration would be eagerly seized to get in spurious leases and counterparts. If the Court were to go into evidence in the case of each document, it will open up an extensive field of litigation. The Court need enter only such documents as are of the descriptions mentioned in the section and undisputable.

It may be observed that the registration of leases and counterparts is not absolutely necessary for the purpose of registering tenures. Documents which are disputable may be excluded without producing any difficulty or incongruity.

Section 23.—Every landlord, being a proprietor, whose name has been registered under the Land Registration Act, 1876, and every landlord, being a tenure-holder, whose tenure has been registered under this Act, may apply for the registration of all tenures held under them. And every tenure-holder, whose landlord is a proprietor registered under the Land Registration Act, 1876, or whose landlord is a tenure-holder registered under this Act, may apply for the registration of his tenure.

NOTE.—Registration should not be made compulsory. People will readily come forward to register their own tenures and tenures held under them. Registration offers manifest advantages to both landlord and tenant, which will be quickly perceived and eagerly availed of.

Tenures may be registered on the application of either landlord or tenure-holder. The only condition insisted upon, and insisted upon for an obvious reason, is that the parent estate or tenure should be previously registered.

Section 24.—Every application for the registration of a tenure shall be presented in the Court of the Subordinate Judge, duly verified and accompanied by leases or counterpart leases relating to the tenure, if any. It shall contain the following particulars:—

- (1) (c) to (4) of section 20;
- (2) name and description of the immediately superior estate or tenure, and reference to its registration under the Land Registration Act, 1876, or this Act;
- (3) date and description of leases and counterpart leases filed with the application, if any.

Section 25.—The Court, on receiving an application framed as above, shall register the same and issue a summons to the opposite party, whether landlord or tenure-holder, to file in his Court a return duly verified, accompanied by leases or counter-leases relating to the tenure, if any, and containing the particulars specified in section 24.

If the opposite party do not file his return within the time appointed in the summons, the Court may proceed against him as against a recusant witness under the rules contained in that behalf in the Code of Civil Procedure.

Section 26.—The Court, on receiving a return under the last preceding section, shall appoint a day for hearing in the presence of the agents or vakils of both parties.

Upon the day appointed for hearing, if the Court shall find, after reading the petition and return, and examining, if necessary, the agents or vakils of the parties, that there is no difference between them on any of the following points:—

- (a) admissibility of the tenure to registration,
- (b) amount of annual rent payable therefor,
- (c) instalments in which the rent is payable,

the Court shall record a proceeding and pass order for registering the tenure and any lease or counterpart lease filed by the parties which are admissible for registration under section 22 of this chapter. The Court may also note in the proceeding, and direct to be noted in the general register, any difference existing between the parties in other particulars. The tenure and the admitted lease or counterpart lease shall thereupon be registered, and a memorandum of such registration shall be endorsed upon such lease or counterpart lease under the seal and signature of the Court.

Section 27.—If after reading the petition and return and examining the agents or vakils of the parties, the Court shall find that there is a difference between them on any of the points specified in the last preceding section, the Court shall record the points of difference, appoint a day for hearing and upon the appointed day try and determine the issues between the parties as in a declaratory suit.

Registration shall thereupon take place in such manner as the judgment shall direct.

Section 28.—An appeal shall lie from the judgment of the Court as an appeal in a declaratory suit.

NOTE.—Any dispute between the parties will thus be at once and finally decided. This is one great advantage of having the registration made by the Civil Court.

Section 29.—Any changes in the names of the landlord and tenure-holder, changes in the amount of annual rent, whether by contract or decree of Court, and changes in other particulars may be registered in the Court of the Subordinate Judge in a similar manner under a procedure following as nearly as possible the lines of sections 25 to 28.

NOTE.—It will be seen that the registration of tenures in the Civil Court under the above procedure will present no difficulty of any kind. In the large majority of cases there will be no difference between the landlord and tenant, and registration will be a mere formal matter. In some few cases differences will arise, and then they will be determined at once and finally between the parties. Registration being left optional, it is not likely that the parties will bring before the Court contentious cases in large numbers. People usually bide their time and do not rush into Court with doubtful or disputed claims, unless compelled to do so by any rule of limitation. The writer humbly suggests that provision should be made for the repeal of Regulation VIII of 1819 two years from the date of this Act. Within that period all landlords should be able to register tenures held under them.

The writer hopes he has sufficiently shown that the registration of tenures is not such a bugbear after all, and that it does not require a separate Act of the Bengal Council. Everything depends upon the manner of doing

it. It may be easily done under an easy and simple procedure without producing any appreciable friction between landlord and tenant. But it is quite possible to do it in a different manner so as to embroil landlord and tenant and to produce the greatest crop of litigation out of it. If that be the object, pass a long and cumbersome Act, make registration in great detail and of a large number of unnecessary particulars compulsory, and entrust the work to the Collector of the district.

PART II.

RENT-SUITS AND SALES FOR ARREARS UNDER DECREE.

In suits for rent, one or more of the three following issues usually arise for trial, namely:—

1. What is the annual rent of the tenure or holding?
2. In what instalments is it payable?
3. What payments have been made by the tenant?

The third issue is comparatively unimportant, and its trial presents little difficulty. Payments are usually evidenced by receipts. Any false case on either side on this point is easily detected, and sometimes leads to criminal prosecutions. This acts as a sufficient deterrent, and very few cases occur in which there is any serious contest between the parties regarding payments; but the other two issues are points of vital importance. The affirmative lies upon the landlord. He has to prove it in all *ex-parte* suits and in the great majority of defended suits, the line of defence commonly adopted being to join issue on the annual rent claimed by the landlord and to throw upon him the burden of proving it.

The especial procedure set out in Part I of this Review rests upon this principle, that where the Civil Court has, in the course of registration, determined the amount of annual rent and the instalments in which it is payable a formal suit for rent is needless, and the landlord may at once apply for the sale of the tenure as in an execution-proceeding, in which any question of payment raised by the tenure-holder may be as fully tried and finally determined as in a regular suit. The special procedure is, for obvious reasons, inapplicable to raiyats' holdings, and cannot be safely extended to tenures other than permanent tenures. When a raiyat makes default in the payment of rent, and the matter has to be brought into Court, it must, in the first instance, be in the shape of a proceeding in which the Court shall be able to fully try all or any of the three issues stated above which may be raised in the case. Such a proceeding, by whatever name you call it, is no other than a civil suit. The question of court-fee stamp is not of much importance in rent-suits against raiyats. The suits are generally for small amounts, and the stamp-duty that has to be paid forms a very small proportion of the actual costs that have to be incurred in such suits.

But when in a civil suit a decree has been made for the rent of a holding or tenure, and the amount of annual rent and instalments determined, there is no reason why there should be a series of suits for subsequent years against the same tenant. He may be proceeded against by application as in an execution-proceeding for subsequent rents accruing upon the same tenure, and in such proceeding any question of payment or other matter that may be raised by the tenant shall be tried and determined. This will save to the Court the civil suit, to the tenant the legal costs thereof, which ultimately fall upon him, and to the landlord the extra costs and two months' time, which is the usual period of gestation of an ordinary rent-suit. The writer thinks that the addition of a few sections on the following lines to the chapter on Judicial Procedure will eliminate a great deal of unnecessary and costly procedure, and be advantageous to both landlord and tenant:

1. In every suit for rent the Court shall find and specify in its decree the annual rent of the tenure or holding and the instalments in which it is payable.

2. When the annual rent of a tenure or holding, and the instalments in which it is payable have been determined and specified in a decree as aforesaid, the landlord may, on the accrual of subsequent arrears on the same tenure or holding against the same tenant or raiyat, apply by petition in the said Court that the amount of such arrears be recovered under the rules for the execution of a rent-decree.

Proviso (1).—No such petition shall claim rent at a higher rate than that specified in the decree, nor include arrears of rent barred under the rules of limitation contained in schedule IV of the Act.

Proviso (2).—No such petition shall be presented oftener than twice in the year.

Proviso (3).—No such petition shall be entertained after the lapse of ten years from the date of the decree.

NOTE.—Section 293 of the Code of Civil Procedure and Act VII of 1880 (B.C.) furnish instances of the application of the execution procedure without previous suit. There is nothing anomalous or incongruous in it. To prevent the tenant being harassed, and the Court being flooded by such petitions on default being made in every monthly kist, *Proviso No (2)* has been put in as a necessary safeguard.

Some rule of limitation, such as is contained in *Proviso No (3)*, seems also to be necessary. It is obvious that a decree specifying the annual rent and instalments should be renewed at certain intervals, in order to keep pace with the progress of time and the changes brought on thereby.

3. On the presentation of the petition, the Court shall register it and issue a notice on the opposite party to appear on an appointed day and show cause why the amount claimed in the petition should not be levied from him. The Court may, simultaneously with the issue of notice to the opposite party, issue process for the sale of the tenure if it be saleable, or for the attachment of moveable and immoveable property belonging to him; but no warrant for the arrest of the opposite party shall be issued until after the expiration of the day appointed for his appearance to show cause.

4. If the opposite party do not appear and show cause, the Court shall make the rule absolute. If the opposite party appear and show cause, the Court shall hear the case in the presence of the parties. If the parties are at issue on questions of fact, the Court may adjourn the hearing and fix a day for the production of evidence and final disposal of the case. On the appointed day, the Court shall try and determine the issues between the parties, and record judgment which may be for upholding, reducing, or dismissing the claim of the landlord.

5. The decision of the Court under the last preceding section shall have the force and effect of judgments in rent-suits, and shall be open to appeal and revision under the rules and limitations applicable to decrees in such suits.

It will be seen that the recovery of rents by the execution procedure as sketched above will present no difficulty of any kind. The tenant, if he have any good cause to show against his landlord's claim, will have a full trial of his case. In short, nothing is excluded by this procedure except a needless formal suit.

The writer will now proceed to consider a few sections of chapter XIV of the revised Bill relating to Judicial Procedure, which, in his opinion, are especially open to objection, or on which improvements may be suggested.

CAPHTER XIV OF THE REVISED BILL.

JUDICIAL PROCEDURE.

Section 160. (1) The cause of action in all suits between landlord and tenant as such shall for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.

Section 168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent, where—

- (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees; or
- (b) the decree or order is passed by any other judicial officer especially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant.

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

Sections 160 and 168 may be considered together. To allow no appeal from a decree or order passed, whether in the first instance or on appeal by a Subordinate Judge in rent-suits under Rs. 100, is a move in the right direction. But the exception to this rule should be extended by adding a clause to the following effect in the fourth paragraph of section 168:—

“or unless the decree or order has decided a question of the amount of annual rent payable by the tenant or of the instalments in which it is payable.”

It has been shown at the outset that these are questions of vital importance between landlord and tenant. Any decision on these issues goes a great deal beyond the scope of the suit in which they are raised, and seriously affects the position and rights of the parties in respect of future rents. Such decision should be open to appeal.

The last paragraph of section 168 should be omitted. It will do no good to give this power to the District Judge. The High Court has it under section 622 of the Code of Civil Procedure, and it ought not to be conferred upon an inferior Court. Any exercise of this power by the District Judge is sure to lead to a further application to the High Court, and it will be held as often as not that the Judge in setting the first Court right has himself, “exercised a jurisdiction not vested in him by law.”

The writer has noticed section 168 first, because the provisions of that section would lend strong support to the following important suggestion which he would submit for the consideration of the legislature and the public, namely, to make all rent-suits and applications under the Rent Act cognizable by the Court of the Subordinate Judge. There is little advantage in having the small suits of this class tried in the first instance by a less experienced officer and then re-tried by the Subordinate Judge in appeal. The appeal may very well be saved by making

them triable in the first instance by the more experienced officer. Especial Judges and especial Courts mentioned in clause (b) of section 168 are not likely to prove successful. It will be far more simple and far less costly to entrust the jurisdiction to Subordinate Judges—a class of judicial officers who possess general confidence and stand well in public estimation. The Local Government should bear in mind that the appointment of Subordinate Judges is in its hands, and that it is more simple to appoint efficient men to preside over these established tribunals than to create especial Courts. It is also a point of great importance that there should be no doubt as to the jurisdiction of the Court. Section 160 as framed will render a much larger proportion of rent-suits cognizable by the Subordinate Judge than under the present law. This is good so far; but the jurisdiction will depend upon the value of “the land in respect of which the relation of landlord and tenant exists between the parties.” The Subordinate Judge or the Munsif will have jurisdiction accordingly as the value of the land does or does not exceed Rs. 1,000. This is a question of fact which will be frequently raised, and will have to be determined on evidence. All this unnecessary litigation may be avoided by giving exclusive jurisdiction to the Court of the Subordinate Judge.

Section 163, sub-section (b). The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant, or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification.

Sub-section (c). A written statement shall not be filed without the leave of the Court.

Sub-section (c) should be struck out. There is no reason why the tenant should be placed under any disadvantage in respect of making his defence. It is not at all likely that leave to file a written statement will be refused in any case. This little clause will not do any good to any body, but simply put the tenant to the cost of making an application for leave, and put the Court to the trouble of hearing it.

Sub-section (b) is equally objectionable on the side of the landlord. In the large majority of estates it will be impossible for the landlord to meet its requirements. The matter was fully considered in the Rent Commission, and the old law was left untouched—see Mr. Field's Digest, paragraphs 149 and 185, and Bill prepared by the Rent Commission, section 167. If you make it compulsory on the landlord to state boundaries in the plaint, you will enable the tenant to raise a foreign issue in the case by alleging that there has been misdescription. It is not desirable that the trial of a rent-suit should be encumbered with an issue, to determine which a protracted enquiry would often be necessary, but which, when determined, would be wholly unnecessary for the decision of the suit. The annual rent of the tenure or holding, and the instalments in which it is payable, are necessary particulars in a rent-suit, and should be substituted for the boundaries.

Section 166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

The principle of payment by instalments is wholly inapplicable to rent-decrees. There is only accumulation of interest on other decrees for the payment of money, but in case of rent-decrees the debt accumulates with interest and subsequent instalments of rent.

Section 174. (1) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant, may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

(a) the situation, quantity and boundaries of the land held by the tenant;

(b) the class to which he belongs,—that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and if he is a tenure-holder, whether his rent is liable to enhancement; and

(c) the rent payable by him at the time of the application.

(2) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local enquiry, the Court may direct that a local enquiry be held, under Chapter XXV of the Code of Civil Procedure, by such Revenue-officer as the Local Government, by rule, directs.

(3) The order on any application under this section shall have the effect of, and be subject to, the like appeal as a decree.

The writer does not see that any useful object will be attained by directing that the local enquiry should be made by a Revenue-officer. An experienced officer in the higher grades of the Revenue Department will not conduct this enquiry himself. He will depute an Amin or Sub-Deputy to make the local enquiry, which may be done with equal result by a Civil Court. Amin. The passage of a case from a Civil Court to a Revenue-officer will be productive of very great harassment to the parties. It would be far more simple to improve the position and efficiency of the class of officers attached to the Civil Courts and known as Civil Court Amins. This class of officers is practically self-supporting, and cost the Government nothing. The fees paid by suitors for the employment of such officers in local enquiries cover their pay.

Section 170, relating to forfeiture, and sections 171 and 172, relating to ejectment, do not properly come within the scope of this Review. They are the outcome of changes proposed to be made in substantive law, and not mere matters of procedure.

CHAPTER XV OF THE REVISED BILL.

SALE FOR ARREARS UNDER DECREE.

The procedure contained in this chapter is somewhat cumbrous, and not likely to work well in practice. When a decree has been obtained for an arrear of rent due on a saleable tenure, it may very well be brought to sale under the especial procedure dealt with in Part I, which, with a few slight alterations, may be easily adapted to sales in execution of decrees for arrears. A procedure for sale and, in fact, procedure for every matter arising between landlord and tenant, should be as simple as possible, and should contain nothing that is not absolutely necessary. To the landlord the application of the especial procedure will make this difference, that there will be a sale-day in each quarter instead of a sale-day in each month; but against it we may set off the manifold advantages of having sales on fixed days in each quarter. There will necessarily be a great concourse of people interested in land on such quarterly sale-days, and larger competition and greater publicity than on sale days spread over twelve months in the year. Publicity is a point of great importance in auction-sales, and is a more effectual safeguard against fraud than the terrors of a future civil suit. The writer would, therefore, humbly suggest that Chapter XV should be re-cast by making the especial procedure applicable to sales in execution of rent-decrees and incorporating therein the following sections of the revised Bill:—

Section 175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances".

Section 176. The following shall be deemed to be protected interests within the meaning of this chapter:—

- (a) any under-tenure existing from the time of the Permanent Settlement;
- (b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burying grounds have been made;
- (d) any right of occupancy;
- (e) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
- (f) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly, and in writing, given the tenant for the time being permission to create.

Section 177. For the purposes of this chapter (a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.

Section 186. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

- (a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.
- (b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.
- (c) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.
- (d) The balance (if any) remaining after the payment of the rent mentioned in clause (c) shall upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Section 188. (1) When any person having, in a holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum, and secured by a mortgage of the holding to him;
- (b) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and
- (c) he shall be entitled to possession of the holding as mortgagee, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Section 189. When a holding is advertised for sale under this chapter, in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Section 190. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

The next matter for consideration is the scheme for protecting what are termed in this chapter "registered and notified incumbrances." It has greatly encumbered the procedure relating to execution-sales for arrears; but that alone is not a fatal objection. The idea of the scheme seems to have been borrowed from the law relating to revenue-sales (Act XI of 1859). It will appear, however, on close examination, that the conditions of the two sales are materially different, and there is no real analogy between them in respect of the point under consideration. The revenue-sale law allows no compensation for the avoidance of tenures and incumbrances; whereas the rent-sale law contains provisions for the payment of such compensation out of the surplus sale-proceeds. A tenure-holder's right to receive compensation is subject to a very reasonable condition. It is set out in the proviso to section 206 of the revised Bill, and is as follows:—

Provided that no such suit (for compensation) shall be maintainable by any tenant inferior to the defaulter, if at the time of the sale any arrear of rent was due from him.

If the especial procedure be extended to execution-sales for arrears, the holder of a voidable tenure or incumbrance will have the following remedies:—

- (1) he may prevent the sale by paying into Court the amount of the arrears, and recover the same as a charge upon the saved tenure (sections 10 and 16 of the Draft Especial Procedure, in Part I);
- (2) he may, after the sale, get it cancelled by paying into Court the amount of the arrears and five per cent. compensation to the purchaser, and recover the same as a charge upon the saved tenure (sections 13 and 16 of the Draft Especial Procedure);
- (3) he may, at the worst, obtain a money equivalent for the loss of his tenure, provided he himself be not in arrear (section 18 of the Draft Especial Procedure).

The holder of a voidable tenure or incumbrance cannot, in reason and justice, ask for more. He knew very well when the tenure or incumbrance was created that it was liable to be cancelled upon a sale of the parent tenure for arrears, and presumably paid value accordingly. Upon principle also his claim for further protection seems to be wholly untenable. "The rent of every transferable holding shall be a first charge upon the holding" (section 77 of the revised Bill). To sell a holding for the discharge of the first incumbrance, and to allow subsequent incumbrances to remain upon the property seems to be a clear anomaly.

Numerous complications and disadvantages are sure to result from encumbering the procedure relating to rent-sales with rules for the protection of incumbrances. Sales of tenures for arrears will gradually become like sales of rights and interests in execution of money-decrees, which have acquired such fame for producing splendid crops of litigation. Fraudulent tenureholders will be enabled to register *bédami* leases absorbing the profits of the tenure, and entrap purchasers. In short, the scheme is not at all likely to work well. It will add to the troubles of everybody, and produce a feeling of insecurity very undesirable in rent-sales.

If this scheme be abandoned, it will eliminate the following sections of Chapter XV:—

Provisos (a) and (b) in section 175.	Section 181.
Sub-section (b) of section 177.	Section 182.
Sub-section (a) of section 179.	Section 192.
Section 180.	Section 193.

PART III.

PROCEDURE IN SUNDRY OTHER MATTERS BETWEEN LANDLORD AND TENANT.
(To follow.)

Dated 13th December, 1884.

From—Secretary, Behar Landholders Association, Gya Branch,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to request the favour of your laying before His Excellency the Viceroy and Governor-General in Council the accompanying memorial, with the report annexed there-

with, from the landholders of the District of Gya on the Bengal Tenancy Bill. I further beg to despatch by book-post five copies of the memorial and the report therein alluded to.

To the Viceroy and Governor-General of India.

The humble memorial of the landholders of the District of Gya.

MOST RESPECTFULLY SHEWETH,—That your memorialists have been greatly alarmed and distressed by the provisions of the Bengal Tenancy Bill, and your memorialists respectfully submit that in spite of the changes made therein by the Select Committee, the Bill, far from improving or ameliorating the condition either of the landlords or their tenants, will powerfully tend to upset their present relations, and disturb the harmony which has hitherto generally existed between them.

2. That your memorialists beg respectfully to invite your Excellency's attention to the strange situation of the so-called landlords in this province under the laws at present in force. Their lands are subject to a summary sale law for arrears due to Government, and even their persons to arrest and imprisonment, under a summary certificate procedure law, and this for public demands upon their lands, not due by them but by their tenants, while for the realization of their rents they are obliged to have recourse to the cumbrous, dilatory, and costly procedure of regular suits in the civil courts. The injustice of this state of things has long been recognized, and so far back as the year 1876 a revision of the Rent Law, with a view to afford to the zemindar greater facility for the realization of his rents, was thought a pressing necessity. Your memorialists respectfully submit that the present Bill not only fails to provide any facility for the realization of rents, but by taking away from them the imperfect power of distraint which Act X of 1859 gave to them, will leave them in a more miserable position than before.

3. That your memorialists respectfully submit that the nature of ryotty tenures in this district, owing to the natural features of its land, differs radically from that of other districts in Bengal, and that the provisions of the Bill regarding settled ryots, right of occupancy, enhancements of rents, transferability and subletting of the right of occupancy, improvements and management, are quite unsuited to it, and will prove subversive of long established and customary rights of both parties, and most harmful both to the landlords and ryots of the district.

4. That no cultivation is possible in the district without the combined efforts and capital of both the landlord and ryot, and it is the bhowli tenure alone, under which both share proportionately the profit and loss under the effects of good and bad seasons that has encouraged them to join their labour and capital in the work of agriculture. The tenure benefits the landlord because, without the trouble and expense of enhancement, it enables him to get a just return for any labour employed or capital spent by him upon the improvement of the soil, and secures to him the prompt and punctual realization of his rents, while it benefits the ryot, since he has no rent whatever to pay on failure of the crops, which is an ever-recurring evil in the district. Your memorialists and their tenants naturally hoped that a tenure such as this, beneficial to them both, would receive all possible encouragement and support which the Government could give it by legislation; and it is disheartening to find that the present Bill aims at destroying it altogether. Your memorialists beg earnestly to submit that both they and their tenants look upon the provisions of sections 53, 81, 82, 83, and 220C of the Bill which they apprehend would have the effect of annihilating this tenure as the greatest misfortune and calamity that could befall the district. Such legislation was never desired either by landlords or ryots, and your memorialists respectfully solicit Your Excellency's pardon for saying that no justification for these provisions is to be found in the remote and delusive hope that the commutation of the rent now paid in kind into money may possibly increase the produce, and consequently the wealth of the country. The fear of your humble memorialists and that of the local authorities, based upon exact knowledge of the conditions under which cultivation is carried on, is that the result of such communication would be purely calamitous to the district and to the country.

5. That with the kind permission of the Collector of Gya, your memorialists beg to annex with this memorial copy of an official report on the Bengal Tenancy Bill, submitted to him by Babu Bhoop Sen Sing, Senior Government Pleader of Gya, and to solicit Your Excellency's kind attention to the several points therein discussed, as showing how injuriously the provisions of the Bill would affect this district.

6. That in conclusion your memorialists beg most respectfully to submit that, so far as they have been able to understand the provisions of the Bill, they believe that the passing of the measure into law would practically confiscate the rights which were guaranteed to them by the solemn promise of Government in the proclamation which imposed the permanent settlement upon them, and disturb the peaceful relations which have hitherto existed between the landlords and their tenants. A general confiscation of rights, so long recognized by such revolutionary means as the Bill contemplates, will not, your humble memo-

rialists fervently hope, commend itself to Your Excellency's just and benevolent Government; they respectfully pray that Your Excellency will be graciously pleased not to allow the Bill to be passed into law.

And your humble memorialists, as in duty bound, shall ever pray.

No. 42, dated Gya, the 13th July, 1884.

From—BABU BHOOP SEN SING, B.A. & B.L., Government, Pleader, Gya,
To—The Collector of Gya.

I have the honour, as directed by you, to submit my report on the Bengal Tenancy Bill, as revised by the Select Committee, with reference to the remarks contained in Government of India's letter No. 784, dated 5th May, and Bengal Government's letter No. 3T.—R., dated 24th May 1884. I regret that various other engagements, the voluminous papers connected with the subject which I had to go through, and ill-health prevented my submitting the report as early as I had intended to do.

2. The subject of the Bill is one of extreme difficulty and of the highest importance; and although my opinion thereon may, I am afraid, be not worth the paper it is written upon, yet in obedience to your order, I venture to put before you the conclusions which I have arrived at in consultation with those who take any interest in the matter, and after a careful consideration and discussion of the different questions raised in the Bill and the Report of the Select Committee.

3. Complaints from the actual cultivators of the soil that though the law had secured to them valuable rights in the land and given them protection from duress, illegal distraint, exaction, withholding of receipts, and arbitrary ejection and enhancement, the patwari's *basta* changing and changeable at the will and pleasure of an unscrupulous landlord, and the costly and cumbrous procedure of the civil court which would keep them hanging about it oftener at times when they could more advantageously be employed in their fields, prevented them from asserting their rights, and compelled them to remain quiet at the mercy of the landlord; and on the other hand, equally just appeals from the landlords for protection from frequent agrarian disturbances and combination of tenants to withhold and resist the payment of rents; their repeated complaints that the law was weak and feeble to assist them in the exercise of their right of enhancement, and above all their loud cries for justice and fair play that, while their estates were liable to summary sale under the sunset law, and the summary certificate procedure for Government revenue, and other public demands upon lands, not only payable by them but by their tenants as well, for their own just dues, they were to maintain the highly expensive and dilatory procedure of regular suits in the civil courts, pending the decision of which their estates would either be sold or pledged at exorbitant rates of interest, pressed seriously upon the attention of Government, the necessity and justice of revising and re-casting the existing law. Both the parties expected the revised law to give to each the relief and protection he wanted against the other. The zemindars expected a summary and simple procedure for the realisation of their rents, facility for, and enlargement of the grounds of enhancement, and safe and secure enjoyment of all the emoluments, present and future, to which they were entitled by law without any curtailment. The actual cultivators of the soil in their turn expected an easy, speedy, and less costly procedure which would enable them to hold their own, and protect themselves from improper encroachment upon their rights and emoluments by a ruthless and unscrupulous landlord. An impartial lover of justice and fair play, acquainted with the wish and advice of the legislature, repeatedly expressed and made known from the time of the permanent settlement, that neither of the parties should look upon the other as hostile in interest, and that both should live in peace and harmony, working for their common weal and benefit, and for the improvement of agriculture upon which depended and depend the wealth and prosperity of the country, would naturally expect the revised law to take away nothing from, and add nothing to, the vested rights of both parties. Every one expected that the revision of the law, so earnestly desired by both landlords and tenants, would bring on peace and harmony between them, and inculcate upon each to love and regard the rights of the other as his own. But the present Bill, in its present form, forgetting the original complaints of both the parties, ignoring the relief they respectively prayed for, and declaring and creating new rights to the great detriment of the old and vested ones, would throw both the parties into a turbulent and boisterous sea of litigation, there to be wrecked on the rock of ruin and starvation.

4. The above is the impression which a close and careful perusal of the Bill, chapter by chapter and section by section, has left upon my mind, as well as upon the minds of those in this district, who have read it with some interest. So far as our district is concerned, the Bill is quite inapplicable and unsuited to its peculiar circumstances and its time-honored tenures, which do not seem to have been properly represented to the Members of the Council, or which appear to have escaped that amount of careful consideration which the importance and peculiar nature of such tenures absolutely demand.

5. Hilly tracts, sandy lands, and absence of navigable rivers make the relation of landlords and tenants, and the tenures themselves in Gya, very different from what they are

elsewhere, and legislation congenial to any other part of the country is and must necessarily be quite unsuited to this part of Behar. The nature of the soil and the physical features of the district make any improvement in agriculture, nay cultivation itself, without the cordial and combined efforts of both the landlords and the tenants, a matter of exceptional difficulty, if not of utter impossibility. In this district the capital of the landlords and the labour of his servants and those of the ryots have kept agriculture and cultivation a-going. The rivers and streams in the district, being dry all throughout the year, except during the best rainy season, every village has to maintain a large and extensive system of irrigation, in the shape of ahars (reservoirs) and pynes (artificial watercourses), at very heavy costs which are all borne by the landlords alone. The number of cases, both civil and criminal, in connection with water disputes, which crop up every year in this part of the country, and in which the landlord alone figures and bears the whole expenses of litigation, with all its concomitant evils and troubles, will satisfy the legislature that the Gaya zemindar, even where he is rack-renting and tyrannical, considers his interests as identical with those of his ryots, and is always ready to help them with men and money for their own welfare as well as for the improvement of agriculture. Any one unacquainted with the state of affairs in this district, and visiting any of its agricultural villages at any time during the months from July to September, will be struck with surprise at the strange sight of the zemindar, the rich by his servants, the poor himself, regardless of sun and rain, not unfrequently without an umbrella over his head, supervising the putting up, with his own money, of dams in rivers, cleaning the beds of pynes, conducting waters from place to place, filling up reservoirs with them, running from field to field, to see the proper distribution and economical use of the waters, so brought to the village, with hard labour and at heavy costs.

6. It is not unfrequently that the land lord, in hard years, supplies his ryots with seeds (*bihun*) and food (*khairun*), to be returned to him within the agricultural year, with interest, at 2 annas per rupee a year, which is equivalent to 12½ per cent. per annum. But cannot the ryot do all these himself without the aid of the zemindar? My answer to this question would be an emphatic *No*. It is impossible for him to maintain the village reservoirs and the intricate water-courses, which are so many arteries and veins of vital fluid, supplying the life-blood to its whole agricultural community. But why? Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the ahars and pynes, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan. Thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, any thing but practicable within the bounds of possibility. Fourthly, because assuming even for the sake of argument the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each ryot having paid for the common reservoirs and water channels, would claim the priority of irrigating his fields, and try to assert his rights or supposed rights, by means fair or foul, which would often lead to serious affrays resulting in the breaking of bones and shedding of blood, and sometimes terminating in murders and manslaughters. If not this, there would certainly be surreptitious cutting of reservoirs and diverting of channel-waters, by a ryot whose single field of a few kuttahs in some remote corner of the village land is drying up at a time when the whole village requires to keep them closed or in their proper course as the case may be, and thus all the water might be wasted to the immense loss and injury of the rest of the ryots. I might add here, as the result of many years' experience, that in joint estates, owned by several proprietors, irrigation works suffer a great deal for want of co-operation and union among themselves, in carrying out such works for the benefit of such joint estates. But the proprietors who were indifferent and careless when the estates were joint, would no longer appear to be so when the estates are partitioned. After partition has been effected and the lands marked out, the first thing that the proprietor of each plot takes up is the irrigation-work of his plot for which he spares neither pains nor money. In this district there are numerous pynes known under the name of *Dusiain*, running over several miles with numerous branches held in common by several villages. One of these from the Jumna river runs over more than 12 miles, and irrigates about 60 villages, containing in all upwards of 1,000 cultivators; and if pynes like these were left in charge of the ryots, the result would be what can be better conceived than described, proving itself extremely disastrous to the ryots themselves and ruinous, to the cause of cultivation. The last, but not the least, reason is that the reservoirs and water-courses are subject to constant litigation between neighbouring villages, and have always been a fruitful source of serious riots and affrays. The cases, whether civil and criminal, thus cropping up require to be carefully conducted and properly managed, as upon their results depend the prospects of both the landlord and the tenants. It is highly desirable that the management and the looking-after of such cases should be entirely in the hands of that party which possesses better intelligence and superior understanding. There can be no doubt that the landlord is better than his ryots in point of intelligence and understanding. In the present state of affairs, the reservoirs and the water-courses are maintained at the exclusive costs of the landlords, who keep a vigilant watch

over them and exclusively control their opening and closing up. No ryot ever ventures to open them without his landlord's permission, which is never withheld unless when it would be injurious to the interests of the majority of the cultivators.

7. Having shewn the physical impossibility of making any improvement in agriculture, nay of keeping up cultivation in this district, without maintaining costly reservoirs and water-courses, and having also shewn that these cannot be well kept up and maintained by the ryots, individually or collectively, and that they have, from time beyond all legal memory, been kept up exclusively by the landlords at their own expenses, I next proceed to shew why the landlords have undergone, and are undergoing, so much troubles and expenses for their ryots. The preamble to Reg. II of 1793 desired both land lords and tenants to keep them on. Enhancement suits in Gaya have not been heard of. In fact, during my comparatively extensive practice at the Gaya Bar for the last 14 years, I never had a single enhancement suit to conduct or defend. Is it that the landlords have been making enhancement by underhand means and illegally out of Court? Doubtless, the Ryotan class (the cultivators of inferior orders) who plough with their own hands and never engage hired labour, look upon their zemindar, not only as the lord of the land they till and cultivate, but as a divine being; and with them the landlord may do whatever he likes. Wallowing in the mire of ignorance, living from hand to mouth, and spending all their savings in the grog-shop, the cultivators of this order confound their *Gowan* (landlord) with their *Bhagowan* (God), against whom they will not and cannot go to Court. But the landlord's task is not so easy, nor his position so sacred and awe-inspiring with the superior class of cultivators, the Brahmans, the Babbhans, the warrior and other classes who cultivate their lands through their servants or hired men and who form the bulk of the cultivators of this district. Many of these are the descendants of the proprietors of bygone times, and consider themselves by birth and in position, equal, if not superior, to their landlord. They are quarrelsome and litigious, and without fight, they would not yield an inch to him. They are a terror to him instead of he being a terror to them. He has met with difficulties and obstacles in realising his just dues from them, and it cannot possibly be maintained that he could enhance their rents so easily and quietly, without the aid of Court. The records of the Civil and Criminal Courts here will shew the number of cases and complaints that were and are brought by the cultivators of this class against their landlords, as evidence of the fact that they would resist with all their might any, the least, attempt at an arbitrary or illegal enhancement. If the landlord has not been able to make enhancements in or out of Court, why, it may be asked, has he been spending so much money and undergoing so much trouble for his ryots and for the improvement of agriculture? My answer to this is that the nature of the ryoti tenures in Gya is such as would enable him to get a return and reward for his money and labour, without the necessity of enhancements, legal or illegal, and that his neglect to keep on these works of irrigation would cause loss not only to his ryots but to himself as well.

8. This brings me to the consideration of the tenures of various descriptions that prevail in this district. The first and the foremost among them is the *Blowli* tenure, under which the greater part (more than four fifths) of the cultivated lands here are held. Its distinguishing feature is the payment of rents in kind, not in any fixed quantity but in a fixed proportion on the actual outturn of the crops grown. The rent paid, or payable accordingly varies from year to year. The land is tilled and the seed sown is supplied by the ryot or at his cost—the costs of hoeing and transplanting, of weeding and clearing being also borne by him. But the water is supplied by the landlord at his own cost. The costs of *gilandazi*, throwing up of earth, division of lands into plots, by *ais* and *asls* (ridge-walls) according to their levels, for the storage of the necessary quantity of water, and of erecting embankments on the banks of rivers for the protection of the villages from being over-flooded, are exclusively paid by him. In dry years when water cannot be supplied from rivers and village reservoirs and artificial water-courses, he pays the ryots the costs of sinking wells. It is not only that the landlord supplies water for irrigation, but as the rise or fall in his income depends upon the increase or decrease in the produce of the lands, he naturally shews as much anxiety and takes as much care in the proper and timely ploughing thereof, as he would have done had he been a cultivator himself, and his servants are always found to be busy in superintending the tilling of the soil, the sowing of the seeds, the transplanting of the crops, and so forth according as the case may be. If the ryot's bullock happens to die in the ploughing season and the ryot is unable to procure one in its stead, the zemindar would come forward and help him with one, even at the risk of running into debt, if he is poor. Seeds are also supplied by him in the same way. For similar reasons, the landlord is interested in seeing that the best crops are grown upon the land it is capable of producing. No ryot has the right to sow any crop inferior to what the land is capable of producing, nor can he be allowed, without the express consent of his landlord, to grow crops which, by the custom of the country, *Nekdi* rent is paid for, or which is incapable of being appraised or stored in the *Khalihan* for division. From the time the crops are sown to the time they are appraised and stored, the landlord watches the crops with keen interest and protects them from being wasted or otherwise injured by men or cattle. For this purpose he has to maintain an establishment of *Barahils* and *Goraites*, the former of whom receive their salary from the zemindar and a share in one of the *abwabs* called *mangan*, while the latter are remunerated by the zemindar with *Jaggir* and *Pawbhi*, as well as with a share in the *moicha*, an *abwab* which will be described

hereafter. This kind of tenure, it may be remarked *en passant*, is a peculiar one and has not its like any where else either in Asia or Europe; and it would be a mistake to compare it with the European metayer system and to condemn it as having all the evils of that system without any of its advantages.

9. It would thus appear that in the rearing up of the crops, the capital and labour of both the landlord and the ryots are employed. The crops in the fields remain in charge of both. Both have vested rights in the land, and I fail to see why the crops should be considered in the possession of the ryot any more than in that of the landlord. Under the circumstances, both law and equity would consider not only the land, but the crops as well, as the joint property in joint possession of both. Such has always been our legal conception of the rights of the parties with regard to the possession of the crops. Both the ryots and the landlord have, from time immemorial, dealt with the crops of Bhowli lands as their joint property. Neither party ever believed, nor does it even now believe, that the one can touch or remove the crops of Bhowli lands without the consent or permission of the other.

10. Having thus pointed out that the Bhowli crops are, by custom and the circumstances under which they are grown, regarded by the parties concerned as their joint property, we proceed next to ascertain what, under law and the said custom, have been the respective shares of the parties and how each has been taking and enjoying its share. The whole of the straw and the chaff, which are not without value, goes to the ryots. It is only out of the grain-produce, that the zemindar gets a share which, though everywhere more than half, is different in different pergunnahs, and almost in different villages, and which again varies with the different classes of ryots, whether *Regan* or *Surfa*, the former delivering a higher and the latter a lower share; and we shall be very near the true figure, when we state that the zemindar's share, with the customary abwabs, is $\frac{1}{10}$ of the grain-produce. But if the value of the straw and the chaff which are in these days, as much valuable commodities as grains, be taken into consideration, the highest share which the zemindar gets in lieu of rent, would be much less than even half of the total gross produce. The value of the straw and chaff may fairly be assumed to be one-third of the grain-produce. It has been stated to me by cultivators that ordinarily 100 small bundles or 4 men's load of paddy would yield one maund of rice; and if the rice be sold for one rupee this straw might be sold for 4 annas to 6 annas. Thus out of the total gross produce of Rs. 21, while the zemindar would get Rs. 9, the ryot gets 12. I cannot vouch for the exactness of the figures given above, but I am assured by both zemindars and ryots that they can be taken as the basis of a fair comparison of the values of their respective shares in the bhowli crop. Paddy being the principle produce of bhowli lands, it would not be out of place to allude here to the proverb which is so common both among zemindars and ryots of Behar, viz., "*sab dhan sarhe basis pasari*" all paddy twenty-two and half pasaris (one-eighth of a maund)." Twenty-two and half pasaris out of forty pasaris would correspond exactly with $\frac{1}{4}$ share of the landlord in the grain-produce of the bhowli land.

11. The mode in which the two parties take their respective shares of the crops is either by *Dana bandi* (appraisement) or *Agorbatai* (apportionment). I have already said that in the fields the crops are watched and protected by both the parties, neither of whom can touch them without the permission of the other. As soon as the crops are ripe for harvesting, the zemindar deputed an *Amin* (assessor) and a *salis* (arbitrator) to make an estimate of the grain-produce. In the presence of these officers, the ryots, the village *gomasta*, the *patwari*, and the *jeth* or the principal ryot, who generally knows to read and write, representing and watching the interest of the ryots; the village chairman called *Katha dhar* (holder of wood or bamboo) measures the field with the village bamboo which in this district is nowhere less than 8 feet, 3 inches, or more than 9 feet in length. The *salis* then goes round the field, and from his experience guesses out of the probable quantity of the grain in the fields, holds a consultation with the *amin* and the village *amlas*, and when the quantity is unanimously agreed upon, it is made known to the ryot. If he accepts the estimate so arrived at, the quantity is entered by the *patwari* in the *khasra* or field-book. If he objects, other ryots are called in to act as mediators, and if they fail to convince either party, a *partar* or test takes place. On behalf of the landlord, a portion of the best part of the crops is reaped, and an equal portion of the worst part is reaped on behalf of the ryot. The two portions so reaped are threshed and the grain weighed. On the quantity thus ascertained, the whole produce of the field is calculated and entered in the *khasra*. From the time the estimate is made, the zemindar withdraws his connection from the crops which are then left in the exclusive charge and possession of the ryots but their (the ryots') interest therein until reaped is still carefully watched by the *budhwara* or the watchman and the other village establishment. After the appraisement of the field, the ryot is allowed the full liberty of reaping the crops and taking them home at any time that may suit his convenience. Out of the estimated quantity, a deduction at the rate of two seers per maund is allowed to the ryot, which is called *chhut-ti* (let off.) I have not been able to ascertain the exact reason for which this allowance is made to the ryot from the joint quantity of grain. There has been a diversity of opinion on this point. But as in the *Agorbatai*, the reapers who also thresh out the grains are paid from the joint crop, I presume this is allowed to the ryot to meet the cost of reaping, gathering, and threshing. The landlord's share is then calculated on the quantity left after the *chhut-ti* has been deducted. The total quantity thus left is then equally divided, to the one-half is added what under the name of *daheak*, *neg*, or *labub*, is called the bhowli pattah which, as already stated is different in different places and

with different classes of ryots. But so far as I have been able to ascertain from records of rent suits and from my own personal knowledge of my own estates, as well as from other zemindars and the ryots, this *daheak* is in no case less than $1\frac{1}{2}$ seers or more than 4 seers per maund calculated on the other half. To this being added the *pausera*, the *nocha*, the *budhwara*, the *parial* and *mauserhi* of which I shall speak hereafter under the heads of abwabs, the zemindar's total share would come to, in some cases, a little less, and in others, a little more than $\frac{1}{10}$ which is called the *ain* as distinguished from the *nakdi*-rent called the *mal*. The word *ain* means "something" and as a matter of fact the landlord gets his share in the same kind of crops that are grown in the field.

12. Under the *dana-bandi*, the ryot is bound to deliver the zemindar's share at the *kut-chery*; and if the grain is spent or otherwise used by the ryot he is charged with money value of the grain so spent or used. If the parties do not agree to *dana-bandi*, the crops are reaped under the supervision of both, and gathered in a common threshing floor, called *khalian* where too they are carefully and strictly watched by both the parties. Threshing does not take place until the whole crops of the village have been thus gathered in the *khalian*. Neither party is allowed the use of the crops which remain in the joint possession of both, till the grains are threshed out, weighed and divided. During the reaping period, the ryot, at the end of each day, gets what is called *lorha* (the ears of corn accidentally dropped at the time of reaping) and *denowra* and *chhokowti*, in certain varying proportion in every village and *perganah*, as daily wages of the reapers. From the joint crops, the village barber, washerman, potter, blacksmith, carpenter and the tanner who have worked all the year round for the ryots and occasionally for the zemindar, receive their fixed *bojhas* (bundles) and *panjas* (half bundles) in lieu of which in *dana-bandi*, it is said, some of them pluck the ears of corn from the fields at the time of appraisement. When the heap of grain is ready for division, the grain which is blown away with the chaff, is all left to the ryot, and is commonly known by the name of *agar*. Then again out of the common heap, certain fixed proportions known by the name of *agaoon* (offering for family God,) *bishun pir* (offering to priest) and *bhut kuri* (spirit's share,) are set apart in honor of the family and village gods of the ryots, and are given to the ryots for holy purposes. Out of the grain thus left in the heap, the zemindar gets his share and what is left at the bottom of the heap, mixed up with dust and is called *tari*, is all left to the ryot. The *tari* and the *agar* too are allowed in a fixed proportion, so also the *agaoon*, *bishun pir* and *bhutkuri*. The fees of the village *amlas* are also paid from the joint heap. This system is called *agorbatai*. The items mentioned above, are not allowed in the *Danabandi* system, as the ryot, there takes the chance of the rough estimate, by way of contract, which is less troublesome and may give him more than *agorbatai*.

13. The *agorbatai* has the appearance of more fairness than the *danabandi*, but is disliked by both landlords and tenants. By the landlords, because it entails upon him a great deal of trouble, and by the tenant, because it prevents him from using and enjoying the produce of his fields in proper time and keeps him under the suspicion of the landlord's servants and leads to friction between them. There is also a good deal of wastage in the *batai*, as the parties hurry over the reaping. The crops which under the *danabandi*, would go to the ryots house, in the months of *Poor* and *Magh*, at the latest, cannot, under the *agorbatai*, with all possible haste, be divided and removed from the open *khalian*, till the end of *Pagoon* or the middle of *Chait*, at the earliest.

14. It would thus be very clear that the straw and chaff all going to the ryot, and he taking, at least $\frac{1}{10}$ of the grain produce in the shape of *chhut-ti* in *danabandi* and of the several items, alluded to before, in *batai* from the joint heap of grain, and the zemindar's highest share being $\frac{1}{10}$ of what is left after due deductions, as detailed above, there could be no ground for the remark, once made by the Bengal Rent Commission, that the bhowli tenant who pays as rent so much as half the produce must have the option of cultivating only so much of his holding as he likes, especially when the zemindar pays out of his own share, the costs of the establishment so essential for the interest of both, and has to meet the enormously high expenses of supplying water, erecting embankments, &c., I have tried above to give as full, faithful, correct and accurate an account of the bhowli tenure, with all the main and important incidents of this peculiar tenure, of a peculiar nature, of the rights and liabilities of the parties thereunder and the mode of its working, as, with my limited knowledge and local experience, I could. However, ill-featured and ugly, looking as a relic of primitive ages long gone by, and, however, cumbrous and unmanageable, in practice, it may appear to the civilized people of this enlightened age, to the people of Gaya, at least, it presents a quite different and more agreeable and attractive aspect, as a tenure which is and has always been, the source of the greatest blessings to them. If it were not for this tenure, poor as the people of this district are, they would surely have been far worse off. Having to pay, as rent, only a definite and fixed share in the actual out-turn of his fields, and nothing more than that, if there be a failure of crops, whether total or partial, an event which is of very frequent occurrence in this part of the country, the bhowli tenant has never felt and will never feel the rigour and horror of famine and scarcity so much as his *nakdi* neighbour who has not only to provide against starvation, but to meet the relentless demand of his unsympathetic landlord for rent which he must pay whether there has been a total or partial failure of crops. I may here state, without fear of contradiction, that no system of tenure could be more advantageous and beneficial to the tenants who are generally so thoughtless and improvident in a country where famine and

scarcity pay periodical visits, than the one, like the bhowli, under which the liability to pay rent varies with the variation in the rainfall and grain-produce of the land. In famine and in years of scarcity a nakdi ryot may be, and as a matter of fact is frequently, compelled to pay rent by selling his holding and sometimes his cattle and homestead too, but not so the bhowli tenant, not even for the road and public works cesses, which having been assessed upon the estate will be paid up for him by his landlord, who will not recover those cesses from him, as the ryots liability (*vide* Section 41 of IX of 1880) depends upon the rent payable by him, and as failure of crops will relieve him from his liability to pay rent he will be relieved of the cesses also. The tenure is not beneficial to the landlord inasmuch as it enables him to promptly realise his rents without the trouble and barrassment of a suit or without distraint, legal or illegal, and as it enables him to give immediate return of any capital or labour spent or bestowed upon land improvements, without the expenses and embarrassments of enhancement suits. The paucity of rent-suits between landlord and actual cultivators in the districts and the total absence of enhancement and abatement suits, are due entirely to the nature and incidents of this tenure. If it is desirable as the declared policy of every civilized and enlightened Government undoubtedly is and has always been from the time of the Roman Republic, that it is to the interest of the people that litigation should cease, it is nowhere more desirable than among the agricultural classes of Behar in general, and of Gaya in particular, who proverbially poor as they are, would better and more advantageously spend their savings on agricultural improvements than squander them away in litigation which brings them no earthly good in return, but heartburning, distress and destitution. And no tenure is so pre-eminently well constituted and calculated to work as an effective bar to such litigation, as bhowli tenure unquestionably is with all its so-called ugly features and relics of primitive ages. Devoid as the district of Gaya is of all those resources of agriculture which nature has so bountifully bestowed upon the more favoured parts of the province, what tenure can be more suited to the soil and congenial to the people of the district than the one which would encourage the landlord to lay out all his capital and spend his energy and intelligence, to supply, by human skill, art and labour, and would thus give an impetus to the progress of the agriculture which is so devoutly wished for by all. This the bhowli tenure certainly is. The fear of loss, if the landlord neglects or omits to maintain the irrigation works and to attend to the improvement of the land and the hope of gain of which he is sure, if he directs his attention and energy to, and spends his capital upon them, have both combined to operate as a good and stimulus to unite his capital and care with those of his tenants for the benefit of agriculture. It will I trust, be now conceded that this tenure being so beneficial to both landlords and tenants and being so favourable to the cause of agriculture, requires all the support which a benign and benevolent Government can give by legislation. But it is a matter of deep regret that such an important and beneficial tenure escaped the notice and consideration of the legislature, from the commencement of legislation by British Government in Bengal, and it is really painful to see that the first attempt at legislation in this direction, aims a deathblow to this tenure which have survived all the vicissitudes and revolutions that time has wrought. But I confess that this tenure, like all others, has been, in its working, attended with abuses which are attributable more to the neglect of the legislature to give in protection for upwards of a century than to any inherent defects in the tenure itself. All that was required to be secured and protected by legislation was (1) to provide for a timely reaping and enjoyment of the produce by both parties, (2) to secure fairness in *danabandi* in time of dispute, (3) to preserve a proper record of appraisement and division when they were on good terms in order to prevent future disputes and institution of false suits and setting up of false defence, regarding such appraisement and division, that is to say, that if the landlord had made an *agorbatai* he might not be able to see on the allegations of a *danabandi*, and similarly if the ryot had accepted a *Danabandi* and enjoyed the crops, he might not be allowed to set up a defence of *agorbatai*, (4) to prevent the ryot from neglecting the proper and timely cultivation of his fields, (5) to prevent each of the parties from forcibly and surreptitiously removing the crops from the fields or *khalyans* to the detriment of the rights of the other; and (6) if practicable to define the respective shares of both parties in produce. But in my humble opinion the remedy which the Bill provides is worse than the disease. This brings me to the consideration of the different provisions of the Bill regarding the bhowli tenure, at the outset of which, I might say that matters connected with this tenure which urgently required legislation, in order to protect the rights of the parties and to improve and to strengthen its working, have not received that amount of consideration which their importance demanded. The provisions of the Bill regarding this tenure are to be found in sections 53, 81, 82, and 83, section 53 gives a right both to an occupancy ryot and his landlord, to effect, by application to the Collector, or any settlement revenue officer, a forcible conversion of the bhowli tenure into a nakdi one. This provision, revolutionary as it is in its character, is altogether new and uncalled for as neither the landlord nor the tenant ever demanded it. Instead of improving the position of either the tenant or his landlord, the section would involve them in those heart-burning disputes regarding enhancement and abatement, which have hitherto been altogether unknown. Besides it is open to the objection that it encroaches upon the rights of both the parties. The zemindar has enjoyed, from time immemorial, the right of availing himself of the increase in the yearly produce of the land and of the rise of the market value of the grain, and thereby profiting himself by such increase and rise, while the ryot, on the other hand has enjoyed the privilege of paying no rent at all when there was total failure of the crops, or of paying such rent only as the actual produce of the land would permit in

certain fixed properties already alluded to before. This provision would thus be very distasteful both to the landlord and to the tenant, and would be looked upon with distrust as it might be used by either of them as a handle to harass the other, under circumstances which may chance to be favourable to the one and unfavourable to the other. An ease-loving and indolent zemindar, would only be too glad, if he be able, to force upon his tenants a fixed money-rent, thereby relieving himself of the duties and care of a bhowli landlord. Similarly a well-to-do ryot, who, having other sources of income, does not care for the cultivation of his land so much, and happening to entertain some ill-feelings towards his landlord, would not scruple to take advantage of this section and by inducing other ryots to join him, to use it against a hard-working and active zemindar who spares neither pains nor energy to improve the agriculture of his estate, and thus to reduce his income and emolument even below the liabilities which his estate is subject to. However, at the same time, I must candidly confess, that this ancient and time-honored tenure, held as it is in high estimation by both landlords and tenants, in this part of the province, would render this section a dead letter with those landlords and tenants who, mindful of their interest and anxious to improve the agriculture, never consider the interest of the one as clashing against that of the other, and always work and co-operate with one another for the furtherance of the cause of cultivation. But it may be argued that if the section would remain inoperative as a dead letter, why raise any objection to it? To this my answer is, that if the section be allowed to stand on the statute book an unscrupulous landlord or a revengeful ryot will ever try to use it as a weapon to injure the interest of the one or the other, as the case may be. Then again the commutation of the bhowli tenure into nakdi one is surrounded with many difficulties. The principles laid down in clause (4) of the section, for determining the sum to be paid as money-rent, are neither so easy nor practicable as they might appear at first. The bhowli and the nakdi lands are so situated in any estate in this district and are so different and dissimilar with each other in their productiveness and the kinds of crops grown upon them, that it would be very difficult, if not impossible, to determine the money-rent of the former by the light of that of the latter in the vicinity with any degree of fairness to the emoluments of the parties concerned. It may here be observed that in this district, nakdi rent is fixed upon crops grown on the land and in the majority of cases it was fixed with reference to the crops then grown, at a time when grains were so cheap for more reasons than one, that it would be very unjust and hard upon the zemindar who has never altered the nakdi rent of his estate to compel him to convert his his bhowli into a nakdi estate, on the principle laid down in sub-clause (a) of clause (4) of this section which would reduce his emoluments to at least $\frac{1}{2}$ or $\frac{1}{3}$ of what it at present and the bhowli system is. Then again how ruinous it would prove to the interest of a ryot the rent of whose Nakdi land, or of that of his neighbour, has of late been enhanced by a rack-renting and unprincipled landlord, if he be forced to pay money-rent for his bhowli holding determined on the principle referred to above.

15. The principle laid down in sub-clause (b) which contemplates the determining of money-rent of bhowli lands, on the average value of the rent actually received by the landlord during the preceding ten years, is as untenable and impracticable, as the other. "The preceding ten years" may either be a period of uninterrupted prosperity and plenty of crops in the agricultural community or just the reverse. If the former, the ryots are ruined in hard years, if the latter, the landlords are ruined for ever. But the difficulty is how to ascertain the average value of the produce for the preceding ten years.

16. Where to find a faithful and trustworthy record of the actual produce of the lands during that period. Can any reliance be placed upon that perennial spring of mischief, the patwari's basta, for such a record, after what has repeatedly and strongly been said of it from every quarter? Will a dishonest and intriguing landlord ever scruple to fall back upon it, for the purpose of showing that the lands, during the preceding ten years, produced more than what they actually did, and can any ryot be safe from being rack-rented, if his holding is made a victim, to that strange and fearful basta, which on the other hand may as well be turned against weak and honest zemindar, by the ryots combining and colluding with the patwari. Instances of such collusion with the patwari being not rare.

17. Thus both the principles for commutation of rent payable in kind as laid down in the Bill being open to serious objections, no other principle or principle can be possible or practicable under the peculiar incidents of the tenure paying rent in kind. Even the wise suggestions made with regard to section 53 by the Hon'ble H. J. Reynolds in his memorandum of dissent is far from being sufficient to make the section free from any of the objections that I have ventured to point out in the foregoing paras.

18. With all due deference to the opinion of such an able, wise, learned and experienced legislator, I humbly beg to submit that while those suggestions seek to protect the interests of the ryots, they fail to extend that degree of protection to the interest of the landlord which justice and fair-play entitle him to. Altogether ignoring the material injuries which the interests of the landlord would suffer if this section be allowed to stand as it is, and be fully taken advantage of by vindictive and unscrupulous ryots, the suggestions proceed further to shape the section in such a manner as would undoubtedly make it exceedingly objectionable in the eye of every bhowli landlord, as it would stand in the way of all his future prospects and legitimate emoluments arising out of his personal exertions and care to improve the agriculture of his estate. The proposal that the money-rent should not in any case exceed

the rental at which the holding is entered in the landlord's road-cess returns may, at the first sight, appear to be just, but a little careful consideration would at once show that the basis on which the proposal is made is anything but just and fair to the landlord. For it is well-known that these road-cess returns are not what they profess to be and are far from being true and reliable. These returns were made at a time and with motives which would at once render them quite unfit, if not utterly unsafe, to be treated with any degree of weight or importance. These returns invariably underrate the actual rentals to which they relate as they were made with interested motives. It is not the object of the present Bill to punish the zemindar for what he might have done long ago; and yet it is proposed to inflict a heavy penalty upon him for the returns being not what they ought to have been. In many cases the zemindars who made them are no longer in possession of the estates, and in accepting the rental entered in them as the maximum limit of money-rent for a bhowli holding the income of such zemindars would not only be lowered, but it would be punishing them for the faults of those upon whom they could have no control. Even assuming that these road-cess returns are correct, they cannot and ought not to be taken into consideration in calculating the money-rent of a tenure paying rent in kind, as nearly ten years have elapsed since they were first made, during which period vast improvements have been made and the value of the holdings have increased. It is also noteworthy that these returns showed the average rentals of the years 1280 and 1282 F. S. corresponding with September 1873 to June 1875, years in which this district was visited with famine on account of failure of crops. No return since then has been made in the district.

19. Nothing can be more unjust and nothing at the same time can be more detrimental to the interests of a zemindar than to lay down such a hard and fast rule that the money-rent shall not in any case exceed the rental at which a holding is entered in the road-cess returns. While thus the income and emoluments of a tenant will increase with the increase in the productive powers of the soil and rise in the price of grains, those of the poor landlords are attempted to be curbed and curtailed in many cases below his liabilities and are allowed to proceed so far and no further.

20. It is no wonder therefore that the zemindars of this district look upon such a suggestion with feelings of alarm and despair. The proposal to make a substantial deduction in favor of the ryot "in consideration of the whole risk of cultivation being taken by" him tends only to add gall to bitterness. If such a deduction be allowed to the ryots, would not the zemindars be justified in demanding that a substantial addition should be made in their favor in consideration of the benefits and advantages which the ryots will derive from the existing improvements which were chiefly effected by their capital and exertions? Considering, then, the peculiar nature of the bhowli tenure and the benefits which are derivable therefrom, considering also that this tenure has been in existence from time immemorial and that both landlords and tenants thereunder have always regarded it as highly beneficial to the interests and welfare of both, any attempt to do away with this ancient tenure, sanctioned by long usage and accepted by the people as a source of blessings to them, is not only uncalled for, but is detrimental to the cause of agriculture and subversive of the rights of the parties. Any such attempt should be given up as hopeless, as it is not possible to devise any practical principles of commutation, fair, just, and equitable to the parties concerned. No possible apparent good, either to the landlord or to the tenant, does the provision of section 53 secure; but it appears to have been introduced into the Bill simply with a view to remove the seeming anomaly which this tenure, notwithstanding its intrinsic and inherent virtues, present in comparison to tenures prevalent in other parts of Behar and Bengal. But as we cannot possibly alter the natural features of this district and its peculiar circumstances under which this tenure has lived and grown up, we cannot, by any legislative enactment, remove the anomaly without causing immense injury. In my opinion, therefore, which I share with the other landlords and the tenants of the district, the provision of section 53, together with that of clause (b) of section 210, which seems to have been made with a view to strengthen it, should altogether be eliminated. The conversion or otherwise of this tenure had better be left in the hands of that powerful, but silent and quietly working legislator—Time.

21. The provisions of section 83 read with section 220, clause (c) and section 99 sub-section (2) are more revolutionary and destructive than those of section 53. have already shown that the crops, being grown on the lands in which both the landlords and the tenants have vested rights, and being protected and reared by the joint capital and combined labor of both, ought to be, as they have always been, considered as their joint property in their joint possession, and that both of them have, from time immemorial, treated and dealt with them as such. The principles of law and equity which govern the enjoyment and possession of joint property ought to regulate, as they have hitherto been doing, the crops of the bhowli lands. But the provisions of section 83 place the bhowli crops, whether subject to appraisement or division in the exclusive and entire possession of the ryot, in total disregard of the rights of the landlord to the joint possession thereof. The penalty clause (c) of section 220 of the Bill, would make the landlord's interference with the cutting or removing of the crops, an offence of the criminal trespass within the meaning of the Indian Penal Code; while section 99 would prevent the zemindar, without the consent of the tenant or the written permission of the Collector, from making any measurement except in certain cases specified therein. The exceptions

attached to sub-section (2) would only cover measurements when the rent varies with the area affected by alluvion or diluvion and varying from year to year, and when the rent depends upon the area under cultivation, and such area varying from year to year. But none of these exceptions are explicit and wide enough to cover the measurement of the bhowli lands for the purpose of appraisement where the rent depends not so much upon the area under cultivation as upon the actual produce of the lands. The provisions of these sections, while they contemplate to give every protection to the ryot and to create new rights for him, deprive the landlord of his rights to enter into fields for the purpose of making appraisement and superintending the reaping, gathering, or dividing of the crops and of preventing the surreptitious or fraudulent removal of them before appraisement or division. If these rights of landlord, which he has so long enjoyed without disturbance and interruption and without any prejudice to the interests of the ryots, be so suddenly and summarily taken away, he will be thrown off and placed at the absolute mercy of his tenants with regard to the timely reaping and gathering of the crops, and will be rendered utterly powerless in protecting himself from fraud and other acts of bad faith on the part of his ryots. When the rent payable to the landlord depends upon the actual produce of the fields, and when the increase in such produce mainly depends upon his care and capital, could any thing be more unjust and hard upon him, more distressing and disheartening to him, than to take away from him the right of protecting himself and his interest from foul play and fraudulent act, and of seeing that his legitimate income and just emoluments do not suffer at the mere will and pleasure of his tenants, who, being in absolute and exclusive possession of the crops can do with them as they please, without any fear of immediate and effectual interference on the part of the landlord. There are many crops grown in the bhowli lands yielding edible pods and peas which require a great deal of care and vigilance for protection from being eaten up by men, while they are yet unripe and unremoved from the fields. With regard to the proper protection of such crops the landlord is left at the tender mercy of his tenants. It is notorious that, in spite of the vigilant watch which is kept over such crops while they are in the fields both by the tenants and the landlords' men, they are not safe from being eaten up by greedy passers-by, and from being plucked off by the children and women of those tenants themselves who are far from being well-to-do. Can the interests of the landlord with regard to these crops be properly guarded, when they are in danger of being devoured up at an early stage, not only by other men, but by the tenants themselves, and when the landlord dares not for fear of criminal prosecution, interfere and rescue them from such waste and misappropriation. While the poor landlord is liable to be criminally prosecuted for trespass if he prevents or attempts to prevent the ryots from "otherwise dealing with any produce of a holding" what penalty is provided for for the tenants if they commit, as being thoughtless and improvident they are sure to do, any acts of bad faith with respect to the crops that are henceforth to be left in their exclusive possession, under the vague and conflicting provision of sub-section (2) of section 83, which will leave well in theory, but in practice will be almost entirely inoperative? Is this fair dealing and meeting out even-handed justice to the parties concerned? Mark the words italicised above. Let the tenant deal with the produce of his holding as he likes, the landlord shall not interfere; if he feels himself aggrieved or injured by any acts of his ryots, he must go to the civil court and undergo all the expenses, anxieties and embarrassments of a litigation before his grievances can be redressed and his injuries remedied as against the ryots. The landlord is to be handed up before the criminal court, even for the slightest attempt on his part to exercise his hitherto undoubted rights on his own property, while the ryot's body is not to be touched even for the grossest misappropriation of the crops. If the tenant removes any portion of the crops before appraisement or division, all that is left to the landlord for the remedy is to sue for his share in the crops so removed which shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest. So if the zemindar attempts to touch the crops he must be dragged to the criminal court; if the tenants actually remove them, he must be forced to go to the civil court, where he must prove, before he can succeed, that there has been a removal and that similar land in the neighbourhood produced a certain quantity of crops of the same description. If he satisfactorily discharges the burden of proof that would thus lie upon him, right and good, but if he fails to do so, or if his case is knocked down on some legal technicalities, he must not only lose his share of the crops, but must be saddled with all the costs of the litigation. That the landlord, when the ryots combine against him, cannot do any thing but submit, is the result of such legislation, and difficult it would be for him to procure evidence on those points which he must establish before he can make out a case against his tenants. What can be the best of proofs on those points, unless it be the evidence of some of the neighbouring ryots, and how can he expect to avail himself of such evidence if the ryots rise in a body against him, with the intention of causing material injury to their landlord. Instances of such rising among the ryots of the Surfa class are not wanting. Then, again, the sub-section (4) though it appears to assume the garb of a penalty clause and a preventive measure, would rather encourage, than put down, the removal of the crops, before appraisement or division on the part of a ryot, in cases in which the land of that ryot happens to produce the best, fullest and most plentiful crop in the neighbourhood, as such removal would unquestionably lead to his advantage and gain, even if he be sued in the Civil Court to contribute towards the share of his landlord. Having obtained more, he will not hesitate nor feel to give less to his landlord. While the sections

recognizes the *agorbatai* system of appropriation of the bhowli produce by both the parties, the essence of which being that the crops should be reaped, gathered and thrashed under the watch and supervision of both, and that neither of them should, before division, remove or appropriate any portion of them, section 220, clause (c) by making the zemindar's interference, as a criminal offence, gives full liberty to the ryot to bring only as much as he wishes to the *khalian* and to take as much as he pleases to his home, in which case the zemindar would have greater difficulty, in availing himself of the benefit provided for in sub-section (4). This section in the hand of an unscrupulous and oppressive landlord, may be worked to the ruin of the tenants of the *regan* class. Such a zemindar having allowed appropriation by *danabandi* or *agorbatai* may yet go up on alleged removal of the crops without his consent by the ryot and force him to pay up in accordance with the measure provided by sub-section (4). Such an unscrupulous landlord, fond of litigation and calculating upon the support of some of the ryots of the superior classes either of his estate or of a neighbouring estate might always find it to his advantage, to seek the benefit of sub-section (4) to compensate the loss to him, by deficiency of crops, which might be due to his own negligence or indifference to maintain the irrigation works, rather than to any fault on the part of his tenants. The difficulty of successfully supporting his claim under the said sub-section might compel a zemindar, who has hitherto been honest, to fabricate evidence and to commit perjury. These provisions seem to have been introduced either as a measure to compel the landlord by making his position as difficult as possible, to apply for commutation into *nakdi*, the impolicy and evil consequences of which have already been pointed out, or with a view to ensure timely reaping and appropriation by the ryots, of their share in the produce of the bhowli fields; which have been well provided for in sections 81 and 82. Magistrates and sub-divisional officers are supposed, during their winter tours, to visit almost every village, and where they would see that, in consequence of any dispute between the parties, the reaping of the crops has been delayed, they can, with or without the complaints of the parties, move the Collector for an order under those sections. But for whatever reasons introduced, these provisions which tend to encourage smuggling and misappropriation on the one hand, and perjury and forgery on the other, and are at the same time subversive of the rights and detrimental to the interests of the parties, and opposed to long established custom, should find no place in a Bill which seeks to secure and protect the rights and guard the interests of either of the parties against the aggression and encroachment of the other.

22. It may here be noted that the Bill does not provide for the insurance of the genuineness and authenticity of *danabandi* papers prepared when the parties are on good terms, to prevent the possibility of the landlord suing the tenants on papers forged subsequently for the purpose, and to restrain the ryot from setting up a false plea of *batui* (division) when he had really accepted *danabandi*, or the landlord from suing on *danabandi*, when there was an *agorbatai*. Disputes, false suits, and false defence, of this nature are of more frequent occurrence than the actual disputes regarding the propriety and fairness of appraisalment or of division.

23. The land-lord's rent depending upon the actual produce of the field for which, as shown before, he annually spends large sums of money and undergoes hard labour and endless trouble, it is but just and fair that he should have the power, which he has under the custom regulating the tenure, of preventing the tenants from neglecting cultivation or growing indifferent crops. The ryot not being liable to pay rent for any portion of his land left uncultivated, may, if evilly disposed, leave the land fallow or throw bad seeds out of time, with a view to diminish the profits of the landlord, and cultivate only so much as he requires for his own purposes. At first sight, it might look absurd that a ryot could do an act which would cause loss to him. But cases of such neglect of cultivation have actually occurred among ryots of the superior classes, many ryots of the Brahman, Babhon, Rajput Pathan or Malik caste having an extensive *Jote* would not care leaving a good portion uncultivated, if by so doing, they could reduce the *Juma* of the village and compel their landlord to quietly walk out of the village or the estate. Many of these being descendants of former proprietors, do not like to bear the yoke of the landlord not of their own kith and kin. The serious riots which followed the execution sale of the Kowa Koll estate in this district, by the ryots combining with the Tekait family, to prevent the purchasers from getting a footing in the estate, must always be fresh in our mind, as illustrative of the strong feeling of aversion which certainly this class of ryots entertain against new proprietors. If the old records of the Criminal Court be turned over, Kowa Koli would not be the only and solitary instance of this. When the ryots are told and made to understand that they have the option of cultivating only as much as they wish or please, without any risk or liability, they would find an easy and convenient means of getting rid of an obnoxious landlord. In lieu of the hard struggles and fights for the purpose at the risk of going to jail. Instances of well-to-do ryots, who can well afford to purchase the estate in which they live, are not rare. Bhowli landlord, unwilling to sell, may thus be forced by these ryots and their brethren omitting or neglecting to cultivate for no longer period than 2 or 3 years. Again a neighbouring landlord might, by purchasing a few tenants' right of occupancy, do the same.

24. The Behar Rent Commission made a suggestion to provide against such acts and omissions on the part of the tenants, so prejudicial to the interests of the landlord. But it did not find favour with the Bengal Rent Commission who, not foreseeing the loss and annoyance

to which the landlord might be put, and led away by an erroneous supposition that the bhowli ryots paid rent as high as half the gross produce of his fields, held that he should have the option of cultivating as much as he likes. A provision like this would be dangerous to the landlord and place him at the tender mercy of the designing, turbulent and litigious ryots of the superior class, whose number in this district, as stated above, is large enough. The interest of the landlord required some provision like the one suggested by the Behar Rent Commission or any other, to enable him to exact from the tenant timely and proper cultivation. But it is alarming and distressing to find that the provisions of section 31, clause (a) and section 58, clause (b) taken with the absence of any provision to the contrary give both to occupancy and non-occupancy ryots, the option of cultivating any portion of their holdings or growing any crops they would like. I might add that such a provision regarding bhowli land might lead the landlord to neglect or be indifferent to, the irrigation works which in the present state of the district will be extremely harmful.

25. This district is dissimilar with other parts of Behar and Bengal, not only with regard to its bhowli tenure, but it presents features of dissimilarity with regard to its *nakdi* tenure as well. The *nakdi* tenure here is of two descriptions, *shikami* and *chikuth*. *Shikami* tenure is that under which the landlord has not, or at any rate, is presumed to have not, any power of enhancement irrespective of the period for which the tenant might have been in possession thereof. The money-rent is not fixed upon the land but upon the crops actually grown, varying with the nature of the soil and the class of tenants whether *Surfan* or *Regan*; the former having a lower rate to pay than the latter. The lands which are generally cultivated under *shikami* tenure are the best land lying on the borders, of the inhabited portion of the village, called *dihans* land; and crops grown thereon pay the higher money-rent than the same crops grown upon fields more distant from the village site. It is for this reason that almost every village in Gaya has fixed rates of rent for different kinds of crops with reference to the different part of its land and different classes of tenants inhabiting it. Crops generally grown under the *shikami* tenure, are those of the *bhadoi* (autumn) and *rubbi* (spring) harvests. Hence every village for every class of ryots and for every plot (*kita*) of land has a fixed rate of rent per *bigha*, for *murua* and *posta*, and an inferior rate for *murwa* and *rubbi*. For example a Babhun ryot growing *murooa*, *marhua* and *posta* on a particular land reserved as *shikami* in a particular year, would pay the rent, at the rate for *marhua* and *Posta* fixed for ryots of his caste, but he should be liable to pay an inferior rate of rent, if on the same land, he would grow *murhua* and *rubbi* the next year; and *vice versa* similarly a ryot of the inferior class would pay a higher rent for the same kinds of crops grown upon the same land. Every ryot of an estate has a fixed quantity of *shikam* land, partly at the rate of *murhua* and *posta* and partly at the rate of *marhua* and *rubbi*. If the ryot grows, with the consent of his landlord, poppy upon a bhowli field, he pays for one harvest bhowli rent and is liable to pay *nakdi* rent for the poppy (*posta*) at the rate fixed in the village for the particular class of ryots to which he belongs for poppy grown under such circumstances. There are certain crops which from their nature cannot be the subject of either appraisalment or division under the bhowli system, such as sugar-cane, and cotton (*banga*) and as they cannot thrive if grown on the same land for consecutive years, they are generally, with the consent of the landlord, grown upon different plots of bhowli lands in different years. Every village has thus a sugar-cane rate for each class of ryots and for every plot, and similarly a *banga* rate. The ryot must pay for sugar-cane and *banga*, the sugar-cane and *banga* rates of his village fixed for his class of tenants even when he grows those crops upon his *shikami* or *chikuth* land which he seldom does. In some villages there is also *dhan shikami*, the quantity of which is small. In addition to these crops, there are other crops called *jethwa*, or summer crops for which, so far as I have been able to ascertain only one rate prevails throughout the district without reference to the class of ryots, *viz.*, one anna per *cutka* or $\frac{1}{10}$ of a *bigha* which is $2\frac{1}{4}$ times as large as a Bengal *bigha*. He has to pay for the jethooa crops, only when he grows them upon the bhowli lands, but not when he grows them upon his *shikami* or *chikuth* land. Thus it would be clear that the so-called *Nakdi* land of Gaya is not really so but only a form of bhowli paying money-rent for crops, which, from their nature, do not admit of being delivered in kind. Every ryot of whatever class, whether he has held his *jote* from the time of the permanent settlement, or whether he has recently settled in the village and commenced cultivation, has to pay for such crops, the same rate of rent which is fixed for his class of tenants in that village; and the custom which regulates this kind of tenure does not recognize any right in the landlord to alter the village rates of the different crops for which under the custom, money-rent is payable. Thus a ryot, whether he has acquired the estate of a ryot holding his *jote* from the time of the permanent settlement or that of an occupancy ryot or not, enjoys, as regards enhancement, all the rights and privileges guaranteed by Act VIII of 1869 (B. C.) to a ryot holding at fixed rates from the time of the permanent settlement. The records of the courts here will show that no landlord ever brought any suit to alter the established village rates of any crops against any ryot, new or old. But the custom has not been so with reference to the *chikuth* tenure, which is a temporary settlement of waste or uncultivated but culturable lands, for limited terms of years, at nominal rents for the purpose of reclaiming or bringing them under cultivation. This tenure is governed and regulated by the terms of the contract between the parties. The ryot can never claim the right of occupancy in them, nor protection from enhancement after the expiry of the terms. When such lands are thus properly reclaimed and brought under cultivation, and

become capable of producing any crops as full as those of the surrounding, or neighbouring bhowli or *shikami* lands, the landlord, at the end of the temporary settlement, is entitled under the terms of the contract to settle them, as a rule with the same ryots as *shikami* or *bhowli*, or with others when the former, as is seldom the case, do not wish to cultivate them under the bhowli system or at *shikami* rates as described above. If one term be not sufficient to render the lands fit for proper cultivation, the settlement is renewed from time to time till they become capable of yielding full crops. It may here be mentioned, in passing, that packa wells for irrigation of *shikami* crops or *chikuth* lands, are constructed by the landlord at his cost. It might also be added that no rent in this district is charged for pasturage or for homestead lands of actual cultivators. *Motahurfa* or rent for homestead land is taken from shop-keepers and other inhabitants of the village who are not of the Surfa or the favoured class and who have no cultivation whatsoever.

26. The above description of the tenures which prevail in this district, was necessary for the purpose of of properly understanding the bearing of the various sections of the Bill upon them and the manner in which they are affected thereby. I have already examined the provisions of the Bill regarding the bhowli tenure which is the most vital structure in the whole agricultural system of the district, as briefly as, with due regard to the importance of the subject and the gravity of the questions involved, I possibly could.

27. In addition to what I have said on the several sections bearing directly upon the bhowli tenure, I now beg to offer such remarks on the other parts of the Bill as have suggested themselves to me. The definition of "estate" as given in section 3, sub-section (1), read with the provisions of chapter V, sections 25 and 26, is rather inconvenient and open to objections. In this district, as well as in other parts of Behar, land, registered under one entry in the Revenue Register, prepared under Act VI of 1876 (B. C.) includes several villages. Lot Snibnagar registered under one entry contains about villages extending over an area of square miles, situated in different parganahs. Taluka Bilkhora has ninety main villages, besides as many hamlets or more. Unless it is meant that a ryot, having a right of occupancy in one of these villages, should have that right with reference to the lands in all of them, the word "estate" should either be removed from sections 25 and 26, or its definition modified.

28. The popular conception of a tenure-holder is that which is embodied in the provision of section 5, sub-section (1). But the Bill proposes to include two other clauses under it which are altogether new, viz., (1) a ryot who has sub-let more than half of his holding; (2) a ryot who holds 100 standard *bighas* which in these districts would mean $\frac{400}{9}$ (or 44 $\frac{4}{9}$) *bighas*, and who has sub-let whole or part thereof. There seems to be no reasons to give such ryots as these the name or position of a tenure-holder. Notwithstanding this name the Bill subjects them to the same rules of enhancement which an ordinary occupancy ryot is subject to. It is suggested in the Government of Bengal's letter that it would exercise as a check upon sub-letting, but in my humble opinion it would rather encourage it than discourage it. Any temporary farmer of any estate might succeed in purchasing all the royti holdings and by sub-letting convert himself into a permanent tenure-holder and prevent the landlord from ever getting *seer* or direct possession of his estate. Thus while these new provisions confer no benefit upon the actual cultivator of the soil, and rather tend to make their position worse, they trench upon the rights of the proprietor. No ryot holding 100 *bighas* or more has, as is wrongly assumed in the Government of India's letter, ever been regarded as a tenure-holder.

29. Tenures in this district, as defined in section 5, sub-section (1) are only such as have been created by contracts between the parties and are governed by the conditions and terms therein stipulated. They are not subject or liable to enhancement or cancelment, except under the conditions of the contracts. Whether temporary or permanent, they are transferable, some under the terms of the contract and others by local custom. I do not therefore possess sufficient information so as to be able to express any opinion as to the fairness or otherwise of the rules of enhancement laid down in sections 7 to 10 in the Bill.

30. The descriptions which I have given above of the tenures in Gaya will bring all its ryots without reference to the period of their cultivation as regards their bhowli and *shikami* land within the class of ryots holding at fixed rates as defined in section 4 sub-section (3) clause (a), and confer upon them whether they are occupancy ryots or not, indiscriminate and unlimited power of alienation which it is not deemed necessary or expedient to confer even upon occupancy ryots. Clause (b) of section 23 would protect even a ryot who has succeeded very recently in getting any portion of either *shikami* or bhowli lands against eviction, even if he would render the land unfit for the purposes of tenancy, and his holding would under section 182 be sold, subject to incumbrances and even in execution of decrees—privileges not enjoyed by ordinary occupancy ryots. The classification of ryots, hitherto recognized, both by law and in practice, consists of three classes of ryots, viz., (1) ryots holding at fixed rates from the time of the permanent settlement; (2) ryots not so holding but having right of occupancy; and (3) ryots neither so holding nor having any right of occupancy. This classification is an exhaustive one and should not be interfered with and sufficient provisions having been made for the protection of all these classes of ryots, section 23 might be omitted without any detriment to the existing interests and rights of the tenants, as far at least, as the Gaya ryots are concerned.

31. The difficulties which generally attend a ryot in carrying on cultivation, and the inconvenience to which not only he but his landlord or landlords are put if he possesses lands in different villages or under different proprietors, as well as the detriment which is occasioned to the cause of agriculture by his holding lands in various villages under as many proprietors, should make it highly desirable that a ryot having a right of occupancy in a village must be made or induced to reside in that village so that his interests may not suffer, and that timely and proper cultivation may not be delayed or in any way prejudiced by any possible friction between the rival landlords of the different villages. As a rule, a ryot attaches more importance to his interests in the village where he has residence than to those in other villages where he has his cultivation only. It not very unfrequently happens that in disputes between his several landlords regarding water and irrigation works, he would take the side and embrace the cause of that landlord in whose village he has both his residence and cultivation, whether that cause is just or unjust, to the great deterioration of cultivation in those villages whose cause he has left or neglected. Instances have also occurred of a ryot who holding his *jotes* under two proprietors who are on fighting terms with each other, has been actually influenced and induced by the landlord in whose village he resides, to neglect his cultivation in the village of the rival landlord and thereby has caused loss to the latter, without incurring the liability of paying rent for the lands so neglected as they are mostly under the *bhowli* system. For these reasons, based as they are on local knowledge and experience, the Behar Rent Commission deemed it not only expedient but indispensably necessary to make residence as an important and essential element in the acquisition of the right of occupancy by a ryot. Residence therefore should not be lost sight of as an essential condition to the acquisition and maintenance of the right of occupancy by the ryots, if not of whole Behar, at least of Gaya, which differs materially from other parts of Behar in the peculiar nature of its tenure and agricultural circumstances. But Chapter V of the Bill which treats of occupancy ryots have introduced changes in the existing law regarding landlord and tenant, which although they shower innumerable benefits, hitherto unenjoyed, upon the ryots, would tell very hard not only upon the landlords, but would also under peculiar circumstances prove injurious to the interest of the ryots themselves. The provisions of sections 25 and 26 as they stand at present would tend, as soon as the Bill is passed into law, to convert all lands held by ryots as such, whether they have occupancy rights in them or not, into holdings with occupancy rights permanently and inseparably attached to it. There could have been no serious objections to these salutary provisions for the ryots had they not threatened to demolish some of the long-established and vested rights of the zemindars and strengthen the position of the former by undermining that of the latter. No provisions, how beneficial soever it may appear or prove to a particular section of the community, should find favour with a just and benevolent Government, as our Government undoubtedly is, which seek to ameliorate the condition of the one at the sacrifice of the cherished interests of the other but equally important section of the same. The definition of "settled ryots" as given in section 26 is so sweeping and comprehensive as to include and take in within its wide and almost unlimited range every class of ryots, however small and insignificant their holdings may be, provided they have held a bit of land as such in any village or state, giving them the benefit of extraordinary presumption, as specified in sub-sections (2), (3), (5), (6), and (7), only one of which (sub-section 21) being rebuttable. In many cases it would be extremely difficult for a zemindar to rebut such a presumption, as he might not be in possession of all the evidence required for the purpose, especially when an estate is owned by several proprietors not on good terms with each other. The presumptions which are not irrebuttable would operate with redoubled hardship against the bhowli landlord, especially those in sub-sections (6) and (7), as they would prevent the landlord from settling the land abandoned by a ryot with any other ryot for at least three years, and he will fail to induce any ryot to accept such a temporary settlement for so short a time; for section 96 gives the ryot so abandoning a right to bring a suit within the time prescribed therein. This section 25 with the definition of "settled ryot" as given in section 26 would confer rights of occupancy upon all settled ryots, not only in the lands held as such by them in a village or estate, but in those also which they may hereafter acquire, no matter how and where, provided only that they may hold such land as ryots. Henceforth all that would be requisite for a ryot to acquire a right of occupancy in lands in a village or estate that may come into his possession subsequently after the passing of the Bill is to hold only a *dhoo* of land in that village or estate as a settled ryot. The provisions thus do away not only with the residence of the ryot in a village, but with the 12 year's rule, as well as the essential and guiding principle in the acquisition of the rights of occupancy in the lands held by him in that village. What the evil effects of these sweeping provisions would be are not far to see. They would inevitably give rise to disputes between the parties, of a novel but alarming character, by creating a feeling of jealousy and ill-will against each other, and destroying that peace and harmony between them which are so indispensable for the furtherance of the cause of agriculture in the interests of both. These provisions would also go very deep to sap the very foundation of the tenure which is known in this district under the name of *chikuth* lands, which have already been described, and with respect to which, no ryot, whether settled or not, has any right of occupancy, and which from the operation of the terms of contract regulating the grant of such lands are liable to enhancement of rent from time to time, until they are capable of yielding the ordinary full crops produced in the bhowli or *shikami* lands in the village, and are converted into either of those descriptions of lands, unless the provisions of section 212 be so worded and

extended as to govern these *chikuth* lands with retrospective effects. Under section 31 of the Bill, right of occupancy is transferable and capable of being sublet; and under sections 32, 33, and 34 the landlord (a proprietor or permanent tenure-holder, or any other tenure-holder expressly authorised in that behalf by section 36 clause (a)) is allowed to exercise the right of pre-emption on voluntary sale or sale in execution of occupancy right, and to take the place of mortgagee on foreclosure when such occupancy right is subject to mortgage. But on the principle that inferior title merges into a superior one the moment the landlord's title on purchase, pre-emption or foreclosure, is completed, the right of occupancy would at once cease under section 28. But if the landlord having thus acquired land with the right of occupancy, settle it with a "settled ryot" of his village or estate, that ryot would at once acquire right of occupancy therein by the operation of section 25. Section 42 would prevent him from settling it with any "settled ryot" of his village or estate on any higher rent than what was paid by the former tenant except on conditions mentioned in section 41. The case would appear to be otherwise if the land be let out to one who is not a "settled ryot," or if it be sublet by a purchaser other than a landlord. If the purchase be made by any person other than the landlord of the village or estate in which the land is situate, the right of occupancy would not be extinguished, and section 62 would give him the power of settling by a registered contract at 50 per cent. on the rent paid by him to his landlord. The landlord beyond keeping out a stranger from his village or estate, gets no benefit out of the trouble and expenses of making the purchase. It amounts to this that, he must not purchase or exercise his right of pre-emption at all, or if he does, he should not give it to any "settled ryot" of his, although that ryot might be in great need of land for cultivation and ready to take it on any reasonable terms. The landlord would give it to him only who would pay him the highest rent, or cultivate it himself if he be able to do so. That such restrictions would be more injurious to a bhowli landlord, needs no further demonstration after what was already been said of the bhowli tenure. I have only to remark, while on this part of the subject, that after having given it the best and most careful consideration that its importance deserves, I fail to see why different rules should regulate the rights of purchase when made by different classes of men, and deprive a landlord purchaser of those rights which a common purchaser would enjoy.

32. On the right of transferability and sub-letting, I have to say that I was once in favor of it. But further consideration has induced me to change my opinion. It was at one time believed that in this district at least there was custom of transferring. But evidence, both oral and documentary, given in a case which arose in this district in connection with one of the escheated estates, and the finding of the courts thereon have satisfied me that that custom is uncertain and not fully and clearly established. One Sital Pershad, a mukhtar of the criminal courts here, was for some time the ticcadar of a small share in the village Simuarali. During the time of his lease he managed to purchase some tenantry rights and sub-let them to some of his vendors, as well as to other ryots of the village at very high and exorbitant rates of rent, both bhowli and nakdi. When Government took possession of the estate under a decree of the civil court, it refused to acknowledge Sital Pershad's purchase, as by it he had converted himself into permanent tenure-holder between Government, the proprietor, and the actual cultivators of the soil. The arrangement was ruinous to the ryots. Sital Pershad instituted a civil suit against Government and the ryots, claiming to justify his purchase by a custom which was alleged to sanction alienation of occupancy rights. The suit was defended by Government on the plea that no such custom did ever exist. Sital Pershad brought forward a good deal of evidence, oral and documentary, to prove the alleged custom, but the evidence could not show a single instance of alienation of occupancy rights made without the knowledge or consent of the landlord, notwithstanding that such evidence stood unrebuted, Government depending mainly on facts elicited in cross-examination. The courts held that the custom alleged by the plaintiff did not exist, and that the plaintiff's suit should be dismissed as against Government. Mr. Porter, while disposing of the appeal in his judgment, which has since been confirmed by the High Court, after reviewing the evidence, remarked:—"It seems to me therefore, the plaintiff has entirely failed to prove the custom which he pleads, viz., that rights of occupancy are transferable in this district without the consent of the landlord. There is no doubt that the rights of tenants are sold as well privately as in execution of decrees. In the latter case they are usually purchased by the lessees or the landlord, as the case may be, and in the former by other ryots or by speculators, but in all such cases it depends upon the good-will of the landlord whether the transferee is recognised or not." Further on, in answer to the complaint of the learned Counsel for the appellant that it was hard upon his client, a *bond fide* purchaser, he said:—"Moreover it would be much greater hardship if speculators or lessees were allowed to purchase the rights of occupancy from the cultivators and without themselves cultivating the same, form another link in the chain of middlemen between the landlords and the tenants. I need hardly point out the annoyance and harassment to which a landlord might be subjected by a custom of this kind." This was the only case in which this point was raised and judicially decided. This case, which was so hotly contested, affords clear evidence of the extent to which the abuse of this power of transferring and sub-letting might be carried, not only to the "annoyance and harassment" of the landlord, but to the ultimate extirpation of the peasantry and the creation of "vicious" class of middlemen. There can be no doubt that these middlemen who would have to pay all the liabilities of the former tenants would, with their sub-lessees, try to make as much profit as they can by means lawful or unlawful. In the case of money-rent, the Bill (section 62) gives to such middlemen the power to demand

profit to the extent of 50 per cent. on the rent which they have or shall have to pay to their landlords. The Bill has made no provision, however, limiting the extent which the bhowli rent might be raised by them. Assuming that they would only take half of what they would have to pay, the actual cultivators would have only $\frac{1}{2}$ or $15\frac{1}{2}$ per cent. of the grain-produce besides chaff and straw. If this be deemed a sufficient share of an actual cultivator under a middleman, why not of a cultivator under the zemindar direct? But a cultivator who would only get $\frac{1}{2}$ of the grain-produce, would hardly find any encouragement to keep on cultivation. The creation of such middlemen which the Bill contemplates, prejudicial both to the landlord and the actual cultivators, increase the cause of dispute and discord which may tell seriously upon all agricultural improvements, especially in a bhowli country. It is curious to note this power of transferability is not to be exercised by the ryot unless he transfers the whole of his holding (*vide* section 97). The extravagant and heedless habits of the people, whether ryots or landlords, which make them spend large and enormous sums on marriages and other social and religious ceremonies, should always be kept in mind in disposing of this subject. Notwithstanding the strict provisions of the Mitakshara and the Mithila Law restraining alienations, how many families after families have been ruined by extravagant expenses. The cases of Babu Gouri Fy Nath and Ramratan Neogi, each of whom, till lately, commanded a princely income from landed estates, and who having within a few years had everything sold off, were reduced to extreme poverty, the one dying a beggar, and the other still going a-begging from door to door, are well illustrative of the danger which may arise out of this power of transferability. What assurance have we that the ryot, who is admittedly more ignorant, more thoughtless, and more improvident than his landlord, would not bring destitution and starvation upon himself and his children by the reckless exercise of this power?

33. Section 32 of the Bill provides, as a safeguard to the landlord against being put to annoyance and harassment, for the exercise of his right of pre-emption, and thus prevents the ryots' holdings from falling into the hands of money-lenders and other adventurers obnoxious to the landlord. This right, however, can only be exercised by a rich landlord. But how many of the landlords are so? Are not many of them over head and ears in debt, who are compelled to borrow, at exorbitant rates of interest, for paying Government revenues and other public demands, not to speak of petty landlords and shareholders? Where shall these get money to pre-empt? Even if they do, does not sub-section 4, of section 32, which gives power to the tenant to refuse to sell after the pre-emption proceedings have been carried on at a heavy cost, leave them at the mercy of the tenants? This right of pre-emption will, I beg to submit, give no effectual protection to the landlord. But what provision has the Bill made to protect the tenants themselves against making reckless transfers? None whatever. The bar, which section 37 and section 38 contemplate to provide against sub-letting, viz., that a ryot, who sub-lets more than half his holding, shall be converted into a tenure-holder, and that his sub-lease shall not inure for a term exceeding seven years, is in my humble opinion, no bar whatsoever. Shorten this period of the lease, the more advantageous it would be to the lessor. The conversion into tenure-holder would protect the tenant against evictions even in cases in which an ordinary occupancy ryot has no protection. Under chapter XV, the tenure if sold, would be sold subject to encumbrances. A transferee, who is not a *bond fide* cultivator would rather immediately on getting the transfer, at once sub-let, under section 62, the whole of the holding purchased by him in order to get the position and advantages of a tenure-holder. No doubt he would be creating a right of occupancy against himself in favor of the under ryots, but that is no loss to him, when we find that the ryots of the real tenure-holders and landholders have rights of occupancy. Thus the provisions of chapter V, by taking away the rights of the landlord do not confer any corresponding benefit upon the actual cultivators, but at the sacrifice of the interest of both of them, "tend to increase the link in the chain of middlemen." In this district ryots for want of means of proper cultivation do sub-let from year to year, with the consent of the landlord to the cultivators living with them in the same village. It would be unwise and inexpedient to stop sub-letting altogether. In my humble opinion it had better be left alone, to be governed by the custom prevalent in each district or estate. So, if it be deemed necessary to put upon the right of occupancy the incident of transferability it should be confined to the cultivators living in the same village with the transferer. To prevent land from falling into the hands of one persons more than he is capable of cultivating, the landlord might also with certain restrictions be allowed to pre-empt.

34. The peculiar nature of the ryoty tenure in Gaya does not at all embarrass us with any question of enhancement. We would therefore look to the provisions of the Bill regarding the enhancement of the rents of occupancy ryots with an air of indifference. But as the Bill proposes to turn our tenures and the relation which have hitherto existed between landlord and tenants topsy-turvy into such a state as we have never been familiar with, the question of enhancement is forced upon us for the first time in the annals of the administration of the rent law in our district. It appears to me at first sight that the restriction, which the Bill imposes upon contracts between landlords and ryots is not based upon any sound principle, the only justification being the supposed inequality between the parties in all matters. I have already said that in this district, there are two classes of ryots, the superior and the inferior class, the former of whom, forming the bulk of the cultivators of this district, are certainly not on terms of inequality with their landlord. Then again, why the ryots, who are supposed to be

free agents in all ordinary dealings specially with relentless money-lenders, should not be left free to contract with the landlords? The parties should be left, as much as practicable, to come to amicable terms among themselves rather than be forced to go to court. Yet the provisions of section 41, and sections 43 and 44, are such as would tempt the landlord to go to court in preference to an amicable settlement for enhancement of rent, and subject himself and his impoverished tenants to the trouble and costs of litigation. To an unscrupulous landlord wishing to avoid the trouble and expense of going to court, the provision of section 41 throw a temptation of falsifying his records in order to make a private settlement advantageous to him. This section also throws upon the Registrar a duty of satisfying himself as to the fitness of the ryot to enter into the contract which he would be asked to register, a duty, which he would neither have time nor means to discharge. On the principles of enhancement I have to say that there seems to be no apparent reasons why a less rate of increase should be allowed in private contracts than that which can awarded by the court. The limit of 7 or 15 years according as the increase made is 2 annas or 4 annas per rupee seems to us to be quite arbitrary. When increase is asked for, for increase in price, the ryot is certainly entitled to a deduction for the increase in the cost of production. But as the Bill limits enhancement on the ground of a rise in the price to only 25 per cent, in would be necessary, if this limit be allowed to stand, to make any deduction for increase in the cost of production, as that limit would leave three-fourth of the increase to the ryot. On the other principles, limits, and rules of enhancement, I do not possess sufficient information so as to be able to give any opinion. Nor is any Gaya landlord or tenant able to give any information or opinion on the soundness of the principles of the Bill on this subject. It appears to us a mystery why the enhancement principles should be based on the value of the staple crops only, and not of the other crops, which are equally and some times more valuable.

35. The occupancy ryot acquires right in the land by occupation for a certain period of time which the non-occupancy ryot, who is a mere cultivator without any interest in the land, does not, and there is no equity on the side of the latter to entitle him to obtain an equalisation of the rules for the enhancement of his rents, with those of the occupancy ryots.

36. On section 69 of the Bill I have to observe that the case laws have hitherto recognized the landlord's rights to appropriate payments made towards the satisfaction of his arrears first, but section 69 leaves it to the option of the ryot to have the payment made appropriated to the arrears or to the current rent. Such an option to the debtor is injurious to the interests of the creditor. The practice among landlords and tenants had also been to appropriate payments first towards arrears, and then the balance towards the current rents.

37. I had formerly shared the popular belief, and followed the current of supposed authorities on the subject of the imposition of the abwabs, and, in accordance with what I then erroneously thought of the subject, I expressed, in the year 1877, my opinion that the abwabs were illegal cesses, and could not be upheld either by substantive law or case law. But on reference being made to me on the subject by Babu Bimola Charan, Deputy Magistrate, with regard to the escheated estates, I went as thoroughly into the subject as I could, and made a most sifting enquiry into the papers that might help the material solution of this knotty problem. The result of my careful and deliberate re-thinking of the subject and the examination of the papers of several villages for years and years led me to subsequently change my opinion and to come to the conclusion that, at least in Gya, the imposition of abwabs was not only illegal and unjust, but legal and justifiable. I then found on a close re-examination of law-books that there was nothing in the statute or the case laws against my changed view. The zamindars of Gya not only take abwabs, but make certain concessions to the ryots which are not elsewhere made. No rent is here charged for pasturage, nor is any charge made or contribution asked for water-work from the ryots. Then again throughout the district the ryot gets in sugar-cane and *banga* (cotton) Shikami lands cultivated by him, a deduction of 2 kattahs per bigha for which he has no rent to pay, and in some estates and villages he gets a similar deduction out of the chikuth lands. With reference to Shikami *Marua-pusta* and *Marua-rubbi* lands he has to pay for every 2 kattahs per bigha at the rate of one rupee less than his ordinary rates of those crops. To the landlord he pays, in addition to the amount calculated on the crop-rates fixed for him, a *Dustoor* generally of one anna and sometimes of half an anna per bigha which is taken by the Malik, and *hujtana* or the Patwari's fees for receipts at the rate of one anna per cultivator, besides the fees of the ordinary village establishment, namely, that of the amin, *gamashtah*, weighman, &c., who, as shown above, all work both for the landlord and the tenants in a certain portion either per bigha or per rupee, varying in each village and per *gamashtah*. In all these rent discussions we have had questions about standard pole and standard *gamashtah* always raised and mooted, but none up to this time about the coin in use among the landlords and tenants in the calculation and settlement of their yearly accounts. The coin in use in the district of Gya is the sicca rupee, which they convert into the current *batta* by setting exchange rate under the name of *batta mal*, varying from $\frac{1}{4}$ th of an anna to $\frac{3}{4}$ th of an anna in different villages per sicca rupee, and *batta company* varying from 1 to 10 annas in different villages on the total sicca rupees, plus the total *batta mal*. The coin in use in the country before the year 1773 was the coin which was struck in the name of Akbar and adopted by Akbar and his successors. It was considered the standard coin, and consequently, when in the year 1773, the Calcutta sicca coin, known as the *Calcutta sicca*, was introduced, a certain exchange rate called *batta mal* was levied to

equalise the value of the new coin with that of the old one. Mr. Wilson says that 100 sicca rupees was equivalent to 116 current rupees. At the time of the Regulation of 1793 rent must have been paid in the coin then current with the *batta mal*. Any subsequent change of coin would necessitate the levy of exchange rate upon it to equalise with the substituted coin. Act XVII of 1835 introduced the Company's rupees into the country, the value of which under section 4 of that Act is $\frac{1}{16}$ th of the Calcutta sicca rupees, i.e., to say, a sicca rupee was considered equal to 16 Company's rupees. This change led to the levy of further exchange rate called *batta company*. The realisation of the exchange rates cannot therefore be considered as an illegal cess; on the contrary, it is a just and legal one, being part of the rent. Neither are the cesses realised as contribution from ryots by the landlord for the payment of the necessary expenses of the establishment illegal, inasmuch as the establishment must be kept and maintained for the benefit both of the landlord and tenant. The abwabs on the bhowli stand on a far different footing as above referred to. I might add that my present views of the abwabs have been accepted by the District and the Subordinate Judges' Courts. Decrees are now being awarded for the so-called abwabs, nakdi and bhowli, as being part and parcel of the rent. One of these hotly-contested cases went up in appeal before Mr. Porter, the then District Judge, and his finding and judgment on the question of abwabs, and generally on the bhowli tenure, and peculiar circumstance of the district are so full and conclusive that I cannot resist the temptation of quoting a good portion from the same here: "On the nakdi rents the plaintiffs claim the following cesses, namely, Hujootana, a fee of 1 anna per head, payable by the ryot towards the patwari's salary; *batta company* 3 pice per rupee in the rent. These two cesses have been admitted by the defendants and allowed by the Lower Court. In addition to these I find the following *batta mal* at 3 pice per rupee. *Dustoor* at $\frac{1}{2}$ anna per bigha. *Sonari* or allowance payable to the village weighman, $\frac{1}{4}$ anna per rupee. *Rusti Dak* (or post cess) at 5 annas per cent. The plaintiff has proved by the evidence of the patwari and some of the other ryots of this village that these cesses have been paid for many years, and there can be no doubt that such cesses are prevalent in this district. The question is whether such cesses can be legally recovered as part of the rent. This depends on evidence of custom (see I. L. R., 1 All., p. 440). As a rule I am averse to allowing the realization of these cesses in addition to the rent payable in cash, as it was undoubtedly the intention of the Legislature that landlords should incorporate these cesses with the rent, and abolish them as far as possible, and many instances have come to my notice where the landlords after incorporating and adding these cesses to the rent and consolidating as required by the regulations, have still continued to levy the cesses on the ryots. But, on the other hand, there are many instances where the ryots have opposed any such consolidation of the rent and have preferred to pay at the old rates, plus the cesses which have been collected from time immemorial as part of the rent. It is not the defendant's case in the present suit that the cesses now demanded have ever been consolidated with the rent, but his case is that these cesses have never been paid. I am clearly of opinion, from the evidence adduced by the plaintiffs, that this allegation is utterly false. It is not probable that the other head ryots of the village would have admitted the payment of these dues, if they had not been in the habit of paying them, and where custom is proved, I think that even in nakdi rents the tenant is bound to pay. Two of the cesses claimed, viz., the Hujootana and the *batta company* are admitted, the other cesses come to a little more than an anna in the rupee, and against this it is shown that the landlord makes an allowance of 2 kattahs in the bigha in sugar cane and chikuth lands for which he charges no rent. If a calculation were made and the full rent charged on the 2 kattahs per bigha, which are excepted, and all the abwabs or cesses claimed were disallowed the ryot would be in a worse position than he is now. This system of account appears complicated to the uninitiated, but it is the system which has been prevalent in the district from time immemorial and must therefore be recognized by our courts. The evidence given in this case satisfactorily establishes the custom, and I am of opinion therefore that the plaintiffs are entitled to the cesses which they claim on the nakdi rents. As regards the bhowli tenure the matter stands on a somewhat different footing. The point to be decided is to what share of the produce is the landlord entitled under the custom prevalent in the village. The history of the bhowli tenure in this district has yet to be written, but as it is calculated that nearly $\frac{1}{4}$ th of the cultivated area of the district is held under this peculiar tenure, it is a matter of no little importance to both landlord and tenant to determine what share of the produce is payable as rent. Unfortunately the term abwabs has acquired in the courts an erroneous signification. It is generally translated to mean illegal cesses whereas there is nothing in the word itself which imports that meaning. A cess may be legal or illegal according to the circumstances of each particular case as applied to those dues claimed by the landlord. Under the bhowli system the term abwab may more correctly be translated manorial dues, i.e., the dues which the landlord is entitled to under the established usage and custom of the country. Of course these dues vary in different villages and in different estates, but as a general rule it may be laid down that the landlord's share of the grain is seldom less than $\frac{1}{8}$ th, and the ryot's share seldom more than $\frac{7}{8}$ th. This fact is recognized by the people who have a proverb to the effect that the landlord's share is 22½ out of every 40 passaris. It may be asked why the landlord should get more than half of the grain-produce and the cultivator less? To answer the question would involve a long disquisition on the peculiarities of the bhowli tenure, but I may notice a few of the salient features of this system. In the first place the landlord does not in reality get a half share of the produce. He only gets a share of the grain. The straw, chaff, &c., is appro-

prorated entirely by the cultivator. It will be noticed that the lower Court offered the defendant to divide the whole produce equally between him and the landlord, but this offer was refused, and why? Because it has always been the custom for a ryot to take the straw, &c. If so, the landlord should surely be allowed to plead that he is entitled to the dues he claims because the ryot has always been in the habit of paying them. Again the expenses connected with the maintenance of irrigation works on which depend the crop fall on the landlords; they also have to defray the costs of any litigation connected therewith. The very existence of the crops in the district depends on an artificial system of irrigation which has to be kept up at much expense. If system of payments in kind were converted into one of payment in cash the landlords would neglect to keep up these works, which under the present system it is for the mutual advantage of landlord and tenant to keep in good repair and working order. It must also be borne in mind that the landlord has to pay his Government revenue punctually in cash whether the season be good or bad, whereas the ryot having to pay in kind is not to the same extent affected by bad seasons. These and many other circumstances have to be taken into consideration in discussing the question of the bhowli system, and if a proper calculation were made it would be found that the $\frac{1}{2}$ th of the grain produce, which I fix for the sake of convenience as the maximum usually leviable by the landlord, does not as a fact represent half of the gross produce. In other words if the $\frac{1}{2}$ th which represent the cultivator's share, plus the value of the straw, &c., were placed on the one side and the value of the $\frac{1}{2}$ th of the grain, which represents the zemindaree share, minus the expenses incurred by him in the maintenance of irrigation works, establishment, interest on Government revenue paid in cash, &c., on the other, it would be found that the tenant had little cause of complaint. Applying the above general principles to the present case let us examine the dues claimed by the landlord (or lessee) and the proportion they bear to the grain produce. The plaintiffs claim the following, viz., the neg or landlords' due of 1 seer 4 chattaiks per maund, the pansaras or harvest fee of 5 seers, the Budhawara 2 chattaiks per maund for payment of the wages of the village watchman, the Pakhi 4 chattaiks per maund for payment of the wages of the priest, the nocha, 8 chattaiks per maund for payment of the wages of the village establishment, viz., the putwari 2 chattaiks, the gumashta 2 chattaiks, the amin 2 chattaiks, the salis 1 chattaik, the nawisinda (clerk) 1 chattaik, the mangun 30 seers per plough, the sidha 10 seers per plough (putwaris' due.) The putwari and Jeth ryots examined on behalf of the plaintiffs give clear account of all these dues and depose that they have been paid from time immemorial. The defendant Chullun Mahton actually has the assurance to depose that he has never heard of any of them! The aggregate of these dues comes to a little more than 2 seers in the maund, so that out of every 80 seers of grain produced the landlord claims a little more than 44 seers, leaving the tenant a little less than 36 seers. If the landlord claimed $\frac{1}{2}$ th as his share he would get 40 seers out of every 80 seers, so that it is clear that in this case his claim is not more than the maximum which I have fixed as the landlord's share of the produce in grain. Of course in some cases it may be shewn that the landlord is not entitled to so much, in others he may, under peculiar circumstances the onus of proving which would rest on him, be entitled to more. It is quite impossible to lay down any hard-and-fast rule. Every case must depend on the evidence adduced by the parties, but there can be, I think, no doubt that if the tenants are led to believe that they can evade their just dues by calling them Abwabs in spite of the fact that they have been paying them from time immemorial the relations between the landlords and tenants in this district will become so unsettled that there will be no end to the litigation. It is the duty of the Courts to look carefully into these cases and not lightly to disregard on the one side the landlords' dues based on the established custom of the country, and on the other the ryots' remonstrances if they can show that these cesses are exorbitant and have only recently been imposed. In the present case the evidence adduced establishes two facts, 1st, that these dues have been collected and paid from time immemorial, 2nd that having regard to the peculiarities of the bhowli system they are excessive. In the case of Budhua, Orawan Mahton (defendant) appellant, v. Jamadar Baboo Dyal Singh, plaintiff (Respd.) X XIV W. R. P. 5, it was held by the High Court that certain payments which were not so much in the nature of cesses as of rent in kind and which were fixed and uniform, &c., had been paid by the ryot from the beginning according to local custom were not illegal cesses, and so in this case. I find that these so-called abwabs are not illegal cesses, and I may here notice that in many cases which have been tried by the Court the putwari has succeeded in establishing, as against the zemindar, his right to these dues, and I hold, therefore, where the custom is proved, that the zemindar is entitled to levy a share thereof from his tenants."

The above extract from the judgment of such an eminent, learned and experienced Judge, Porter, who had made himself thoroughly acquainted with the manners and customs and affairs of the district, is not only important on the question of the bhowli system, but indicative of the great danger which would attend the commutation of

the hearing of which occupied two months in recording evidence as to the custom in the district, legalising abwabs, the present subordinate Judge, Mr. Prasad Binkarji, came to the same conclusion, both on law and fact, and the Judge had arrived. The following passages in his judgment are

"The 3rd and 4th issues which raise the question of abwabs. The plaintiffs claim both for the nakdi and bhowli lands. The nakdi

abwabs are following: (1) dustoor at one anna per bigha, (2) hoojutana or putwari's fees at one anna per ryot, (3) batta mal at 16 dams per rupee, (4) batta company at one anna per rupee. (5) Negdaree at 8 dams per rupee. The bhowli abwabs are (1) neg, (2) pasera, (3) sonaree, (4) badhwaree, (5) mangun, (6) nocha.

"Now with regard to the nakdi abwabs, the plaintiff claims them as part and parcel of the rent, and the collection papers show that the juma plus the Abwabs being taken together, the consolidated sum is shown as the nakdi rent of the ryot. Then the question arises whether these abwabs are legally recoverable or not, and whether the plaintiff can recover them from the defendant. It is argued on the defendant's side that these abwabs are prohibited by law. Now the statutory provisions with regard to the abwabs are to be found in sections 54 and 55, Regulation VIII. of 1793, and section III., Regulation V. of 1812. Now section 54, Regulation VIII. of 1793 says: 'The impositions upon the ryots, under the denomination of abwabs mohotot, and other appellations from their number and uncertainty having become intricate to adjust and a source of oppressions to the ryots, all proprietors of land, and dependant talookdars shall revise the same in concert with the ryots, and consolidate the whole with the asal into one specific sum.' This section does not prescribe any penalty if no consolidation is made of the abwabs with the asal juma. Section 55 only prohibits the imposition of new abwabs upon the ryots under any pretence whatever. Section III., Regulation V of 1812 says:—'That nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, &c.' Then it goes on to say 'the Courts shall enforce * * * payment of such sums as may have been specifically agreed upon between them' (parties). The present Rent Act (VIII of 1869 B.C.) in section XI. only prohibits the exaction of abwabs. So looking to all the statutory enactments it seems to me that the abwabs, as claimed by the plaintiff, are not prohibited by law. The plaintiff alleges that these abwabs have been paid by the ryots from ancient times. The evidence adduced on the plaintiff's side proves the existence of a long standing custom in this part of the country to take these abwabs from the ryots. In fact they are treated as a part of the rent. The whole sum including these abwabs is entered in the books as the ryots' rent. They are certain and definite in proportion, and there is no difficulty in adjusting them. They are not new impositions on the ryot, for they have paid and acquiesced in by the parties concerned from days of yore. It would not be incorrect to say that they have been consolidated with the juma. For the consolidated sum appears in the papers as the ryots' rent and the items are separately mentioned only for the sake of adjustment and calculation. These abwabs have a customary sanction for them; and it would be a disturbance of an established state of things, if the court of justice should raise their hands against them now. Custom, I should observe, is a part of the law of a country, and court of justice in administering the laws of the land, ought not to interfere with the custom. The evidence on the plaintiff's side shows that these items have been all along realised from the ryots as well as from the defendant. This would show that they were acquiesced in both by the zemindar and the ryot, and it would be disturbance subverting the existing relation between those parties were the court to stop those dues now for the first time. I should therefore observe that there is no reason why the plaintiff should not recover the abwabs claimed. They are neither new impositions nor indefinite cesses. For they have been in existence from older times, and their proportions are fixed. So they would not come within the statutory prohibitions abovementioned. The plaintiff indeed calls them as abwabs, but there is nothing sinful in a name. For call them as abwabs or any other thing they have always been regarded both by the landlord and the tenant as a part and parcel of the rent. In fact the whole consolidated sum including them as shown in the papers as the ryots' total rent. Under such circumstance I do not see why they should not be recoverable as rent. The law gives no other definition of rent than this that what is given to the landlord by the tenant in return for the use of his land as rent and when the ryots have from the beginning been paying these items as a portion of their rent to the landlord in return for the use and occupation of his land, I do not see how they can be regarded otherwise than as rent. I am, therefore, of opinion that these abwabs are not illegal and are recoverable at law, and when it is proved by evidence that the defendant has all along paid them, I think the plaintiff is entitled to recover them from the defendant. The bhowli abwabs stand on a higher footing. For they are only certain proportions of the produce of the land. There is no legal enactment in force prescribing the landlord's share of such produce. The evidence on the plaintiff's side proves that according to the custom of this country half share plus the items called abwabs together represent the landlord's share in the bhowli produce, and this would make the landlord's share more than half. It is also proved that the defendant has all along paid this larger share to the plaintiff. I am therefore, of opinion, that when custom sanctions this larger share for the landlord and the defendant also paid the same share in the previous years, the plaintiff is certainly entitled to recover it. The defendant does not say that these abwabs were levied after the permanent settlement or that they are now in a position. He says that these were never paid by him. This is certainly a false statement of the defendant."

40. Apart from my individual opinion, the judicial findings of these two learned judicial officers of considerable experience are sufficient to show that the so-called abwabs, nakdi and bhowli, in Gaya at least, are really part of the rent payable or deliverable to the landlord. Section 85 which contains a too general prohibition against abwabs, would have the effect of doing away with the so-called abwabs which are really part of the rent as pre-

valent in this district. While the ryots would continue to get the concessions and deductions which have been made in their favour, the landlord, under this section, will be deprived of a good part of his rent for no other fault than that he had allowed them to be entered in the village papers as a separate item, for the convenience of calculations and keeping up of accounts.

41. The provisions of sections 87 to 94 are altogether new and quite unsuited to the present condition of the peasantry and the agricultural requirements of the district. I have already shown that irrigation and other works of improvement in this district are constructed and maintained by landlords only, and, that it would be dangerous to put them into the hands of the ryots. The provisions of sections 88 and 89 will work very harshly upon a bhowli landlord, and by introducing a source of dispute in a matter on which there had hitherto been no difference, may ultimately lead to a collapse in agricultural improvements. The provisions for registration of improvements and recording of evidence as contained in sections 91 and 92, however, desirable in theory, will not work well in practice. Considering the number of improvements that are daily made almost in every village, the Collector or revenue officer, appointed for the purpose, will be flooded with applications under these sections, and the proper, effectual and timely working of these sections would necessitate in our district the appointment of as many officers for the purpose as there are sub-divisions, and tax heavily the already drained purse of both landlords and tenants, and at least, these registers and records of evidence will only be corroborative evidence in the civil court whenever any question of improvement would arise between the parties in which the landlord will have to prove the improvements made by him by positive and direct evidence. So the game will not be worth the candle, while section 46 of the Bill imposes a sort of penalty on the landlord in that his suit for enhancement will be dismissed if he omits to register the improvements. The ryot is placed under no such disability for omission to register the improvements, if any, made by him. Section 90 gives power to non-occupancy ryots to construct suitable dwelling houses for himself and his family with all necessary out-offices, and section 87, sub-section 2, clause would make the construction of such buildings as improvements, and section 93 entitles such ryots, when they commit such acts as would make them liable to eviction to demand compensation from the landlord. There is no limit as to the nature of the building such ryots are to erect. They may erect a good costly pucca building and demand very heavy compensation for the same, which, in most cases the landlord might not be able to pay and thus be unable to seek ejectment, even where the law gives him the right to do so against a ryot who might have committed the grossest breach of contract and rendered the land under his cultivation quite unfit for the purposes of tenancy. There are many well-to-do persons of the class of mohajuns, mukhtears and amlas living in villages who do not care so much for cultivation as any how to annoy and trouble the landlords with a view to compel them to sell their estates to them. These sections therefore might, in the hands of unscrupulous ryots of this class, be made to work unjustly against the landlord. It will be extremely difficult, if not impossible, for the Collector to take the construction, maintenance and management of the irrigation works of this district, which, as detailed above are too numerous and intricate to be managed by Government officials, with that comparative cheapness and care with which the parties interested have done and will do.

42. In districts where, as in Gaya, lands, whether bhowli or nakdi, are measured every year, such a yearly measurement being absolutely necessary for a satisfactory settlement of accounts between the landlords and the tenants. The provisions of section 99 sub-section (2) which prohibits the landlord making any measurement within 10 years without the consent of his tenant or the written permission of the Collector, the exceptions (a) and (b) not being sufficiently explicit and wide to cover such yearly measurement, would seem to throw difficulties on the settlement of the annual accounts between the parties. The standard of measurement, prescribed in section 101, would fall far short of the standards which have prevailed in this district from time immemorial. There are two standard measurements prevalent in the district one for the Tikari Raj called the maharajee or *see purd* standard bigha which is equal to (180 feet x 180) and the other for the other estates of the district called the *zuptee* which is equal to (165 feet x 165 feet).

43. In a country where the Hindoo and the Mahomedan Laws of inheritance are prevalent every estate or tenure which is not joint now, is liable within the course of a few years to come under the joint possession of the several heirs of its present single proprietor or holder, and as a matter of fact, such estates or tenures under single proprietors or holders are very few in number in this district. Thus the effect of the provision of Sections 102 to 108 which provide for the appointment of managers for joint estates tenures, would be to deprive the owners of about all the estates and tenures of their natural right and power to manage their own affairs, and to place them under the management of the Court of Wards, Collectors or Managers appointed by the District Courts.

44. The provisions of these sections will be seized by large and rich shareholders to reduce the income of their petty co-sharers with a view to compel them to give up or sell their shares, as the works of such management, must necessarily be very heavy and prove a great burden upon the estates or tenures most of which are already so encumbered. Owners of estates might avoid the appointment of managers under the Partition Act, but tenure-holders have no remedy whatever. Extremely emergent cases in which it might be necessary

to interfere by temporary attachment or otherwise, are sufficiently provided for, by Sections 26 and 27 of Regulation V. of 1812 and Regulation V. of 1827, and the Criminal Procedure Code, Chapter VIII., has given all Magistrates full jurisdiction to prevent breaches of peace; and Sections 73 to 76 of the Bill would enable any ryot, in cases of disputes between cosharers, to protect his own interests by depositing rents. There is, therefore, no justification either in the interests of the public or in those of the tenants and the joint landlords, for the introduction of such a measure as the one under consideration, which having the effect of depriving individual owner and tenure-holders of the right to manage their own estates or Tenures, will not, it is fervently hoped, commend itself to the Government of Lord Ripon, who is so eagerly anxious and benevolently disposed to confer the boon of local self-government upon the people of India.

45. It being now an open secret as admitted on all hands that the majority of the landlords and tenants of this part of the country, who besides the payment of revenue or rent, as the case may be, in regular and strict instalments, have to meet other public demands upon their hands by way of cesses and taxes, are in straitened circumstances and drowned in debts, they cannot be in a position, and ought not to be made to bear all the expenses incurred by Government in preparing the record of rights, table of rents and record of proprietors' private lands, however desirable and expedient the provisions bearing upon these points may be. To saddle them with the costs of such preparation would be like placing the last straw on the camel's back, the cost incurred in preparing the record of rights and table of rates being recoverable from the parties as arrears of revenue due by them. What the legal, not to speak of the illegal, costs of such preparation would be, can better be imagined and inferred from what is incurred by the parties in carrying on the butwara proceedings under Act VI. of 1876 for the mere partition of their estates by metes and bounds.

46. On the subject of distraint I take the liberty to submit that it is not, as is wrongly believed, the offshoot of the English Law. In the Hindu period not only distraint and imprisonment but assaults and tortures as well, as is well-known from history, were resorted to for the realization of debts, whether rents or any other. This practice was kept up by the Mahomedan rulers. The British Government could not tolerate the inhumanity and cruelty practised, either in the Hindu or Mahomedan period, stopped the old practice to which the people had been inured; but at the same time seeing that without some sort of coercion it was next to impossible to realize rents or revenue and "as the delay that must necessarily attend the institution of a law process for the recovery of every arrear would encourage persons destitute of good faith to withhold the public dues and render the collection of them a source of endless litigation," passed on the 1st of May 1793 Regulation XIV of that year, authorizing sales of lands with the sanction of the Governor-General and empowering Collectors to commit, under orders of the Civil Judge, defaulting proprietors to Civil Jail, and to place their estates under attachment until the arrear was paid off, leaving it to the proprietor to contest the justness of the demand and to prosecute the Collector, if he proceeded illegally, for false imprisonment, by suit in the Civil Court. On the same day, Regulation XVII of 1793, was passed prohibiting land-holders and farmers, under the penalty of criminal prosecution from confining or inflicting corporeal punishment on their rent-payers. But as the language of the preamble of that Regulation shows "it being as essential to the prosperity of the country and the punctual collection of the public revenue, that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the Courts of justice, and incurring the delay and expense necessarily attending a law process for the recovery of every arrear" expressly sanctioned and recognized the zemindars' power of distraining without sending notice to any Court of justice, or any public officer, "the crops and other products of the earth of every description, the grain, cattle and all other personal property, whether found in the house or on the premises of the defaulter or in the house or premises of any other persons" and of selling the same through Cauzee or District Court, subjecting them at the same time to heavy penalty on the complaint of the ryot, if their demand turned out to be unjust, and their procedure contrary to the rules therein laid down. Regulation III. of 1794 took away from the Collector the power of confining defaulting proprietors, but confirmed the power of summary sale of their estates, with the sanction of the Governor-General, for the realization of the arrears due from them. Regulation XVII of 1793, however, failed to afford landlords that facility for realization of rents, which they required to enable them to discharge their liabilities to Government. The necessity for further legislation becoming apparent Regulation XXXV of 1795 was passed. Beginning with the preamble "Government not admitting of any delay in the payment of the public revenue recoverable from proprietors and farmers of land, justice requires that they should have the means of levying their rents and revenues with equal punctuality," in addition to the power of distraint which it improved, it provided for the realization by landlords, of rents by a summary application to the Judge, after serving notice of demand on the defaulter, for any sum exceeding 500 rupees which could not be recovered by distraint of the personal property of the defaulter. Still the above provisions both as regards the payment of Government arrears by landlords, and payments to the latter of their rents, were found ineffectual, so much so that in July 1799 some of the members of the Board of Revenue "recommended," says Mr. Field in his introduction to the Regulations page 80, "and strongly urged a recurrence to the former practice of confining the "the landholders for enforcing the payment of arrears." Accordingly on the 29th of August 1799 Regulation VII. of that year was

passed. Its preamble ran as follows. "The powers which landholders and farmers of land paying revenue to Government are at present allowed to exercise for enforcing payments of rents due to them from their under-tenants, having in some cases been found insufficient, a considerable delay having also of late occurred in the payment of the public revenue due from many of the landholders which though ascribable in some instances to the cause above mentioned can in others be imputed only to a want of good faith on the part of certain of the zemindars and other landholders who taking advantage of the delay with which the process of disposing of their lands unavoidably attended, have withheld the payments of their instalments until the day appointed for sale." By this Regulation, therefore, the rules and power of distraint as laid down in the Regulation XVII. of 1793, were considerably improved and simplified so as to expedite the recovery of rent by that process, and so also the rules for summary application to the Judge under Regulation 35 of 1795 were amended, the Board of Revenue got full power of ordering sales without reference to Government, and the Collector the power of attaching estates of the defaulting proprietors. The sale procedure underwent further modifications in the subsequent Regulations and Acts and with it also the landlord's summary procedure of realising rents. A careful perusal of the Regulations and Acts, repealed and unrepealed, down to the year 1859 would establish beyond all doubt that any improvement in the law effected to secure to Government prompt and timely payment of revenue, was attended with corresponding changes and improvements enabling landlords to realize their dues from the rent-payers under them with like promptitude and punctuality and, that from the very beginning the legislature saw and recognised the injustice of driving landlord to the necessity, in every case, of bringing ordinary regular suits in the Civil Courts, while Government itself possessed and enjoyed a simple and summary sale procedure of recovering arrears, of revenues from them — an injustice which it always anxiously sought to avoid. But the year 1859 witnesses a sudden change in this wise and long observed policy of Government. By Act XI. of that year the summary sale procedure for the realisation of Government Revenue, is made more simple and expeditious than before, but Act X. of that year does not only deprive landlords of the right of summary suit, or application which they had enjoyed ever since the year 1795, but, crippled and mutilated very much the power of distraint which they had exercised from time immemorial, both before and after the passing of Regulation 17 of 1793. The Laws and Regulations which it repealed had given to the landlords power of distraining all the personal property of their defaulting tenants wherever placed or removed, but section 68 of Act VIII. of 1869, B. C. (which is re-enactment of Act X. of 1859) makes only the produce of the land, for which the rent is due, as liable to distraint, and only for one year's arrear. Section 72 compels him before distraining, to serve a notice of demand upon the tenant, and section 75 gives him liberty to seek the assistance of the Court in cases in which he apprehends resistance. After service on the tenant under section 78 of a list of the property distrained, section 78 entitles him to apply to Court for sale within five days after distraint, and section 80 leaves no discretion in the Court but to depute an officer to hold sale, and to serve notice upon the tenant either to pay or institute a suit to contest the demand within 15 days. If no payment be made or no suit brought within that period, the sale must proceed. A ryot resisting or forcibly or clandestinely removing is liable under section 101 to imprisonment for six months in the civil jail, or until he pays off the arrear for which the distraint was made. None of these provisions were new, but only re-enactment with material modification of the provisions of the repealed Regulations. Sections 80, 81, and 82 give the ryot power of contesting the demand and of getting the sale suspended by a suit in which the onus of proving the correctness of the demand lies, under section 95, on the landlord. A ryot who omits to sue, within the period of 15 days, may yet bring a suit for damages under section 97. Section 98 also gives him the right to sue for damages where the powers of distraint have not been exercised in accordance with provisions of the Act, while section 99 subjects an authorized distrainer to damages, as also to a penalty of a fine of 300 rupees or imprisonment for two months. These provisions of the present law secure to the tenant greater protection against abuses of the power of distraint than he had under the Regulations. Since 1869 circumstances have altered and new liabilities have been imposed upon the landlord so as to necessitate the strengthening of his power of distraint rather than taking away or weakening it. The landlord now is not only responsible, and his property liable to sale, not only for Government revenue, but for road and public works and cesses, whether payable by him, or by his tenants. "Government not admitting of any delay in the payment" of public demands payable by proprietors, not only on their own account, but on that of their tenants as well, "justice requires" now as it did for a period of upwards of sixty years before the passing of Act X. of 1859 "that they should have the means of levying their rents and revenues which equal punctuality," and the reason that "the delay that must necessarily attend the institution of a law process for the recovery of every arrear would encourage persons destitute of good faith to withhold the rent due from them and render the collection of them a source of endless litigation" is stronger now than it was before. The "delay and the expense necessary attending a law process for the recovery of every arrear" having now increased by more than three times, it is more "essential to the prosperity of the country and the punctual collection of the public revenue that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the courts of justice," by regular suit, now than it was then. But it is disappointing to find that the Bill by sections 159, 140, and 141, compels the zemindar to go to Court for an order for distraint, and prove

his claim with such evidence as he would have to adduce in regular suit, and gives to the Court a discretion either to grant or refuse his application, or even delay the proceedings by which the object of distraint might be defeated, as the ryot might in the meanwhile remove the crops for which he would have strong temptation. The issue of a prohibitory order against the removal of the crops pending the proceedings is also left to the discretion of the Court. Such a distraint as this, in my humble opinion, is no distraint at all. It will neither save the landlord from expense of litigation nor give him the means of recovering his rents with that "punctuality" which would enable him to discharge the public demands upon his lands. In my humble opinion the present law of distraint which protects the interest of both the parties should be left as it is. If any revision is desired it should be more in favor of the landlord whose liabilities have increased than in that of the ryot. The experience of the past has clearly shown that without some coercive measures, "it is impossible to secure punctual payment. The number of persons "destitute of good faith" is not less among the Behar peasants than in those of elsewhere, and it is only the law of distraint, as it is in the law in force, that operating as a moral force, has helped the realisation of rents. The position of a landlord with a summary sale law and certificate procedure, hanging over his head threatening to sell all, and, with tenants under him, having the power and option the Bill proposes to give them, of withholding and delaying punctual payment of rents, and subjecting him to the trouble, vexation and expense of going to Court for every arrear, is certainly a miserable position. The power of distraint has no doubt been abused and sometimes carried beyond its legitimate objects, but that is due more to the ignorance of both the the landlord and tenants, than to any defect in the law itself. There is hardly a landlord or tenant in Guya, who knows any thing of the law governing the relation of landlords and tenants. Both parties have been acting and conducting their affairs on traditions and long standing orthodoxical, and conservative beliefs and habits. And what appears to us as tyrannical and illegal is not considered so by the real actors and the actual sufferers. The present state of things which the Bill tries to improve can only be remedied by spread of education and knowledge.

47. I might be permitted to add that the more easy and simple the position of a landlord is made by legislation, the more likely he would be to treat his tenants with kindness and justice. Nothing short of a simple procedure for realising his rents, whether nakdi or bhowli would better his condition and his relation with his tenants. Having considered the chapter of the Bill on judicial procedure in the light of the experience which I have gained in the trial of rent suits, I have been persuaded to think that suits for arrear of rents based upon registered documents or other reliable and trustworthy writings such as printed counterfoil receipt, bound and regularly paged printed form of measurement, laggit, and danabundi papers, might with advantage be governed by the Small Cause Courts Procedure, Negotiable Instruments, or, by re-enacting with necessary modifications and provisions for summary applications for realization of rents, which were in force before the passing of Act X. of 1859.

48. If there have been oppressions and extortions on the part of the landlords, there have been equally systematic temptations and combinations on the part of the ryots to withhold and delay the payment of rents unless compelled; and if in justice and fairness ryots are entitled to legislative protection against oppressions and extortions, the landlords are equally entitled to legislative assistance for recovery of rents with punctuality and promptness.

49. I might here be permitted to take this opportunity of stating in plain and unmistakable terms that the views which I have expressed in this report are in strict consonance with what I have entertained on the subject from a long time, and are in no way inconsistent with, or antagonistic to, what I have given expression to from time to time regarding the necessity of revising the Rent Law, and of thus removing a misunderstanding or misinterpretation of my views, which seems to have prevailed in some quarter by the publication of a solitary and isolated piece of extract from my report of 1877. In that report as well as in those which preceded and followed it, I did not only describe the miseries of the ryots of the *Ryain* class, but also the difficult situation of landlords with respect to the turbulent fighting and intriguing ryots of the *Soorfa* class, and showed that both ryots and landlords required legislative protection against each other.

50. In conclusion I have only to observe that although I am not blind to the necessity of a revised Rent Law, which will serve to redress the grievances of both landlords and tenants, yet I am more alive to the fact that the more complex and intricate the law relating to landlord and tenants is made, the greater the difficulties of agriculture, and expense of litigation, and the worse therefore, the condition of both. No legislation, however, strong, well-meaning, and clearly defined it may be, will help to ameliorate the condition of the agricultural community unless it tends to promote good-will and cordial feeling between the landlords and the tenants.

51. Lastly I have to offer you my best and warmest thanks for the honor you have done me by giving this opportunity of expressing my views on a subject of such grave importance, and to solicit your indulgence for the many defects and shortcomings, which are undoubtedly to be found in this report, but which are attributable, not to any want of zeal or interest on my part in the subject, but to a feeble and failing health which is gradually undermining my constitution.

No. 123, dated 29th December, 1884.

From—Secretary, Central Committee of Landholders of Bengal and Behar,
To—Secretary to Government of India, Legislative Department.

I have the honour to forward herewith the memorial adopted at a general meeting of the landholders of Bengal and Behar held at the Calcutta Town Hall on the 19th instant, and to request that you will submit the same for the consideration and orders of His Excellency the Viceroy and Governor-General in Council.

To—His Excellency the Viceroy and Governor-General of India in Council.

The memorial of the Zemindars, Taluqdars
and other Landholders of Bengal and
Behar, in meeting assembled—

HUMBLY SHEWETH,—That your memorialists are the descendants, or the representatives, of the zemindars, as they are called, with whom the Marquis of Cornwallis made in 1793 what is known in history as the Permanent Settlement of the land revenue in the provinces of Bengal, Behar, and Orissa.

2. That much discussion has taken place as to the actual *status* of the zemindars at the time when this settlement was made, its opponents generally maintaining that the zemindars were mere collectors of the land revenue and held no proprietary rights in the soil.

3. That without entering upon this discussion, your memorialists believe that it is now generally admitted that, while this contention may have accurately represented the *status* of a small number of the zemindars, the great body of these gentlemen were the owners of the land in the only sense in which ownership thereof was recognized by the Muhammadan law, which prevailed in the provinces, and had prevailed for centuries, before their administration was transferred to the East India Company.

4. That that transfer was made by the Mogul Emperor Shah Alum in the year 1765 by an express grant under an Imperial firman bearing date the 12th August.

5. That the nature of the land revenue, the right to which was made over in perpetuity by that firman to the Company, was very imperfectly understood until long after its acquisition.

6. That all doubt upon the subject has been cleared up by the researches in particular of the late Colonel Galloway, the late General Briggs, and Mr. Neil, B. E. Baillie, author of "The Muhammadan Law of Sale," "The Muhammadan Law of Inheritance," and "The Land-tax of India, according to the Muhammadan Law," the authority of whose writings has long been considered unimpeachable in the Law Courts of the Empire.

7. That the last-named of these authorities opens the preface of the last of these works with the following impressive statement:—

"The most important of the rights acquired by the East India Company by cession or conquest from its predecessors in the Government of India is the *kharaj* or land-tax, which has existed in that country from early times, and was probably imposed upon it soon after its conquest by the Muhammadans. In Bengal the right to this tax was conferred on the Company by an express grant from the Mogul Emperor Shah Alum, under a firman bearing date 12th August, 1765; and neither in that presidency, nor in any other part of India, have the East India Company, or their Local Governors, ever pretended to any greater rights in respect of this particular tax than belonged to the preceding Governments under the acknowledged law of the country. It has, therefore, always been considered a matter of importance to ascertain as correctly as possible the nature and limits of that tax according to the Muhammadan Law, which was not only the general law of the country, but was more especially that which determined the rights of the Government and the people to each other."

8. That it was this law which the East India Company undertook to maintain and administer under the Imperial Firman of 1765, and to which they were required to adhere strictly by 2d George III, Chapter 25, section 39, under which Act the Court of Directors were required to give orders for settling and establishing "upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tribute, rents, and services of the *Rajds, Zemindars, Polygars, Taluqdars*, and other native landholders should be in future rendered and paid to the Company."

9. That in obedience to the orders of Parliament thus registered, Lord Cornwallis, after protracted and earnest enquiry into the assets of the land and the rights and privileges of dependent tenure-holders and cultivators of the soil, determined to commute the immemorial State claim to a share in the produce of the soil at a money rental amounting to about three crores of rupees, admitting of no alteration, and fixed permanently upon the soil itself; and in the firm belief that he would thereby best promote the interests of all classes of the people and the interests of the East India Company's treasury, declared the zemindars, *whatever they were before*, the proprietors of the soil, His Lordship's avowed intention being to preserve, or to create, in the Bengal Provinces a landed aristocracy after the model of the same great body in his own country.

10. That the Regulations which embodied this settlement, as it was called, defined the rights of the different classes of dependant tenure-holders and cultivators of the soil, and declared that, subject to certain prescribed restrictions regarding lands in the possession of the then resident raiyats or cultivators, "the zemindar or other actual proprietor is to let the remaining lands of his zemindari or state," &c. &c., "in whatever manner he may think proper." The Regulations further declared that they, the zemindars, "would enjoy exclusively the fruits of their own good management and industry," and that "no power will then exist in the country by which the rights vested in the land-holders by the Regulations can be infringed or the value of landed property affected.

11. That owing to the assessment imposed upon the zemindars being fully ten-elevenths of the gross rental payable to them, and to economic and other causes, this fixed annual payment was far beyond the power of the zemindars to bear. These causes were the complete exhaustion of the provinces by the long period of misrule which preceded the Company's acquisition of the Diwan as it was called, in 1765, and the remorseless exactions which followed on the part of the Company's servants; partly also from mistaken estimate of the resources of the people; partly from the cruel extortions of the men to whom the revenues had been "farmed" for collection; and partly from the dreadful famine which desolated the provinces in 1770, and in which ten millions of the people are believed to have died of hunger or disease, with the effect of reducing two-thirds of the cultivated area of the provinces to jungle.

12. That the assessment proving too grievous to be borne, the result of the settlement was speedily seen in the ruin of masses of the zemindars within seven years, and the threatened extinction of the entire class, their estates reverting to the Government. So great, indeed, was the extinction thus effected of old families of landholders, that the number of zemindars of the present day with whose ancestors the settlement was made, represents an insignificant fraction of the total, the great body of landholders having come into the possession of their estates by subsequent purchases.

13. That your memorialists have recalled these facts only to show that, although conceived with the most benevolent intention, the settlement which was thus made with their ancestors and predecessors was not one of their own seeking, or for their own advantage, but was imposed upon them to the immediate ruin of a multitude of old families in the provinces of whom your memorialists are survivors or successors.

14. That happily for your memorialists, the blessings of peace which followed upon the establishment of the Company's rule in these provinces led very rapidly to a great increase in the population, and to a wide extension of the acreage under tillage. Land which had relapsed into jungle, and wastes that had never before been cultivated within the memory of man, under the assistance and encouragement of your memorialists were brought under the plough, until the assessments which were at first ruinous to them became lightened by being spread over a wider area of tillage, and by the great change which has gradually taken place in the value of money during the century of years that has gone by.

15. That your memorialists having represented the manner in which the settlement was made, have now to solicit your Excellency's regard to a short history of the measure which threatens to interfere seriously with the rights and privileges secured to them by that settlement.

16. That since the trial of rent-suits was transferred in 1868 by an Act of the local Legislature from the Revenue Courts to the regular Civil Courts of the country, landholders have experienced great difficulty in recovering arrears of rent by reason of the heavy expenses and delays incidental to the procedure of such Courts. When, therefore, Government imposed upon them in 1870 an obligation to collect the road-cess from their tenants, and to make good to Government all deficits in collection of the same, Government promised to enact a law for giving them summary powers for the recovery of both rent and cess. This promise was repeated in 1875, when a similar obligation was imposed upon landholders for the collection of the public works cess for Government.

17. That in the year 1876 Government brought a Bill into the Local Council with the avowed object of giving landholders facilities in the collection of rent and cesses, but the objection was then raised for the first time that no such facilities could be given without making changes in the substantive law regulating the relations of landlords with their tenants. The Government at last appointed in 1879 a Commission for the purpose of drafting a Bill relating to landlord and tenant, on principles which might appear to them just and proper. This Commission, known as the Rent Commission, drew up a report upon the subject in 1880 and drafted a Bill embodying the recommendations contained in their report. The Bill was designated the Rent Bill, but upon publication its provisions were found to be based upon such obvious delusions as to facts, and so subversive of the interests in which it professed to be drafted, that it was abandoned almost immediately. Since then Bill after Bill has been drafted with no better result; and at last a Bill has been introduced into the Viceroyal Council, known as the Bengal Tenancy Bill, which subverts the vested rights of your memorialists, ignores altogether the authority and the accepted interpretation of the old regulations and innumerable deliverances of previous Administrations and of Her Majesty's Judges on the

subject, and which is so opposed to the economic conditions under which cultivation is carried on in Bengal, and so violates immemorial customs, usages and rights to which the people cling, that the measure will, if it becomes law, plunge the provinces into inextricable confusion, and produce a sea of litigation such as the world never before witnessed.

18. That your memorialists now find themselves in this position, that after nearly a century of supposed proprietorship of their estates the Bill practically confiscates their proprietary rights altogether. Their ancestral rights, extending back in a multitude of cases to time immemorial, as well as the rights which were forced upon them in 1793, are by this Bill to be legislatively declared non-existent, or to be swept away on the monstrous pretence that they have been oppressive, rackrenting and evicting landlords, the notorious fact being that so unwisely low have been the rentals they have levied, that a great mass of middlemen have grown up between them and the cultivator, who are living upon the margin of the rental which your memorialists had abandoned to the cultivator.

19. That these grave charges are so wholly unfounded that they could never have been framed had any inquiry whatever preceded the measure. Enquiry would have shown that so great—they may say truthfully so mischievous—has been the moderation with which they have asserted their rights, that the cultivator (raiya) has long become the virtual landlord over wide districts of these provinces, and that your memorialists find great difficulty in collecting the rent admitted to be due by him. That the Government is well aware of this fact, and has itself experienced so much difficulty in realising or enhancing the rents due to itself on the estates that still belong to it, that it has had to pass Act after Act on its own behalf to enable it to beat down the opposition which the cultivator raises to the payment of any just rent whatever, however moderate.

20. That your memorialists cannot speak the sense they have of the wrong that is being done to them by branding them with oppressions that have never been practised by them, and that the slightest enquiry would show to be imaginary. That your memorialists believe the Government itself has at last become aware of the delusions under which Bill after Bill has been brought forward, only to be shown to be practically impossible and abandoned. That your memorialists appeal earnestly to Your Excellency to arrest the present measure, and to compel the institution of those enquiries which your memorialists affirm will show at once the delusions under which the measure has been drafted.

21. That your memorialists claim, as a matter of unquestioned right, to be entitled to collect in perpetuity under the settlement, and on their own behalf, what they were collecting before that settlement on behalf of the Government. That Lord Cornwallis himself forced them into this position by imposing the settlement upon them, exacting from them as its price the perpetual annuity which they are still paying in consideration thereof. And that your memorialists have used the rights conferred upon them by the settlement with conspicuous moderation is susceptible of the simplest and most conclusive proof.

22. That should the measure be preserved with and become law under the strange delusions in which it has been conceived, it will not only be, your memorialists submit, a breach of faith, but will confiscate numberless rights in the soil which have existed from time immemorial, and been respected by every conqueror thereof, will unsettle the relations of every man with his fellow, and plunge sixty millions of people into a boundless sea of litigation. That your memorialists, therefore, implore Your Excellency that before this measure goes any further, the question of the rights vested in your memorialists by the settlement of 1793, and of the power, if any, reserved to Government for interfering with those rights, be submitted to Her Majesty's Judges for adjudication after hearing counsel, and that a Commission of Enquiry may be appointed publicly to receive evidence of the charges which have been brought against your memorialists and assumed to be true in the teeth of every reasonable presumption that could be given that they are wholly and altogether false. Your memorialists are to be ruined, their estates confiscated, their character traduced, and ancient institutions concerning the land abolished, which are to this hour the economist's "ideal" in Europe on the gratuitous opinion of a small number of officers under the Government of Bengal, that it would improve the relations that now exist between your memorialists and their tenantry were these officers allowed to recast them all upon certain views of what they call "tenant-right," the tenants of your memorialists themselves praying earnestly that the customs, rights, and usages which this measure sweeps away may be preserved as vital to their continued well-being.

23. That your memorialists crave reference to the many memorials and petitions which they have heretofore submitted to the Government of India and to Her Majesty's Secretary of State in Council for India with reference to this Bengal Tenancy Bill. They have therein shown that no cause of necessity has been made out for any radical changes in the land-law of the country; that the Settlement Regulations do not warrant the assumption by Government of a power to take away by legislation, in the way they purpose to do, the rights vested by that settlement; that the Bill rests on an entirely erroneous view of the status and rights of landholders before and after that settlement; that if passed into law it will prove a source of endless litigation between the zemindar and raiyat; and that the effect of its operation on the economic condition of the people will be disastrous in the extreme.

In the full conviction that Your Excellency will listen to their reasonable prayer for an opportunity of vindicating their rights, and for an enquiry into the charges against them, upon which the Bill rests, your memorialists humbly pray that Your Excellency will, after taking into consideration the facts and arguments above set forth, be pleased to suspend the further consideration of the measure until the representations of your memorialists have been considered by an impartial and competent tribunal.

And your memorialists, as in duty bound, will ever pray.

LAKSHMESHWAR SINGH, OF DURBHUNGA,

Chairman.

To His Excellency the Viceroy and Governor-General of India in Council.

The humble memorial of the Khas Mehal ryots of Government Estate Jalamuta, villages Paikbhara, Har-masah, &c., District Midnapur.

MOST HUMBLY SHEWETH—That the rights which khas mehal ryots as well as other ryots have to the land they cultivate are recognized by custom all over the country. That the British Government too has repeatedly recognized these rights, specially by the Regulations of 1793.

That it may be safely asserted to be a fact, that these rights embrace all the incident of full proprietary rights subject only to the customary land tax due to the State.

That notwithstanding these facts, in the case of khas mehals, the Government has practically ignored the rights of the ryots by placing itself beyond the powers and jurisdiction of the courts of law.

That in all cases of conflicting interests between the Government and khas mehal ryots, the present law is, to leave the settlement of such matters to the discretion of the executive officer of Government, who represents only one of the parties to the disputes in these cases. That, in short, the settlement officer is his own law as regards the justice or injustice of act done by him.

That such a state of things is not reasonable and proper, your Excellency's memorialists need hardly say. That however well-meaning or discreet a person may be, he can never be expected, nor can he himself honestly trust, to keep the balance of justice evenly between him and another person to whom he is opposed.

That it may be thought, in comparing between settlement officers and zemindars in relation to the ryots that the former are disinterested, and the latter interested in oppressing and rack-renting ryots. That it is not quite correct to think so. For if the zemindar is interested in taking as much from the ryot as possible, his permanent relations with the ryots cannot but inspire him with a great measure of sympathy for the ryots, while the settlement officer has, on the one hand, no cause to feel that sympathy for the ryots, but on the other, he has nearly the same sort of motive to rack-rent the ryot as the zemindar, the difference being that the motive of the one is to please himself and that of the other to please his superiors.

That the Government itself in 1793 was earnestly anxious to prevent the evil which your Excellency's memorialists are complaining. That this will be apparent from the following extract from the preamble to Regulation of 1793:—

"The collectors of the revenue must not only be divested of the power of deciding upon their own acts but rendered amenable for them to the Courts of Judicature and collect the public dues subject to a personal prosecution for every exaction exceeding the amount to which they are authorized to demand on behalf of the public and every deviation from the Regulations prescribed for the collection of it."

That according to the present law, the foregoing principle of justice and equity enunciated by the Legislature of 1793 stands violated on two points of vital importance to your Excellency's memorialists, viz., on the point of adjustment and enhancement of rent and on the point of the realization of rent.

That Act VIII of 1879 and VII of 1880 have only to be referred to to show how flagrantly these two Acts violate the principle mentioned in the Regulation.

That as regards the working of Act VIII of 1879, your Excellency's memorialists trust that your Excellency is already aware how in the case of your Excellency's memorialists and other khas mehal ryots of Midnapur, the said Act has been worked to reduce your memorialists to destitution and ruin by enhancing their rents far above the prevailing rates of the neighbouring private zemindars, and all this, while the Government is fully aware of the unfertile and arid condition of the lands your memorialists occupy and also of the fact that they always live with the apprehension of famine before them at the least failure of a crop.

That Your Excellency may have been informed that some of the brother khas mehal ryots of your memorialists appealed to the High Court, while the majority including your memorialists were too poor to carry on litigation and have been compelled to put up with the state of destitutions to which they have been reduced by the settlement proceedings in question.

That your memorialists are bound to say that khas ryots of other quarters may feel themselves somewhat relieved, seeing that the present Rent Bill intends to repeal Act VIII of 1879. But your memorialists most humbly submit that the repeal of Act VIII of 1879 comes too late for your memorialists, as that Act has already done its work of destruction as regards themselves.

That Act VII of 1880, to which your Excellency's memorialists have referred, gives the Revenue Officers powers of a peculiar character. Whenever they have any claim against a ryot for arrears of rent, they can convert that claim according to their pleasure into that solemn and irrevocable instrument of justice called a decree. That no doubt the law requires a notice to be served upon the ryot to apprise him of the intentions of the Collector. But as a matter of fact, it is well known that such notices as a rule are not served. That in many cases the tenant learns of the proceedings when all his properties, moveable and immoveable, are about to be hammered down to a stranger.

That the outrageous character of such proceeding will be apparent when your Excellency kindly considers that generally the responsibility of the proceeding does not rest really on the Collector or Deputy Collector but on patwarees or petty collecting sarkars. That men of this class are no better than patwarees under zemindars and are by no means above temptation such as might lead them in many cases, not to give full credit to the ryots for payments made. That the Collector's records are made on the faith of these men. That yet the ryot is placed by the above Act in such a hopeless position to contest the correctness of the demands made on such a basis.

That your memorialists earnestly pray that your Excellency will be pleased to provide for your memorialists all the safe-guards to protect the rights of your memorialists against the arbitrary acts of settlement officers, which Government has justly thought its duty to provide in the case of ryots of private zemindars.

That, in short your memorialists pray that the Government will be pleased to extend to khas mehals all the rules and provisions contained in the present Rent Bill in favor of ryots by repealing in addition to Act VIII of 1879, also Act VII of 1880 and such other Acts.

That the points on which there should be a difference between the case of the ryots of private zemindars and that of those of khas mehals are points on which, according to reason and justice, there should be a difference in favor of khas ryots, and that, on such points, more favorable provisions should be made in the case of khas mehal ryots than in the case of zemindari ryots.

That your memorialists will mention two such points:

First, that in khas mehals, all ryots whatever should be declared occupancy ryots, as there is no reason to make any distinction as regards khas mehal tenants between some ryots and others, dividing them into occupancy and non-occupancy ryots. That such a distinction does not in fact exist.

Second, that inasmuch as Government, unlike private zemindars, does not, in many cases, resort to enhancement proceedings to raise the rents of individual and isolated ryots only, but it proposes to raise the prevailing rates of a whole mehal whenever it has recourse to settlement proceedings, the interval which the law should require to elapse between one settlement and another should be extended at least to 30 years, though the interval may be only 15 years, in the case of zemindari ryots, in whose case wholesale enhancements of entire mehals is not usual.

That Your Excellency's memorialists would also venture to submit that the chapters in the Rent Bill empowering Government to make records-of-rights and settlement of rents should be omitted from the Bill.

That your memorialists earnestly urge this, as they have by bitter experience learnt that the executive officers of the Government failed to exercise powers like these with any degree of satisfaction, your memorialists' prayer is that the Government may be empowered to constitute temporarily judicial Boards presided over by judicial officers to exercise the said powers.

That Your Excellency's memorialists also submit that the ground of enhancement based on an increase of price is not a proper ground. Because high prices mean great distress to men of the class of your memorialists who, for portions of the year, have to buy food grains. That then again, if there is a tendency to a gradual rise of price of food-grains your Excellency should kindly remember that there is also a tendency of the soil becoming less productive. That therefore setting the one tendency against the other, the law should remove this ground of enhancement which is a creation of recent times.

That your memorialists also beg to submit that, by long existing custom and tradition, tanks and reservoirs of water as well as common pasture grounds which used to be left in each village as khas pateet, were not assessable with rent. That recently, settlement officers have begun to assess such lands, that your memorialists beg to say that this is improper and unjust. That by the common law of the country and by the provisions of Hindu law the king should not levy land revenue on lands of the above description.

Your Excellency's memorialists earnestly crave your Excellency to consider your memorialists' grievances and kindly to remedy them. Your Excellency's memorialists pray that Your Excellency will order a reasonable reduction of the extraordinary high rates to which the rents of your memorialists have been raised by the cruellest rack-renting process, and also that the Rent Bill be amended so as to meet their grievances.

Dated 27th December, 1884.

From—BABU SARAT CHANDRA MUKHOPADHYAY,

To—Private Secretary to His Excellency the Viceroy.

I HAVE the honour to forward herewith a memorial signed by myself and my brother land-holders of the district of Rungpore, and to request that you will be pleased to submit the same to His Excellency the Viceroy for his orders.

Memorial of Proprietors and Taluqdars of Rungpore District.

To—His Excellency the Viceroy and Governor General of India.

The humble memorial of the undersigned Proprietors and Taluqdars of the District of Rungpore in the Province of Bengal.

MOST RESPECTFULLY SHEWETH,—That the rumour that a Bill, contemplating radical changes in the law which governs the relation of landlord and tenant in the provinces of Bengal and Behar has been introduced by Government, has so much disturbed the agrarian economy of the part of the country to which your memorialists belong, that the tenants have been emboldened to withhold payment of rents and deny their yearly rentals in many instances, and generally to assume an unsatisfactory and hostile attitude towards them.

The changes contemplated in the Bill which is now before a Select Committee of the Legislative Council are all in the direction of the expansion and enlargement of the tenant-right to the derogation of the rights of your memorialists.

That although hitherto, with the exception of a short period, the judicial determination of disputes and the adjustment of relations between landlord and tenant were left, as a part of the general administration of justice, to the constituted tribunals of the land, and the system has worked eminently well from the time of Lord Cornwallis downwards, still it is contemplated in the Bill to vest in the executive officers of the Crown semi-judicial functions of deciding questions relating to the status of tenants, the nature of their rights, the fixity of their tenures, and, what is still more a matter of grave anxiety to your memorialists, the validity and fairness of contracts on behalf of the tenants; and the most important of these functions will have to be performed not by the chief executive and presumably most experienced officer of each district, but by subordinate agency in the Revenue Department.

That the Bill proceeds mainly on the assumption that the tenantry of these provinces are rack-rented and subjected to wholesale eviction at the hands of the landlords; that the assumption is wholly disproved by forensic statistics.

Your memorialists would beg humbly to invite Your Excellency's attention to the figured statements given every year in the Report of the Administration of Civil Justice, recorded and circulated to the subordinate courts by the Honourable High Court of Calcutta.

That they find that from 1875 to 1880, a period of six years, the total number of ejectment-cases instituted throughout Bengal and Behar was only 10,799, which gives an average of nearly 1,800 per year; dividing this number by the number of districts under the Honourable High Court, the yearly average of ejectment-cases for each district is about 43.

Your memorialists further beg most respectfully to bring to Your Excellency's notice that it would be found on enquiry that the rate of rent in all parts of Bengal and Behar is invariably moderate, and in the majority of instances extremely low; and they earnestly submit that a thorough enquiry by a duly constituted Commission should have preceded the introduction of the Bill.

But your memorialists regret that not only was there no enquiry on this vital point, as also on other matters on which legislation has been based, but oppressive conduct on the part of your memorialists in enhancing rents and evicting tenants having been postulated, and certain doctrines and principles with regard to the nature of the rights of the tenants having been postulated, the Bill proceeded in the lines of the aforesaid views and proposed supposed remedies; that although long subsequent to the introduction of the Bill, the executive officers of the Government of Bengal and a few judicial officers were consulted, the reports submitted by these gentlemen were based, not on the results of investigation, but on their individual views and sentiments; that His Lordship, the Chief Justice of the Calcutta High Court, as also another Judge of the same august tribunal, the Honourable Justice Field, two of the most eminent and learned Judges of the Honourable Court, both condemned the main provisions of the Bill.

That the leading and well-informed newspapers of this Presidency have also strongly disapproved of the Bill.

That under the above circumstances your memorialists respectfully but earnestly entreat Your Excellency to abandon the Bill, as it is wholly uncalled for, as it threatens to embitter the relations between your memorialists and the tenantry which were hitherto entirely satisfactory, and as it threatens to open the flood-gates of protracted and ruinous litigation and also be the resources of the nation in law expenses amongst an impoverished people.

And your memorialists as in duty bound shall ever pray.

Dated 8th January 1885.

From—BABU RAJESHOOR MUKHERJEE, Utterpara.

To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward herewith a memorial to His Excellency the Viceroy signed by me and a number of vakils of the High Court practising at the High Court and Hooghly.

in connection with the Tenancy Bill now under consideration of His Excellency's Legislative Council.

Sixty spare copies of the memorial are herewith submitted.

Hoping you will lay it before His Excellency and his Council.

To the Viceroy and Governor General of India in Council.

The humble memorial of the under-signed tenants of Bengal.

MOST RESPECTFULLY SHEWETH,—That your memorialists notice with great regret that no provision has been made in the Bengal Tenancy Bill with regard to *bastu* lands or homesteads. The only section which refers to such lands is section 216 which runs as follows: "When a raiyat, holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom."

2. That your memorialists have always felt it as a great grievance that the law relating to homesteads has never been formulated by the legislature, and that it has been allowed to be shaped entirely by judicial decisions based on judicial discretion.

3. That your memorialists have under the circumstances above set forth never been able to ascertain the law relating to homesteads and it has always appeared to them a pure matter of accident how a particular Judge will decide a particular case involving the law of homesteads.

4. That in consequence of the exclusion of *bastu* lands from the class of lands over which occupancy right could be acquired, men who have been holding *bastu* lands for two or three generations have been arbitrarily ejected upon the mere service of a notice on them by the landlord.

5. That your memorialists have found very often that English Judges when they have to decide cases in regard to *bastu* lands regulate their judicial discretion by their conceptions of English law. They regard all tenants as tenants-at-will unless there is clear documentary proof to the contrary, and in the absence of any specific contract they hold the landlord entitled to eject his oldest tenant upon the mere service of a notice. In Bengal, however, tenancy-at-will and its necessary consequence arbitrary eviction have never been recognised. The rent which the raiyat pays is only a land-tax, and he cannot be ejected so long as he pays his determined rent. This principle was recognised by the authors of the Permanent Settlement. The idea of evicting a raiyat from his holding on any other ground than non-payment of rent was foreign to the authors of the Regulations. In Act X of 1859 also, sections 21, 22 and 78 authorize the cancellation of leases and actual eviction only on non-payment of rent. The English lawyer, however, has always insisted that the landlord has an inherent right of eviction and that the only defence to a suit for ejectment would be a specific agreement.

6. That your memorialists have been greatly alarmed by the judgment of the Calcutta High Court in *Prosunno Kumari Deba vs. Sheik Rutton Bepary* reported in the Indian Law Reports, 3 Calcutta Series, page 686. The judgment gives some indication of the previously unsettled state of the law, but it practically settles the law by declaring that for whatever length of time a man may have held *bastu* land he may be turned out any day upon being served with a notice. Your memorialists submit that such a view of the rights of the *bastu* tenant is seriously detrimental to the interests of the entire body of the Bengal peasantry. It is extremely difficult to prove the existence of a custom satisfying the conditions which would make it valid in the eyes of a Court, and practically a man would have no defence if the most capricious attempt were made to turn him out of his ancestral home.

7. That your memorialists in view of the danger of leaving the law relating to *bastu* land unsettled and in view of the ruinous consequences of the ruling of the High Court above referred to, beg leave to submit that the law may be definitely settled by Your Excellency's Council and specially they pray that it may be provided in the Bengal Tenancy Bill that rights of occupancy shall accrue in all *bastu* lands.

And your memorialists, as in duty bound, shall ever pray.

No. L.9-301, dated 7th January, 1885.

From—His Highness the Maharaja of Burdwan,

To—The Secretary to the Government of India, Legislative Department

As the greater portion of my estate is let out in putni, I cannot but feel deeply interested in any Bill which proposes to amend the Putni Law. I therefore beg to send the accompanying Notes, and request the favour of your laying the same before His Excellency the Governor General of India in Council for favourable consideration.

A few Notes on the amendment of the Putni Regulation and its proposed incorporation with the Rent Law.

1. No good, I submit, can be gained by the incorporation of the Putni with the general Rent-law. It seems, on the contrary, desirable that the Putni-law should be kept separate and distinct. All the provisions on the subject should be embodied in a separate Act, thus preventing the confusion and difficulty which is likely otherwise to arise from the incorporation of the one law with the other. To putnidars especially, with their imperfect acquaintance with law, the incorporation cannot fail to be objectionable as throwing in their way difficulties likely to prevent them from distinguishing which provisions will apply to putnis and which not.

2. It is more than sixty years since Regulation VIII of 1819 was passed, and experience has shown how satisfactorily it has worked. It cannot be doubted that it is one of the most successful instances of legislation which the present statute book of the country can boast. In their report on the first Bill, the Rent Commissioners, in speaking of the Putni-law, bore testimony to the fact that the procedure is seldom abused, and "that it is extremely rare to hear even the allegation that a tenure has been brought to sale without arrears being *bond fide due*." The general and principal features of the existing law, therefore, ought to be kept unaltered; but certain additions and alterations here and there are necessary, and deserve careful consideration. Some of the amendments I am about to propose may be regarded as part of the existing law on the subject, based as they are on the rules of the Board of Revenue and long established practice. But there are others which are new and necessary, and the effect of which would be to check unnecessary litigation and place things on a more satisfactory basis. It is these especially which I am desirous to bring forward for the consideration of the Legislature.

3. Although the present Rent Bill cannot certainly be characterized as on the whole a happy attempt at legislation, yet its proposed provisions with regard to the registration of transfers of, and succession to, tenures would be undoubted improvements upon the existing law. The importance and the necessity of landlords knowing the names of persons whom they are to consider as their tenants, and whom they should look to for payment of rent, cannot be called in question. As to putnidars, it cannot be denied that they have hitherto as a rule neglected to register their names in the zemindar's *sherista*. The necessity of some provision more adequate and stringent than those already existing for compelling registration of tenures in the zemindar's *sherista* follows, therefore, as a necessary corollary from the above. That zemindars have often to suffer on account of the disinclination and neglect of the putnidars to register their names, is a fact too obvious to need any illustration. For a putnidar to register his name in the zemindar's *sherista* is very rare, and unless certain penalties and disabilities are attached to non-registration, this unsatisfactory state of things is likely to remain unaltered. At present a putnidar considers it his interest not to have his name recorded in the zemindar's *sherista* in the place of the old tenant. If the latter is dead, it is his interest to keep the zemindar ignorant of the fact, that he may, in case of a sale of his taluq under the Regulation, for default in the payment of arrears, be able to put forward as a ground for reversal of the sale that the proceedings had been conducted in the name of a dead person. In the present state of the law a technical objection of this nature, independent of any loss caused to the putnidar in consequence of the irregularity complained of, would be a sufficient ground for setting aside a sale. When, therefore, a putnidar finds that the notification of sale does not run in his name, he need not pay the arrears, for he knows that the sale will be set aside; and he will be able to recover from the zemindar costs of the suit—costs which may exceed those he really incurs. For he may in such a suit engage a single junior pleader paying him less than half fees, while recovering the full amount of pleaders' fees as prescribed by law. Thus the putnidar in such cases takes advantage of his own wrong, and for this reason, amongst others, putnidars are not at all anxious to enlighten zemindars as to the present ownership of their tenures.

4. As regards holdings and tenures other than putnis, it is to a certain extent the interest of the tenant to have his name registered in the zemindar's *sherista*, because otherwise a suit for arrears of rent may be brought against the registered tenant and a decree obtained against him, and perhaps in some cases, e.g., where the tenure is sublet, it may be sold without the tenant coming to know of it. This cannot occur with respect to putni tenures. Putni sales are periodical, and it is well-known when they take place. The fact that the sale proceedings take place in the name of the registered tenant cannot affect the putnidar in the least. Why should a putnidar, then, be anxious to seek for registration and pay the prescribed fee when he has nothing to lose and something to gain by pursuing a contrary course? The necessity of additional provisions attaching certain penalties and disabilities to non-registration is, therefore, obvious. I would, therefore, propose that to the provisions on registration already existing in Regulation VIII of 1819, the provisions contained in sections 15 to 22 of the Rent Bill should be added. There should be a further provision embodying the principle of the ruling laid down in *Gossain Mongol Dass v. Roy Dhunpat Sing* in Vol. 25 W.R., p. 152, that where a putnidar has omitted to register his name in the zemindar's *sherista*, the zemindar is not bound to recognize him as a tenant, and the latter has, therefore, no right to bring a suit against the former to set aside a putni sale. An exception ought to be made where the zemindar is guilty of fraud in any matter relating to the sale.

5. In setting aside a sale held in execution of a decree of a Civil Court, on the ground of irregularity in publishing or conducting it, it is necessary to prove—(1) that there were material irregularities in that respect, and (2) that substantial loss has been caused to the applicant by reason thereof. The law is different with regard to setting aside a putni-sale. As the case law now stands, a mere irregularity though not material, and without any proof or even allegation of any substantial loss having been caused thereby, would be a sufficient ground for the reversal of a sale. The wording of the Regulation, however, that a sale should be set aside on the putnidar's "establishing a sufficient plea," seems to me to be susceptible of a different construction from that which is now adopted. Why the law for setting aside a putni-sale should be different from that for setting aside an execution-sale, it is difficult to understand. Where a putni-sale has taken place for default in paying the arrears in accordance with the express terms of the lease, it is but fair to the zemindar that substantial loss to the owner of the putni on account of the irregularities complained of should be insisted upon as a condition precedent to the reversal of the sale.

6. Another point which ought to be noticed as needing amendment is the mode of publishing the notifications of putni-sale. The present law requires the publication of three notifications. One in the Collectorate, another at the zemindar's cutchery, and a third at the cutchery, or at the principal town or village in the land of the defaulter. The non-publication of the two first mentioned notices has seldom, if ever, been the ground of a reversal of a putni-sale. It is the publication of the third notice therefore which only need be now considered. The existing law on the subject as administered in the Courts has proved a source of very great hardship to the zemindar. The law requires that the third notice should be published by being stuck up at the cutchery, or at the principal town or village upon the land of the defaulter; that the peon who goes to serve the notice should bring back the receipt of the defaulter, or of the manager of the property, or in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the 15th of the month (Bysack or Kartick as the case may be), it is a sufficient warrant for the sale to proceed on the day appointed. In case, the villagers object or refuse to sign their names in attestation, the peon must go to the cutchery of the nearest Munsif, or, if there be no Munsif, to the nearest thana, and there make a voluntary oath of the same having been duly published,—a certificate to which effect must be signed and sealed by the said officers and delivered to the peon.

7. That the publication of the notice is the real thing aimed at by the Regulation admits of no question. The object of the receipt, as laid down in the law, is to enable the zemindar to produce before the Collector some evidence which *prima facie* would be sufficient warrant for the sale to proceed. Where the actual service of notice is satisfactorily established, a technical objection to the receipt, based on the ground of non-compliance with any of the formalities laid down in the law, ought not to be held a sufficient justification for the reversal of the sale. In the recent case between myself and Tarasunderi Debi and others, reported in 9 I. L. R., Cal. Series, p. 619, it has been held that where there is a controversy as to the service of notice, an objection as to the form of the receipt would be a sufficient ground for setting the sale aside. If by this is meant, that where there is not sufficient evidence to justify the Court in holding that notice has been served, the sale ought to be set aside, no one could with propriety complain. But if, on the other hand, what is meant is that whenever the service of notice is called in question, an objection as to the form of the receipt, if established, would be a sufficient ground for a reversal of the sale, then the precedent above cited would operate as a very great hardship on zemindars. The putnidar himself is seldom present in the taluk. The peon who goes to serve the notice in the mofussil may not personally know the manager of the property, and some deception may be practised upon him—a thing unfortunately not rare. The peon who in many cases does not know the gomasta or naib of the property after causing due publication of the notice sometimes obtains the signature of some person purporting to be that of the talukdar's naib or gomasta, and comes away under the *bona fide* impression that he has got a document evidencing the fact of the due publication of the notice of sale in the handwriting of the proper individual. But it sometimes happens that the putnidar's men to provide against the contingency of a putni-sale for default to pay the arrears, studiously puts down in the receipt as the putnidar's manager of the property and attesting witnesses the names of dead or fictitious persons; or, if the name of the real manager is given, it is by arrangement between the putnidar's men signed by somebody else. The peon generally a stranger to the place and parties, is unable, for obvious reasons, to detect the deception so practised, and the result is unfortunate for his employer. When such a receipt is produced in a Court to negative the allegation of non-service, the defaulting putnidar comes forward with proof that the attesting witnesses are dead or fictitious persons, or that the naib himself has not signed it, and with the receipt, the zemindar's case falls to the ground. The oath of the party deceived, he is charged with having palmed off upon his employer a false receipt. That the receipt itself is a very important piece of evidence in determining whether or not a proper service of the notice has been effected is admitted; but a mere technical objection or flaw with regard to it should not be made a ground for the reversal of a sale where actual service of the notice is otherwise sufficiently proved.

8. Such being then the present state of the law, let us now see whether, in lieu of the existing provisions for the service of notice in the mofussil, others could be substituted which, without prejudicing either party, are calculated to bring about more satisfactory results.

9. For this purpose, it would be necessary to see what were the objects of the legislation

in providing for the publication of a notice in the mofussil. The objects are (1) to give notice to the defaulter of the intended sale, (2) to give notice to purchasers, and (3) to give notice to under-tenants to enable them to protect the taluq by depositing the arrears.

10. It is obvious that intimation of the intended sale ought to be given to the above-named persons. This object, however, I beg leave to suggest, may, as a matter of fact, be sufficiently attained by the 1st and 2nd notices provided for by law. More than half a century has elapsed since the time when Regulation VIII of 1819 first came into operation, and under it half-yearly sales are held all over the country at stated intervals. It is, I submit, simply absurd for any man to say now, that he could not pay the rent, because he knew not when the sale was to take place. Besides, if a defaulting putnidar, or subordinate tenure-holder, or an intending purchaser wishes to ascertain whether a particular tenure has been advertized for sale, he has simply to go to the zemindar's cutchery or the Collector's office to assure himself of the fact. The *istahars* (sale notifications) hung up there will furnish either side with unimpeachable testimony of the fact as to whether a particular putni has been advertized for sale.

11. To take up one by one the three above-mentioned objects which were intended to be secured by service of the sale notification in the mofussil, I submit that, in order to give notice of the sale to the defaulters, a notification in the mofussil is not, for reasons already stated, at all necessary. The reasons which render a notice to tenant essential in a rent suit do not apply to the case of sales of putnis under the Regulation. A zemindar is at liberty to bring a rent suit at any time within three years from the last day of the Bengali year in which the rent is due. There is no knowing when such a suit will be brought, and a notice therefore is necessary. But putni-sales are periodical, and it is well-known throughout the length and breadth of the country when they are held. In a recent case, Mr. Justice Maclean observed "the putnidars in the Burdwan raj know very well that there is generally no neglect to bring the putni tenures to sale on the appointed day;" and further on, "that it is as certain as Aghra follows Kartick, that a sale would take place if rent is due, and there are numerous methods for the acquisition by plaintiff of knowledge that the sale would take place besides the affixing of a notice at Salmula, and the owners might be credited with the knowledge that, as they had certainly not paid their rent, they must do so to save the sale." It follows from the above that a notice of putni sale to the defaulter is not necessary.

12. As regards the second object of the notice in the mofussil, viz., to give notice of the intended sale to purchasers, this, also, for reasons already stated, is hardly necessary. On every day fixed for the sale of putni taluqs, a large number of purchasers, putnidars, &c., are collected at the place of sale. That there is no lack in the number of purchasers must be admitted by everybody who knows the real state of things. In the Burdwan district more than 500 men are collected. Putnidars, too, prefer to give up their tenures at these sales, because they generally fetch a higher value there. Publication of a notice on the defaulting taluq has not, I think, the effect of adding to the number of purchasers. Everybody who is able and willing to purchase putni taluqs attends the Collectorate on sale days. There old friends meet, and the landed aristocracy of the district is gathered. Men who have acquired money in service or as merchants or in any other profession, and want to invest it in landed property, look forward to these sales as offering opportunities for the accomplishment of their wishes. In fact, at no other sale are so many purchasers gathered together. A notice, therefore, in the mofussil is not necessary so far as purchasers are concerned.

13. Thirdly, with regard to under-tenants, a reference to either of the first two notices would enable them easily to ascertain whether any particular putni has been advertized for sale. The rents of most of the putni taluqs are paid generally between the date of the application for sale and the date fixed for the sale, and the under-tenants have, if disposed to deposit the arrears, to ascertain from the zemindar's cutchery whether the arrears have been paid. The absence of the third notice will not, therefore, impose on them any additional trouble or place them in any worse position. Besides where a putni-sale has taken place, an under-tenant may bring forward his claim to the price he may have paid for the tenure, or for a just compensation for the loss sustained by him in consequence thereof by a regular suit. Clause 5 of section 17 of Regulation VIII of 1819 contains provisions for paying the under-tenant any sum, in which he has established a right, out of the surplus sale-proceeds. There is, therefore, a sufficient guarantee against the under-tenants suffering pecuniarily on account of the default of the putnidar. The absence of any privity of contract between the zemindar and the under-tenants of the putnidar should relieve the former from the obligation to give notice of the default to the latter. The putnidar being in privity with his under-tenants, and being liable to them for any loss resulting from the sale, the duty of giving the notice of default to the under-tenants ought to rest with him.

14. For the above reasons, I am of opinion that the notice in the mofussil is superfluous. I beg leave to point out that there seems to be no reasonable ground for drawing a distinction between a sale under this Regulation and one for arrears of Government revenue. Every putnidar knows very well when his taluq will be brought to sale if he makes default in the payment of rent, in the same way, as every holder of an estate paying revenue to Government knows when it will be brought to sale for his default in the payment of revenue. It is no more necessary to inform the putnidar of the liability to sale in the one case than in the other. The notifications which are held sufficient in a revenue-sale for the protection of the interests of parties concerned, ought also to be held sufficient in the case of putni-sales. Under Act XI of 1859, when an estate falls into arrears, the Collector is required to issue notices under sections 6 and 7 of the Act. It has been held by the High Court in the case of *Shajednagar*

and the Collector of Burdwan v. Juggobundu Bonnerjee, that a revenue-sale ought not to be set aside for irregularities in the publication of notices under section 7, as these notices are simply intended as orders to the tenants prohibiting their paying rent to the defaulter. I may, therefore, leave section 7 out of consideration. Under section 6, where the revenue of an estate or share of an estate is below Rs. 500, two notices have to be issued, one to be stuck up in the District Judge's Cutchery, and the other in the Collector's Cutchery. When the revenue exceeds the said amount, a third notice has to be published in the Official Gazette. I would humbly suggest that, instead of the third notice for the sale of a putni tenure being served in the mofussil, it should be published in the Official Gazette, and in one or more of the local newspapers, if the Collector of the District so directs. If the proposed provision be adopted any one may, by purchasing an issue of the Gazette or local newspaper, obtain the desired information with the advantage of obtaining in a collected form the notices of all the tenures advertised for sale. This provision will be an effectual substitute for the provision for service of the notice in the mofussil. If, however, for any reason, which I do not at present appreciate, a notice in the mofussil should be deemed indispensably necessary, I would suggest that the third *istahar*, instead of being, as now, posted at the cutchery of the defaulter, should be posted at the Police thana within the limits of which the defaulting tenure is situate. This method, if adopted, will enable the defaulters, the under-tenure-holders, and the intending purchasers to learn without any appreciable difficulty what tenures within the limits of that thana are advertised for sale. Such an arrangement is calculated to commend itself to all parties, as by it neither side gets any undue advantage over the other. The putnidar will not suffer from the laches of the zemindar's agent, and the zemindar will not be made to suffer for the putnidar's cunning.

15. Section 14 of Regulation VIII of 1819 provides that it shall be competent to any person desirous of contesting the right of the zemindar to make the sale, whether on the ground of there being no balance due or on any other ground, to sue the zemindar for a reversal of the sale, and upon establishing a sufficient plea to obtain a decree with full costs and damages. It seems from the wording of the above section that it was not the intention of the Legislature that a sale should be set aside on merely technical grounds.

16. In the corresponding section of the present Bill (section 205) the language has been changed. It says—"any person aggrieved by a sale of a tenure effected under cover of the provision of this chapter, but not warranted by those provisions, may institute a suit," &c. Different constructions may be put upon this section if passed into law. The words "any person" are objectionable. The right to set aside a putni-sale ought to be given only to the registered tenant. Any one who is not the putnidar, or one of the putnidars, ought not to be allowed to sue. It is not meant probably by section 205 of the Bill to give any tenant or under-tenant of the putnidar a right to bring a suit for the reversal of a putni-sale, as there is no privity of contract between the putnidar's under-tenant or tenant and the zemindar: the former, if a loser by the sale, has a right of action against the putnidar for any damages sustained by him in consequence thereof. The words "any putnidar" ought therefore to be substituted for "any person" in section 205 of the Bill. The words "any party" in section 14 of the Regulation, considered along with the other words, are, I believe, always taken to mean any of the putnidars,—i.e., any of the parties to the *Ashtum* sale. I am not aware of any instance of a putni-sale having been set aside at the suit of a person other than the putnidar. Reading the whole of section 14 of the Regulation, it seems to me that it was not the intention of the framers of the Regulation that any under-tenant or third party should have a right to set aside a putni-sale. For the above reasons the ambiguity contained in the words "any putnidar" in section 14 of the Regulation ought to be avoided by substituting the words "any putnidar" in their place.

17. Do the words "not warranted by those provisions" in the above section mean that a technical defect as to the form of the receipt would be a ground for setting aside the sale? A technical defect like that ought not to be held to be a ground for setting aside a sale. The section ought to be made clearer.

18. The words "provided no sale shall be set aside unless it is proved that substantial loss has resulted to the plaintiff on account of a non-compliance with the provisions of this chapter" ought to be added after paragraph 1 of section 205 of the Bill.

19. Another matter which ought to be considered is the question of awarding costs when a putni-sale is set aside. This question, I think, ought to be left to the discretion of the Judge to be settled according to the circumstances of every particular case. Where the zemindar has acted fraudulently, the costs of the putnidar and the damages sustained by the purchaser ought to be decreed against him. But where fraud cannot be attributed to the zemindar, and the sale has been brought about by the default of the putnidar in payment of rent, it would not be fair to the zemindar that he should be made liable for the costs of the purchaser and the putnidar in every case. The question of costs ought, I think, to be left to be settled according to the circumstances of every particular case. The discretion of Courts ought not to be fettered in this respect.

20. There is no express provision in the law to the effect that if the 1st of Kartick or the 1st of Bysack, the dates fixed in the Regulation for the presentation of applications of half-yearly putni-sales, be a Sunday or a holiday, the applications may be presented on the day on which the Collectorate opens. The want of an express provision of law on the point is at present supplied by a rule of the Board of Revenue, authorizing the presentation of these applications on the next day which is not a Sunday or holiday. This latter provision of law ought to be embodied in the Act itself. A similar provision is necessary as regards the date of sale. Section 208 of the Bill has been framed for that purpose.

21. Then a further question arises, viz., as to whether when, in consequence of the Collectorate remaining closed on the 1st of Kartick or the 1st of Bysack, applications for sale are presented on the day on which the Collectorate opens, the sales are to be held a month or thirty days thereafter or on the 1st of Aughran and 1st of Bysack respectively. The rules of the Board of Revenue enjoin that the sale shall take place a month after. The want of a definite rule on the point in the law itself leads sometimes to that want of uniformity of practice which it ought to be the object of the law to secure. The established practice, based on the above-mentioned rule of the Board of Revenue, is to hold sales a month after the Collectorate re-opens, and this rule ought to be embodied in the law itself.

22. If the suggestion made above be adopted, considerations of convenience would require a slight modification in another portion of the law. The law lays down that the notices in the mofussil should be served previous to the 15th day of Bysack or 15th day of Kartick, as the case may be. The object of the Legislature is, it has been held in the case of *Huronath Gupta v. Juggunnath Roy*, reported in 11 W. R., p. 87, to give fifteen days' notice to the defaulter. Consequently, instead of the words "previous to the 15th day of Bysack," in section 8, clause 2, the words "previous to the 15th day before the date of sale" ought to be substituted. The want of such a provision frequently occasions very great difficulty to the zemindar. It sometimes happens that, owing to the Collectorate remaining closed on account of the Durra Puja holidays, applications for sale have to be presented on the 10th, 11th, and even sometimes the 12th day of Kartick. It then becomes a difficult thing for the zemindar to have the notice with reference to all the taluks served before the 15th, especially as it is not until the Collector fixes the date of sale that notices can be issued.

23. Where a Collector rejects an application for a putni-sale without sufficient cause, and his order is reversed by the superior Revenue Authorities after the date fixed for sale, the usual practice is to sell the tenure on another day fixed by the Collector. This practice ought to be recognized by the law; at any rate where it is found that the Collector has rejected the applications for the sale of a number of putni taluks without sufficient cause, and such a procedure is likely to cause hardship to the zemindar, power ought to be given to the Board of Revenue to fix another day for the sale of which due notice should be given in two successive issues of the official Gazette, and in such other manner as the Board thinks fit. Where the zemindar has to pay a very large sum of money as Government revenue, and most of his estates are let out in putni, there can be no doubt that it would occasion very great hardship to him, if the Collector were without sufficient cause to refuse to sell all or a large number of his taluks. The zemindar ought also to be allowed to include in the next half-yearly sale, the amount of any demand which, though made on the occasion of the preceding half-yearly sale, was on insufficient grounds not allowed to be summarily realized.

24. An express provision of law allowing putni-sales to take place if the zemindar dies during the pendency of the application for sale, is also necessary. Where the zemindar dies shortly before the date of sale, and an application is made by his heir for the substitution of his name in the Collector's towji, the petition for sale ought to be entertained. Meanwhile, the Collector should decide before the date fixed for sale, whether the petitioner has the right to have his name substituted in the towji in place of his predecessor in interest, and if he comes to a conclusion in favour of the petitioner, the latter ought to be allowed to proceed with the sale.

25. A zemindar should be allowed also to include *dak* cess in his petition for sale under the Regulation in cases in which the putnidars have by express stipulations in the *kabulest* bound themselves to pay the same. The amount of *dak* cess is always small, but the costs of instituting a suit in Court and executing the decree obtained thereupon often exceeds six times the amount. The putnidar would be a gainer in a pecuniary point of view, if such a provision were inserted in the law, as the greater portion of the costs of the suit fall ultimately upon him; while the zemindar would be saved the trouble of instituting petty suits, as also certain expenses which he has to incur for the purpose, but which he cannot recover from the defaulter, e.g., the cost of sending a man to file a plaint, paying a Muktear, &c. It might even be enacted that where the tenant objects, and the zemindar is not able to produce and file a decree either against the putnidar himself or his predecessor in interest establishing his right to *dak* cess, or where the terms of the *kabulest* do not establish beyond a doubt the liability of the putnidar to pay it, the amount claimed as *dak* cess should be deducted from the *Ashtum* petition.

26. Why zemindars are still made liable to pay *dak* cess, it is difficult to understand. Section 4 of Act VIII of 1862, B.C., provides that no zemindari *dak* shall be established or maintained between any two places between which a Government post for the time being exists. It happens, however, to be the case that almost all the lines which are now maintained out of the zemindari *dak* fund, are between places in which there are Government post offices. It is time, therefore, that the *dak* cess should be abolished.

27. The Bill does not anywhere define in what mode the jurisdiction of the Collector to entertain an application for the summary sale of a putni taluk is to be determined. The Regulation is also silent on this point, but Act VI of 1853 provides that an application for the sale of a putni taluk is to be presented in the Collectorate within the jurisdiction of which the putni is situate, and if a putni taluk is situate within the jurisdiction of different Collectors, then in that Collectorate within whose jurisdiction the greater portion of it is situate. The last portion of the provision frequently occasions very great difficulty. Considering that even Government

officers, with all the facilities they possess for obtaining information on any point, often feel a difficulty in ascertaining the locality of particular mouzahs, it may be readily imagined how difficult it would necessarily be for the zemindars to determine not only their locality but acreage. I would, therefore, propose that applications for the summary sales of putni should be ordinarily made in the Collectorate on the revenue roll of which the estate within which the putni is situate is borne, provided that where applications for the sale of a particular putni have been made for a certain number of years in a certain Collectorate, it shall be ordinarily made in that Collectorate. To the higher Revenue Authorities may be reserved the power of directing, for any sufficient reason, that any particular tenure should, for the future, be sold at any Collectorate other than that above indicated, and when such a direction is given, it should be published in two successive issues of the Government Gazette.

28. There ought further to be a section similar to section 8 of Act XI of 1859, declaring that no claim to abatement or remission of rent, unless the amount of the same has been settled by a Court of Justice or by the parties in writing, nor any other claim which a putnidar may have against the zemindar, shall bar or render void or voidable a sale under the Putni-law.

The converse of the last mentioned provision might also be enacted, precluding a zemindar from demanding in an application for summary sale any enhanced rent, notwithstanding that he may be legally entitled to such rent, unless the amount of it has been decided by a Court of competent jurisdiction, or admitted by the putnidar by a duly stamped document executed by him in favour of the zemindar.

No. 126, dated 14th January, 1885.

From—C. A. WILKINS, Esq., Offg. Registrar, High Court, Calcutta,
To—The Secretary to the Government of India, Legislative Department.

In continuation of Mr. Bayley's letter No. 2943, dated 20th November 1884, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a minute by the Honourable Mr. Justice O'Kinealy on the Bengal Tenancy Bill.

Minute by the Hon'ble, J. O'KINEALY.

1. BEFORE discussing the merits of the present Bill, which has been forwarded for the opinion of the Judges of the High Court, I shall give a summary of the relations which, under the Permanent Settlement and subsequent Regulations and under the rulings of the courts, existed between the zemindars and ryots up to and after the passing of Act X of 1859. It is only through such an examination of the law that we can arrive at a due appreciation of the duty imposed on the civil courts of Bengal by Regulation VII of 1799, namely, the duty of determining the rights of every description of landlord and tenant, whether the same be ascertainable by written engagements or defined by the laws or regulations or depend upon general or local immemorial usage.

2. In legislating, according to the customs of this country, one of the chief difficulties to be contended with is the erroneous ideas of the cultivators' rights which follow from paying too much regard to the relative rights of landlords and tenants in England. Forgetting that the system of land tenures in England is peculiar to that country, some seem to imagine that in India also a zemindar must hold of the Crown and that all other rights in the soil must be carved out of his tenure. There could, however, be no greater mistake than this.

3. The rights of the people of India in the soil must be determined by the laws and customs of India and not of England, and for the only authoritative declaration of what those laws and customs were, we must refer to the laws themselves. What then was the law and custom in India regarding the right of the Government in the soil? The answer to this question is to be found in Regulation XLIV of 1793 and XLI of 1795, where it is declared that—

"By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or kind, according to local custom) unless it transfers its rights thereto for a term or in perpetuity, or limits the public demand upon the whole lands belonging to an individual, leaving him to appropriate the difference between the value of such proportion of the produce and the sum payable to the public whilst he continues to discharge the latter."

4. This is a statement of the law as it existed up to 1793. Under it Government, it will be observed, claimed no estate in the land. Its rights were limited to the receipt of a land tax. If then by the ancient law of the country the right of the State was so limited, the question occurs, was the soil the property of the zemindars or of the ryots? The answer to this question as far as concerns the zemindars is found in Regulation II of 1793, in which it is declared that—

"The property in the soil was never before formally declared to be vested in the landholders. Nor were they allowed to transfer such rights as they did possess or raise money upon the

credit of their tenures without the previous sanction of Government. With respect to the public demand upon such estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots and tenants for each beegah of land in cultivation, of which, after deducting the expenses of cultivation, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government.

5. This passage is conclusive on the point that the soil was not the property of the zemindars. The zemindar had an interest in the soil just as the State had. He had a profit issuing from the land which however he could neither sell nor mortgage. An estate in the soil out of which the ryot's interest was carved he certainly had not. Consequently the ryot's interests are in no way dependent under the common law of India on those of the zemindar.

6. If, then, neither Government nor zemindar had an estate, in the English sense of that term, in the land, the only conclusion is that if such an estate existed at all under the customary law of Bengal, it belonged to the third party interested, namely the ryots. They did not hold from or under the zemindar, and what rights they possessed they held by law—the custom of the country. To show what those rights were, I gave three examples referring to Northern, Western, and Eastern Bengal.

7. In 1793 Behar was settled by Mr. A. Seton, who wrote an interesting report, describing the nature of the ryots' holdings in that district. Among other things he said:—

"It is also understood that a ryot has a sort of prescriptive right to continue on the ground thus occupied by him while he adheres to the rates expressed in the village pottahs; inasmuch as I do not recollect an instance of a zemindar having attempted to remove a ryot who had not been guilty of a breach thereof."

8. At page 529 of the Fifth report, it is stated in regard to Midnapore:—

"The poorest ryots are tenants, and by the custom of the country they are considered as a sort of proprietors, entitled to a perpetual lease."

9. Lastly in the Selections from the Bengal Government, No. 11, the tenures of Assam in 1839 are thus described:—

"The ryots are now considered to have full proprietary rights in all their lands of all description * * * I consider all the estates in Assam, of all description and sizes, to be freehold, and held subject to the only condition of paying the Government tax on the land; and all occupants are, with little exception, freeholders."

10. I will only give another reference. In 1851, a memorial was addressed to the Legislative Department by Sumbhunath Pundit, subsequently a Judge of the High Court, Unnodaprasad Banerjee, now Government Pleader of the High Court, Hurrish Chunder Mookherji, Secretary to the British Indian Association, and others. It will not be denied that these gentlemen were conversant with the rights of the ryots, nor asserted that they were biased in their favour. They said:—

"It has, we believe, not yet been denied that the interest of a khodkash ryot is transmissible by sale, gift, and succession, and that his right of occupancy does not terminate by any of those acts or omissions which determine the rights of leaseholders generally. In certain points of view, a khodkash tenancy constitutes the highest title to real property known to the laws of this country."

11. In the opinion expressed in this extract I concur; and the remarks I have already made support it. They go to shew that the rights of the ryot did not flow from the zemindar, nor were they carved out of his estate. On the contrary, the interests of the ryot were antagonistic to those of the zemindar; the rights of both depended, in their nature and extent, on the customary law of the country, but while the right of the zemindar was a share in the profits, the right of the ryot extended to the land.

Such being the relative position of zemindar and ryot under the common law of the country, the question is how far the position was affected by the Statute Law. For the solution of this question I turn to the Regulations as the chief source of information. They limited freedom of contract, and invalidated all custom opposed to them. Let us then see what rights under those Regulations were granted to the zemindars and what limitations were thereby imposed upon them. Section 54 of the Permanent Settlement (Regulation VIII of 1793) is as follows:—

"The imposition upon the ryots, under the denomination of abwabs, mohlots, and other exactions, from their number and uncertainty, having become intricate to adjust, and a

source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the assul into one specific sum. In large zemindaries or estates the proprietors are to commence this simplification of the rents of their ryots in the pergunnahs where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the Fusli and Willaity year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified."

Section 55 enacted that:—

"No actual proprietor shall impose any new abwab or mahtote on the ryots on any pretence whatever."

12. Sections 56 and 57 describe the variations which the form of the pottah may assume, and section 58 enacted that:—

"Every zemindar, independent talookdar, or other actual proprietor of land, and every dependent talookdar, shall prepare the form of a pottah or pottahs conformably to the rules above described, and adapted to the circumstances of his estate or talook; and after obtaining the Collector's approbation of it (which approbation shall be signified by such officer superscribing the form with his name and official appellation) he is to register a copy of the form or forms in the Dewany Adawlat of the zillah, and to deposit a copy in each of the principal cutcheries in his estate or talook. Every ryot shall be entitled to receive corresponding pottahs on application and no pottahs of any other form shall be hereafter held valid."

And section 65 enacted that:—

"No proprietor or dependent talookdar shall contract any engagement with any underfarmer or authorise any act contrary to the meaning or spirit of the regulations."

13. From this it is clear that no zemindar had power to compel his ryots to enter into any contract which had not been approved of by the revenue officers of Government. These officers were invested with the widest powers of control, and were empowered not only to decide whether any given form of lease was contrary to the Regulations, but also whether it was suitable to the particular zemindar's estate. If the lease offended in either respect, it was void. Freedom of contract in the sense that a landlord had the power to impose any restrictions he desired on his ryots without the sanction of the executive officers, or as it is now called "power to let his property as he liked," was entirely unknown. The conception was wholly foreign to the Permanent Settlement Regulations.

14. So much in regard to covenants in leases. Now let us see what rules prevailed, as to their duration and as to the rents secured by them. The former point may be briefly dismissed by the statement that under section 2 of Regulation XLIV of 1793, zemindars were not entitled to issue pottahs, even when sanctioned by the revenue authorities, for a term exceeding ten years. The latter point, that regarding rent, will be made clear by a reference to section 6 of Regulation IV of 1794, which laid down rules for determining the rates of the pottahs granted under the Permanent Settlement Regulation. The section is as follows:—

"The approbation of the Collector required to be obtained to pottahs by section 58 Regulation VIII of 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined in the Dewany Adawlat of the zillah in which the lands may be situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise."

And in section 7 it is stated that the rules in section 6 not only apply to those pottahs which the tenants were entitled to obtain under the Regulation of 1793, but also to the pottahs which they were entitled to receive after the expiration of the first ten years. It runs as follows:—

"The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII of 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV of 1793. And to remove all doubts regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire, or become cancelled under the last-mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance by Regulation VIII of 1793."

15. Therefore the relative positions of the zemindar and the ryot were as follows:—The zemindar was bound to respect an existing arrangement, but if he found a resident ryot holding at less than the established rates, he could, under section 60 of the Permanent Settlement Regulation, cancel his pottah and assess him at the pergunnah rates, but could not dispossess him as long as he agreed to hold. Further, the zemindar was restricted from forcing on the ryot any lease unless it had been previously approved of by the Revenue officers of Government, and even then for no longer term than ten years. Furthermore the ryot had power to demand a perpetual renewal at the expiration of each term at the pergunnah rate of rent. In other words, the rate at which the zemindar could demand rent from his ryots, of whatever denomination they might be, was simply the established rate of the pergunnah for lands of the same quality and description, the imposition of any cesses being at the same time strictly prohibited.

16. Such was the position given to ryots in Bengal under the Permanent Settlement, a right to hold at the customary rates for ever. What is his position now? The answer to this question is to be found in the forms of kabulyats referred to by Sir Stuart Bayley and Mr. Ilbert in their speeches on the introduction of the Bill. The answer is that the cultivator has no right to occupy the land or is rapidly contracting himself out of his right; that he cannot claim to hold or renew at the customary rates, which no longer exist, but at the amount demanded by the zemindar; that in many cases he pays the taxes imposed by Government on the zemindar, although this is by law expressly declared to be illegal, and in some he is clogged by arbitrary restrictions of the most childish nature.

17. I have seen it urged as a reason against the necessity of the proposed law that the zemindars are merely acting within their rights. No doubt this is to a certain extent true except in the matter of the exaction of taxes or cesses. The action of the courts, and occasionally of the Legislature, since 1793 has had the effect of obscuring, if not of abrogating the ancient rights of the ryots; but it affords no answer to the claim, enforced as it is by lamentable experience, that the law should be changed so as to prevent ignorant cultivators from giving up their rights under pressure and placing themselves wholly in the power of an unjust zemindar.

18. Again it has been urged that the leases referred to in Select Committee were isolated examples, and that the exaction of oppressive engagements has not yet grown into a general custom. Granting this, it would to my mind form no sufficient answer, for what may be done by one bad landlord may be done by another. As a matter of fact, however, the assertion is not true. Some time ago I made a collection of leases in force in different districts, and as a rule they contain oppressive restrictions. I give some examples from districts representative of all degrees of advancement or backwardness in Bengal. The following is from Burdwan:—

"Should you fail to pay according to the specified instalments, you shall be liable to pay interest at the rate of half anna per rupee per month (87½ per cent.). No objections as to too much drought or rain will be entertained, nor the objection that the land was left fallow or that you have incurred loss therefrom will be considered. If you fail to pay rent according to the specified instalments, the said land shall be let to other tenants. Further, if there be any new cesses, you shall be liable to pay the same."

The next is from Jessore:—

"You will make no objection on account of dearth or inundation; you will keep up the boundaries, and yourselves prepare dams and embankments. On default the arrears will be recovered with interest at ½ anna per rupee a month and costs of suit. You shall pay in addition to the fixed jumma the present road and public works cess and whatever cess may hereafter be levied."

The following is from Bogra:—

"If you default in payment you shall pay interest on the amount of the arrear at the rate of ½ anna per rupee per month from default till the date of realization. If you default twice in succession we shall of our own authority eject you and recover the arrears of rent and hajut with interest as above and costs, * * * and neither you nor your heirs shall object, or prefer any claim to possession of the jote. * * * You shall not cut down or sell trees of any sort without written authority. If you do so or allow others you shall pay without objection ten times the value of each tree, and if you object the amount shall be recovered with costs. * * * You shall pay in addition to your rent all cesses that may be levied by Government. Neither you nor your heirs shall, during the period the jote remains in your possession, claim abatement of the gross rental or the rate assessed. On the expiration of the term you shall withdraw from the jote. * * * If any law is made, or any order is made in the village of Amikpore which is to take certain plots occupied by you, you

shall give up the same without objection. If you do not, any loss ensued to us we shall recover the amount by suit with interest and as above and you shall not object."

I shall finish by giving the conditions exacted in Mymensingh:—

"I shall take a new settlement at the end of this term; if not, I shall have no concern with the land. Whatever rent shall be settled after survey and assessment I shall agree to pay. If I fail to pay any instalment, I shall pay interest at the rate of 1 anna per month to date of realization. I shall not cut down any tree or allow any other person to do so. I shall pay separately and without excuse whatever road cess, public works cess, and any other taxes or expenses which I shall be asked to pay by Government or yourself. If I lease the house and land and remove to any other place, or if I farm, mortgage, sell, make a gift, or alienate it in any way or any portion of it, you shall be competent by order to take possession, and having dispossessed (the new-comer), settle the land with others. After such settlement my heirs shall have no right or concern with the house or land. Any claim or objection advanced by my heirs to a right of occupancy shall not be accepted."

19. I continue my examination of the Regulation law. The first Regulation passed in this century which exercised an important effect on the regulation of land-lord and tenant was Regulation V of 1812. Section 3 of that Regulation repealed such portions of Regulation VIII of 1793 as required that the proprietors of land should prepare forms of pottahs, and that such forms should be revised by the Collectors, and that engagements for rent contracted in any other mode than that prescribed by the Regulations in question should be deemed invalid. It also empowered zemindars to grant leases to talookdars, under-farmers, and ryots in such form as the contracting parties might deem most convenient and most conducive to their respective interests; provided, however, that they (the zemindars) shall have no power to impose arbitrary or indefinite cesses, whether under the denomination of abwab, muthote, or any other denomination. The meaning of this section was apparently doubtful, but any doubt which might have arisen was cleared away by section 2 of Regulation XVIII of 1812. This Regulation introduced a new ground of enhancement of the ryot's rent. Section 6 of Regulation V of 1812 declared that where the established rates existed, those only could be obtained by the zemindar; but section 7 laid down a different principle for cases where no pergunnah rates existed, and ran as follows:—

"In cases in which no established rates of the pergunnah or local division of the country may be known, pottahs shall be granted, and the collections made according to the rate payable for land of a similar description in the places adjacent; but if the leases and pottahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pottahs shall be granted and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled."

Section 10 referred to notices to enhance the rents of the cultivators and enacted as follows:—

"Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in court, than the cultivator or tenant was bound to pay under his previous engagements; and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a court of justice."

20. The effect of this Regulation on the scheme of the Permanent Settlement is given in construction No. 234 of the Sudder Dewany Adawlut issued in answer to a letter from the Judge of Rungpore in 1816. The letter ran as follows:—

Paragraph 4.—"The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V of 1812, which seems to have been understood by the farmers and zemindars as authorizing them to consider the ryots, on the expiration of their leases, as tenants-at-will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of section 15 have also induced many who had demands against their tenants on old engagements to substitute summary prosecutions for the former mode of distraint."

Paragraph 5.—"By far the greater number of summary suits preferred last year were for arrears of rent due on kabuliats, but many of those that have lately been instituted are consequent to the more general operation of section 10, Regulation V of 1812, and are preferred either by the ryots after releasing their property from distraint, or by the farmers or zemindars to recover increased rents on the grounds of having served their tenants with the notice described in the above section and Regulation, the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist, as the respective rights of the proprietors and the ryots, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate."

Paragraph 6.—"On first view of section 10, Regulation V of 1812, it might be inferred that the zemindars or their representatives possess the power of exacting, in the first instance, by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to paying the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcilable with that part of section 7, Regulation IV of 1794, which, being declaratory of the rates at which the ryots were entitled to demand pottahs, and, of course, to continue in possession of their lands, cannot be considered as abrogated by section 3, Regulation V of 1812, and I have hitherto deemed it necessary to require zemindars and farmers, prosecuting summarily for enhanced rent, or defending suits instituted against them under section 15, Regulation V of 1812, to show that the amount demanded in the notification served on their tenants was conformable to the pergunnah rates and the actual extent of land."

Paragraph 7.—"Should this construction of the Regulation be correct (and I beg the favour of your informing, should the Court consider it otherwise), it is evident that in the generality of suits denominated summary, it will not be necessary to adduce evidence to prove the pergunnah rates, the quality of the cultivator's land, and frequently the quantity thereof, all of these points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the zemindars before the decennial settlement in the nominal extent of every farm or jote on their estates for the purpose of imposing upon Government and obtaining their lands in perpetuity on favourable terms."

The answer of the Court was as follows:—

"The Court entirely concur in the construction of section 10, Regulation V of 1812, stated in the 6th paragraph of Mr. Scott's letter dated the 28th July 1815, and resolve that he be informed accordingly. The Court observe that the written notice required by section 9 of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent under subsisting Regulations, including, of course, the unrepealed provisions in section 7, Regulation IV of 1794, relative to the renewal of pottahs at the established rates of the pergunnah."

21. Thus it is clear that after Regulation V of 1812 was passed, every ryot was entitled to demand from his landlord a pottah at the established rates of the pergunnah, if they existed, and to obtain a renewal of it on the expiration of the term. But where there were no pergunnah rates, the ryot was liable to pay the same rate as was paid for lands of a similar description in the places adjacent. I think there was no point on which the members of the Rent Commission came so nearly to the same opinion as on the right to hold at the customary rates. I held the opinion strongly. Mr. Field and Mr. Mackenzie agreed in asserting:—

- (1) That the authors of Act X of 1859 did not intend to effect any radical change in the rights and status of the cultivating classes.
- (2) That according to law, up to 1859, the only class of ryots recognised as entitled to hold at specially privileged rates were those ryots whose rates were fixed for ever.
- (3) That on a correct interpretation of the Regulations and Acts before Act X of 1859 no landlord was legally entitled to raise the rents of any village ryots above the pergunnah or customary *nirikh* or rate.

Baboo Peary Mohun Mukerji said:—

"On no one point are the early Regulations more explicit than on this, that with the exception of certain privileged ryots the general body of ryots were liable to pay rent at the established rate, which was understood to mean fully as much as they could afford to pay."

I adhere to the opinion, an opinion in which we all concurred, that a zemindar could not legally demand more than the pergunnah money rates. But the law was not powerful enough to defend the ryots, while the zemindars succeeded in breaking the rates and in obtaining from their ryots what they had no legal right to demand.

22. In regard to talukdars the rule was somewhat different, and they were liable to assessment under section 51 of Regulation VIII of 1793, which had no application to ryots.—(See *Ram Chunder Dutt vs. Jugesh Chunder*, 12 B. L. R., p. 229). This section was soon found defective. In the case of *Bunchanund vs. Hurgopal Bhadoory*, 1 Sel. Rep., p. 192, decided in the year, a talookdar was sued for arrears of rent at an enhanced rate. There was no doubt that his tenure was liable to enhancement, but the difficulty was to determine the proper rate. The decision was as follows:—

"The court entertained no doubt of the lands being held by the respondent at a variable rate, or of their being that description of tenures on which the zemindar is entitled to

demand an increase of rent in proportion to the ascertained assets; and as there did not appear to be in the pergunnah any settled rates of rent for similar tenures, according to which the proper rent could be adjusted, it was determined that the rent demandable from the respondents should be settled by an actual survey and assessment, to be made at the expense of the appellant, unless the parties should come to an adjustment between themselves. In the event of no adjustment being made by them, it was directed that the Zilla Judge should cause a measurement of the lands, and estimate their produce, and after deducting 10 per cent. as the customary rate of the talukdars, together with the actual charges of collection, should fix the residue as the annual rent by the appellant for future years, as well as the rate at which the arrears of the period specified in the claim of the appellant should be adjusted."

23. The reason of this decision is best given in a note by the Judges, in which they say: "There being no rule expressly applicable to the adjustment of rent in this case, the decision was passed upon an equitable consideration of the right of the zemindar to receive a variable rent, proportionate to the produce of the lands which formed a constituent part of his zemindari, and of the right of the talookdars, as holders of hereditary though subordinate tenure, to participate in the RENT produce of the lands comprising it."

This is the first case I can find decided on equitable principles, and it formed the basis of section 8, Regulation V of 1812, which gave a new legal ground for enhancing talukdars. This ran as follows:—

"In case of a dependent talookdar, if the rents of the lands be compared according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the *gross rents* in the adjustment of the jumma of such dependent talook at the rate of ten per cent. of the talookdar's profits, or income, over and above reasonable allowance for charges of collection according to the extent of the talook."

Neither the decision nor the Regulation referred to the value of produce of the land in the ordinary sense. They only referred to what the Judges call the "rent produce." It will furthermore be observed that neither the Regulation nor the decision based on it has any bearing on the law of enhancement applicable to ryots. That law provided that ryots' rents should be limited by the pergunah or customary rates, while talukdars were liable to pay the full mofussil collections less the customary deductions. It is essential that this distinction should not be lost sight of. To confuse rules of enhancement relating only to talukdari tenures with rules which are applicable to ryoti rents is to do the ryots' interests a grave injury.

24. The next law affecting the Permanent Settlement Regulation was Regulation VIII of 1819, and the effect of this Regulation was considered in Construction 1205 of the Constructions of the Sudder Dewany Adawlut of the North-Western Provinces, which was confirmed by the Calcutta High Court on the 12th of April 1839. In that Construction the Sudder Dewany Adawlut of the North-Western Provinces held as follows:—

"They (that is the Court) remark that under the provisions of clauses 4 and 5, section 18, Regulation VIII of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant; while as regards khodkhaast ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected."

The importance of this decision on the *status* of the non-occupancy ryot before Act X of 1859 will be at once perceived. Its importance lies in the fact that such a ryot could only be ejected for non-payment of rent. As far as I understand, the Bengal Government, in its recent report on the Tenancy Bill, is therefore well within the mark, as far as the law before 1859 stood, when they claim that restrictions shall be put on a landlord's power of capriciously ejecting a non-occupancy ryot. And this view of the law is enforced by abundant evidence of a later date. In the first place it is confirmed by a case decided in 1845 in which the nature of the tenure of a ryot in Bengal was discussed before three Judges of the Supreme Court, namely, Peel, C.J., Grant, and Seton, JJ. Their decision was as follows:—

"On the first ground the plaintiff must be non-suited. The ryot here has a better tenure than a lessee in England, and one not nearly so precarious as that of a tenant-at-will."

25. This decision was followed by a decision of a Full Bench of the Sudder Dewany Adawlut in 1855. In that case the question was, what was the nature of a ryot's tenure in Bengal? The Judges say:—

"The plaintiff has not shown that his vendor, whose rights only he bought, was a holder of one of the tenures excepted in the five clauses of section 26, Act I of 1845, nor does he prove in what particular class of ryots he is included. We therefore consider the plaintiff's claim to possession, without permission of the zemindar, invalid. He bought, as he thought, something: the principle *casus emptor* strictly applies, and it was for him to look to the

certainty of getting a consideration for his purchase-money. The party whom he succeeded had no equivalent to offer: he had merely a right of occupancy so long as he paid his rents; failing to do so, either from inability or from unwillingness, the possession returned to the proprietor, the contract between him and his ryot being no longer in force. Such is the custom of the country, and none but the tenures referred to in Act I of 1845, or in case where a *bonus* has been given, thereby creating in the ryot a right in the property to that extent, are considered tenures transferable by the ryot."

What the court here decided was that, according to the Regulations and custom of the country, an ordinary ryot had a right of occupancy so long as he paid his rent, although he was not within any of the privileged classes of ryots described in section 26, Act I of 1845.

26. It seems, therefore, according to the Regulations and according to the decisions both of the Supreme Court and the Sudder Dewany Adawlut, that up to 1859 ryots had a right to retain possession of their land so long as they paid the customary rate of rent and were not liable to ejectment on a notice to quit. This view of the matter is strengthened by the forms of ejectment prescribed by the Regulations. In May 1828 the Calcutta Sudder Dewany Adawlut, in Construction 482 of the Sudder Constructions, laid down as follows:—

"The Court are of opinion that all differences between landholders and their tenants or ryots involving the question whether the landholder can legally oust the tenant or ryots from the lands which the latter considers himself entitled to occupy should come under the provisions of Regulation XLIX of 1793 or Regulation VIII of 1819."

And in 1839 the same court, as I have pointed out above, held that before a landholder was entitled under the Regulation VIII of 1819 to oust his ryot, he was bound to prove the existence of arrears of rent. Regulation XLIX of 1793 only referred to possessory actions. It was subsequently repealed by Act IV of 1840, and is now embodied in the provisions of the Criminal Procedure Code, and the possessory action given in the Specific Relief Act.

This would appear exhaustive. If all actions for ejectment were to fall under one or other of two Regulations, and neither of these Regulations give any colour to the idea that an ordinary ryot could be ejected on notice, while he paid rent, the only conclusion is that no such action would lie; and as a matter of fact, although two editions of Mr. Marshman's digests of the civil law in Bengal were authoritatively recognised as text-books in the Lower Provinces up to the year 1859, no trace of any such action can be found in them.

27. In 1850 the question of enacting or re-enacting in one law the old Regulations in regard to ejectment was pressed upon the Supreme Government. What then were the Regulations under which it was declared that a tenant could be ejected? They are set forth in the preamble to the Bill, which runs as follows:—

"Whereas by clauses 6 and 7, section XV, Regulation VII of 1799, clauses 2 and 4, section XVIII, Regulation VIII of 1819, of the Bengal Code, and section 26, Act I of 1845, rights are given in certain cases to attach under-tenures, to cancel leases, and to eject under-tenants or occupiers of lands whose titles have ceased, but no means are provided by which persons claiming to exercise those rights can obtain the assistance of the Civil Courts for that purpose, except upon a decree obtained in a regular suit; and whereas in like manner no means, except a regular suit, are now provided by law for giving the assistance of the Civil Courts to persons claiming to eject tenants after the determination of their tenancies, or to eject agents after the determination of their agencies; and whereas the enforcement of such rights without the assistance of the Civil Courts is likely to cause affrays and breaches of the peace, and it is expedient to provide a more summary mode for the trial of such rights, it is enacted as follows," &c.

28. Thus so far back then as 1850, admittedly the only rights which zemindars, even if auction-purchasers, had to eject under-tenants or occupiers of land were those given by clauses 6 and 7, section XV, Regulation VII of 1799, clauses 2 and 4, section 18, Regulation VIII of 1819, and section 26 of Act I of 1845. Under Regulation VIII of 1819, as I have already pointed out, the zemindar could not eject any tenant unless there were arrears of rent due. Section 26 of Act I of 1845 referred to the rights not of an ordinary zemindar but of an auction-purchaser, which were of a special nature in order to protect Government. Clauses 6 and 7, section 15, Regulation VII of 1799, referred to cases in which a zemindar instituted summary suits for arrears of rent, or where the tenant defaulted in payment.

29. This Bill was circulated and printed in the *Calcutta Gazette* of 1850, and though it was ultimately abandoned, it shows most distinctly that at that time an ordinary proprietor of land in Bengal could only

determine the tenancy of an under-tenant or cultivator when arrears were due.

When the Bill which afterwards became Act X of 1859 was drafted, the substantive part of the law of ejectment was inserted in clause 5, section 17, and section 19 of the draft Bill. Clause 5 ran as follows:—

"All suits to reject any ryot or cultivator, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the condition of any contract by which a ryot or cultivator may be liable to ejectment, or a lease may be liable to be cancelled."

Section 19 said—

"If any zamindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind denominated *ticca zur-i-peshgee* or the like, in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court."

30. These sections formed part of Act X of 1859. They give no new powers to eject, and left the landlord in the position he held under the Regulations. But the effect of these sections reproducing the substance of the Regulation Law was perverted by an oversight in the drafting of Act X of 1859, namely the failure to distinguish between ordinary zamindars who could only eject for arrears of rent, and those who purchased at auction sales for arrears of revenue who had wider powers of ejectment. The preamble of the Bill in 1850 had carefully set forth the different regulations empowering zamindars to eject, and carefully distinguished between the smaller powers of an ordinary zamindar and the larger powers of an auction-purchaser. The draftsmen of Act X of 1859 struck out the mention of the Regulations and left the rest of the section as it stood in 1850. On the passing of the Act, the Regulations were repealed and soon forgotten. The amalgamation of the Supreme Court and the Sudder Dewany Adawlut assisted the tendency to bring in the theories of English law. During this decay of local knowledge and spread of notions based on English property law, this section still remained; a section evidently recognising the ejectment of a ryot by some class of zamindars, but not stating the class. What wonder is it that lawyers of the Supreme Court, English law and declare that not merely an auction-purchaser, but every zamindar could eject when in any case he desired to get rid of his tenant.

31. When the Bill of 1850 was circulated, Mr. C. Steer, the then Judge of Hooghly, but afterwards a Judge of the High Court, proposed that a ryot should be allowed to relinquish his holding by notice—a power which up to that time had never been afforded to tenants. In his letter dated the 26th November 1851 he said—

"Para. 7.—There is no disputing that the ryots are horridly oppressed; to what degree is only known in its full extent to their tyrants. At present ryots are quite at the mercy of their zamindars. There is no legal means open to them of getting quit of any bad lands they may have acquired. The remedy the Court propose is not enough. It will be no benefit to the ryot to register his resignation if it is left in doubt what effect such registration has, nor will a clear opinion alone on this point be of any service to him, unless other measures are also taken to secure to him the advantages which registration is designed to afford. Nothing less than shutting up the door to endless and vexatious lawsuits under that frequently availed source, the summary regulation, and allowing the ryot to depart from his relinquished lands and tenements with his property safe in his possession, can be regarded an adequate measure for the relief of a ryot suffering under the evils of a taxation he can neither bear or escape from."

"Para. 8.—I repeat that nothing but placing the ryot completely out of reach of the zamindar's touch, and declaring him liable only to a regular suit for any claim posterior to the registration of his resignation will render him safe from the prosecutions of his zamindar. If he is not allowed the protection of the police to remove his property, and if summary actions and attachments are not barred, his resignation tendered to the Court will profit him

nothing. His property will be seized, be the act sheer plunder, or under colour of attachment, and the ryot will find it impossible to get it back. If he should complain to the Magistrate, and the zamindar will plead an attachment. If he should appear before the Collector and seek the release of his property from an unjust attachment, the zamindar will reply that there has been no attachment at all. So that if left without aid to remove his property, he will leave his old habitation a beggar without a pice to support himself or his starving family, and without a bullock or plough or any other means to cultivate any new farm. Thus he is in a state of thralldom to his zamindar, worse than slavery. The only remedy for these things is to declare summary suits and attachments on account of any tenure barred after the resignation of it is filed. No mischief or injury can accrue to the zamindar by the prohibition of summary suit or attachment, as a regular suit is just as effectual to enable him to recover his dues as the honest application of the summary laws and attachment can be; but the evil lies in these enactments being always abused on every occasion when it serves the purpose of the zamindar. They give him a handle to seize a poor fellow's property, and its recovery is about as probable as if it had fallen into the hands of dacoits.

"Para. 9.—There is no occasion I feel satisfied when so much oppression is practised as when a ryot is known to be meditating the relinquishment of his jote. As the law now stands, he has two alternatives, to remain and bear as best he can a grinding taxation, or to fly a beggar and a vagabond. Such a state of things ought not to be tolerated by a just and benevolent Government; and is it going beyond the point to attribute to it a great deal of one species of crime which prevails all over these provinces, without which the overtaxed poor would find it impossible to feed themselves and to feed their rapacious landlords. To enable him to do both dishonest measurement will be resorted to, and the power which enables a zamindar to exercise such a tyranny over his tenants, is therefore a fruitful source of much of the crime which now exists."

32. On account of this and other representations a section was introduced into the Bill which subsequently became Act X of 1859. That section ran as follows:—

"Any ryot or cultivator who desires to relinquish the lands held or cultivated by him shall be at liberty to do so, provided he gives notice of his intention in writing to the persons entitled to the rent of the lands in or before the month of Jeyt of the Bengal year in which, or of the Fusly year preceding which, the relinquishment is to have effect. If he fail to give such notice, and the lands are not let to any other person, he shall continue liable for the rent of the lands. If the person entitled to the rent of the land refuse to receive any such notice, and to sign a receipt for the same, it shall be served upon him by the Collector, on application for such service being made by the ryot or cultivator within the time above mentioned."

No section giving the zamindar a corresponding power to terminate a tenancy by notice was entered in the Bill or ever made law, and this strongly corroborates the position I have explained in the preceding remarks, namely that, except on a few doubtless important points, Act X of 1859 did not really change the old regulations.

33. The British Indian Association in their comments on the Bill noticed the section just quoted and entered a strong protest against it. In section 21 of their letter to the Government of India, dated the 14th February 1859, they wrote as follows:—

"When the ryot is readily invested with the rights of relinquishing his land, equity demands that the zamindar should have the privilege of ejecting his ryot, whether with or without engagement, when reason for so doing exists. Your petitioners are, however, aware of the consequences which this state of things would lead to, and they therefore recommend that no right fraught with such mischief should be conceded to one party to the prejudice of the other."

To this extract I invite special attention. It is a distinct admission by the exponent of the zamindari interest that so late as February 1859 the right to eject ryots at will was not a right claimed by zamindars at large.

34. So far therefore it appears clear that neither the framers of the Act nor the people most interested in Act X of 1859 ever contemplated that the zamindar had any right to put an end to the tenancy by notice. The British Indian Association representing the zamindars of Bengal asked that the privilege of ejectment at will might be conferred as an equivalent for the ryot's right of relinquishment, and this request was refused. It was during a later period when the preamble of Act X of 1859 had been swept away by the repealing Act, when the history of the old Regulations was forgotten, and cases were decided by officers imbued with the spirit of English law, that by degrees the theory was established that under Act X of 1859 and Act VIII (B.C.) of 1869 the zamindar could treat a tenant in Bengal as a landlord could treat a yearly tenant in England, and was

entitled to dispossess him not on a half-yearly notice, but on what was called a reasonable notice to quit.

In a previous note I said in reference to this question that—

“Whoever enquires into this last attempt of the zemindars to extend their powers of ejection will be astonished to find how modern it is. The first recognition I can find is that given at page 548 of XXII Weekly Reporter in a case in which the judgment was delivered in 1874 by Phear and Morris, JJ.”

35. I have heard it urged that whatever the position may have been under the Regulations, still as the Judges have decided under Act X of 1859 and Act VIII (B.C.) of 1869 that a ryot can be ejected with notice, it is impossible for the Legislature to return to the old state of things. This seems to me a monstrous proposition to maintain. Surely the fact that for a few years past a certain number of decisions have set up an erroneous principle seems not of such importance as to bar a return to the law of the land as declared by the Legislature and the courts for a period of upwards of sixty years. We have not to deal with the interpretation of a statute which has lasted for a century or for a long period, and there ought to be little difficulty felt by the Legislature in restoring things to the position which, under a correct construction of the law, they occupied up to 1874.

A point somewhat similar to this was brought before the House of Lords in the case of the trustees of the Clyde Navigation against Laird and Sons, in which Lord Watson in delivering his judgment said—

“I have only to add that in my opinion such usage as has in this case been termed *contemporanea expositio* is of no value whatever in construing a British statute of the year 1858. When there are ambiguous expressions in an Act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken and in determining the true import of such a statute it appears to me to be quite immaterial to consider whether it was passed in the year 1858 or in 1883.”

36. If then, as has been declared in the House of Lords, a wrong interpretation of a statute for twenty or thirty years would have very little effect on them in deciding as to the purport of the statute, surely there can be no reason why this incorrect interpretation of Act X of 1859 should not now be set right by the Legislature and the rights of under-tenants and occupiers be correctly and carefully defined. From the time of the Permanent Settlement Government has constantly asserted a determination to legislate for the people of the country according to their ancient rights and customs. Is it to be debarred from redeeming its often-repeated pledges because of decisions manifestly wrong, which have sapped all the long-established rights of the tenants?

This then appears to me to be the policy which should be followed in any Tenancy Act, and so far as the provisions of the present Bill are in accordance with that policy I approve of them. So far as they depart from it by injuriously affecting the position of under-tenants and of the cultivating ryots I dissent from them. The aim and object of the Government should be not to create new relations between landlord and tenant, but to respect and clearly define the old, for the old are not only the best, but are what the people are morally and equitably entitled to possess. It seems to me that the recommendations of Mr. Rivers Thompson in his report of the 15th September last tend towards that end, and I consider them fair and just to both parties.

57. I pass on now to notice a few of the more salient portions of the present Bill. I see that some doubts have been raised as to whether the Secretary of State for India in Council will be bound by the Bill. I trust that if there is any doubt on this point it may be removed. At the same time I must say that I do not hold the opinion that, unless the Secretary of State is expressly named in the Act, he will not be bound by it. This view seems to me to rest altogether upon a misconception of the position of the Secretary of State in this country. He is exactly in the position of the old East India Company, and from the very beginning the Company was bound by the Regulations and Act X of 1859, though you may search in vain to find its name in them.

38. There is some danger in the attempt to define the different kinds of tenures. The circumstances of the country are so varied that it is very difficult to obtain a perfect definition; and if the definition turns out to be imperfect, serious inconveniences must of necessity ensue. This is not a new difficulty, nor can I see any reason why the present framers of the Bill could be blamed for not doing what we never have been able to do since the time of the Permanent Settlement. None of the old Regulations undertook to define the different kinds of tenures, or to distinguish them from one another, nor did Act X of 1859, nor Act VIII (B.C.) of 1869. I am strongly of opinion that after all it might be a much wiser course to leave this matter to the courts. It has been left to them since 1793 to decide what is and what is not a ryotti tenure. I think it would be as well if the power is allowed to remain with them.

39. I observe that it has been objected to section 26, sub-section 2, that a presumption in favour of an occupancy right is contrary to the spirit of the Indian law and unjust. I confess I can see nothing wrong or extraordinary in this presumption if viewed with reference to the law of property in India, but if the English standpoint is taken, namely, that a ryot has nothing but what he gets from his landlord, the conclusion would of course be different. We are not however warranted in applying English theories to the construction or interpretation of an Indian Tenancy Act. In Bengal, the tenantry have always had rights in the soil not *under*, but *adverse to*, the zemindar. The right of the Bengal ryot to his holding, while he pays a fair rent, is a right *anterior to*, not a right *carved out of*, that of the zemindar. This fact is, by the common law of this country, indisputable. Why, then, should it be presumed that these rights, which we know to exist, do not exist, and that the tenant holds only from year to year. It is fair to presume that they do exist until the contrary is proved. The contention adverse to this presumption becomes more unreasonable when we are told that the persons holding under a statutory title form the majority of tenants. Presumptions of a somewhat similar nature are recognised by the Regulations. By section 60 of Regulation VIII of 1793, no landlord in Bengal could demand a higher rate of rent from a resident ryot unless he proved that the ryot had held for three years under the *pergunnah* rates. Under section 51, Regulation VII of 1793, no zemindar could enhance the rents of a talook unless he proved that it was liable to such enhancement by the custom of the country. If this is the spirit in which the founders of the Permanent Settlement legislated, I do not think there is any objection to extending the protection of a reasonable presumption to ryots who, as a class, are much less able to protect themselves than talookdars. Surely it is not intended that when no such tenancy exists the presumption should be that all ryots hold from year to year. In the North-West it has been decided that there is no presumption that a particular tenant's holding is not transferable without the zemindar's consent (*Meer Hedayat Ali vs. Baboo Lall Singh*, 1869, page 37), and this is a much stronger presumption than that now proposed.

40. In regard to occupancy tenures I think the proposal to render them transferable in Bengal is unobjectionable. Under the law before Act X of 1859 the tenure of khudkast or kadimi ryots could be transferred without the consent of the zemindar. In addition to these there were many other holdings transferable by custom. I may note as examples the *jotes* of Rajshahye and the *gusasta* tenure of Shahabad. When Act X of 1859 became law, the highest tenure known to the law was a right of occupancy, and in course of time this became the general description covering all these more ancient tenures. It is, I think, a mistake to suppose that the custom of selling occupancy tenures has arisen since Act X of 1859. I believe that many of the tenures now sold as occupancy holdings are old tenures transferable before that Act ever came into existence. No doubt the custom has grown since 1859. It now exists in all districts of Bengal, and should, I think, be recognized and allowed with such safeguards as will prevent injury to either landlord or tenant. At present, where the custom exists, the zemindar is powerless to object to the purchaser, and may be saddled with a ryot of the worst character. The ryot, on the other hand, may sell to any one, and hence it may and will happen that he will sell his occupancy right to his money-lender and remain as a sub-tenant on the land. If such sales were limited to *bond fide* ryots on the one hand, and

subject to objection from the zemindar on the ground that the purchaser was not a cultivating ryot or a notoriously bad character, they would be unobjectionable. Nothing further seems necessary for the protection of the rights of either party, and I would not go beyond it. For this reason I deprecate allowing the zemindar the right of pre-emption or the right to levy a heavy fine on transfer or a wide power to object.

41. In regard to the limit of 20 per cent. proposed to be placed on enhancement, I have little to add to what I wrote in my last note. I then pointed out that 25 per cent. of the gross produce was in my opinion a rack-rent, and I added that the rent in England was not more than one-eighth of the value of the crops. I also pointed out that the Eastern Landholders Association proposed one-fifth as the highest limit of enhancement which the zemindars thought proper to demand. There is ample material to corroborate this view in the litigation which arose in Nuddea after the passing of Act X of 1859. In the celebrated case of *Hills vs. Ishore Ghose*, W. R. 1864, I find that he sued to enhance the rent of a ryot having a right of occupancy, and succeeded. There the Judges said "according to either of the calculations the rent would amount to Rs. 1-3 a beegah, without taking fractions of an anna. We think that the amount is a fair rate of rent for the *matan* lands, and that plaintiff is entitled to have the rent of the *matan* lands held by the defendant enhanced to one rupee a beegah. *This is less than one-sixth of the gross proceeds.*" The rent was decreed, but the amount was never realized. No tenant could or would pay it.

42. There is still another case illustrating the great danger of allowing zemindars to enhance to 20 per cent. of the gross produce. During the settlement of the Jellamootah estate a series of experiments were made with a view to determine the proportion of rent to gross produce. The following is the result in tabular form :—

Statement of produce in connection with the proposed re-settlement of the Majnamuta Estate.

	NAMES OF PERGUNNAHS.	Average outturn of produce per beegah, ascertained in maunds of paddy.	Average price per maund of paddy.	Total value of the produce, in- cluding straw.	Deduct expenses of cultivation.	Deduct pro- posed average rate of rent.	Total deduction.	Balance left to the ryot as net profit.
1	2	3	4	5	6	7	8	9
		Mds. s. c.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1	Majnamuta ...	8 31 4	0 12 0	7 1 4	2 8 0	1 11 0	4 3 0	2 14 4
2	Doro Dumnai ...	7 32 0	1 0 0	9 4 9	5 0 0	2 2 0	7 2 0	2 2 9
3	Narnamuta* ...					1 6 6		
4	Kusba Hidgellee ...	9 20 0	0 12 0	7 11 0	3 6 0	1 14 0	5 4 0	2 7 0
5	Balijora ...	10 31 0	0 12 0	8 5 0	2 8 0	1 11 0	4 3 0	2 7 0
6	Sarifabad ...	8 29 0	0 12 0	7 0 9	2 8 0	1 12 5	4 4 5	2 12 4
7	Kiamut Pataspore ...	8 3 8	0 12 0	6 9 0	2 8 0	1 5 6	3 18 6	2 11 6
8	„ Shipore ...	6 36 0	0 12 0	5 10 9	2 8 0	1 11 0	4 3 0	1 7 9
9	Datta Khoroi ...	9 20 0	0 12 0	7 10 0	2 8 0	1 19 6	4 1 6	3 8 6
10	Amirabad ...	8 32 0	0 12 0	6 13 0	2 8 0	1 2 3	4 4 8	2 8 9
11	Majna Nyabad ...	8 20 0	0 12 0	6 14 0	2 8 0	1 9 0	4 1 0	2 13 0

* No experiment was made in Narnamuta. The rates were fixed by comparison with those prevailing in the neighbouring pergunnahs.

From this table it appears that the proportion of rent to gross produce was 25 per cent. What was the result? Government was unable to recover the rents. A considerable permanent reduction amounting, I understand, to more than 10 per cent. in the rental was effected, while it was found necessary to remit arrears to the extent of two and a half lakhs of rupees. In the face of these results it can hardly be doubted that one-fifth of the gross produce is more than the ryots of this country can afford to pay. I have heard it stated that in certain districts the cultivators pay a higher money-rent than one-fifth of the gross produce taken in staple food crops; and where there is garden cultivation, or where crops of exceptional value are grown, this may be true. But specially valuable crops cost a great deal to grow, and a failure of the crop means the ruin of the ryot. I am no advocate of rents graduated according to

the character of the crop, nor do I think that any country can prosper where rents are regulated, not by soil quality but by its produce. Furthermore, if we are to refer to Mahomedan law, it may be observed, that while some maintained it to be allowable to take half of the produce as *kheraj*, the better opinion was that not more than a fifth should be taken. If a fifth was considered equitable in olden times, when population pressed but lightly on the soil, that proportion must be rack rent to-day. As time goes on, as population increases, and the productiveness of the soil grows less, the proportion of one-fifth will become impossible of payment. In former times there was always a difficulty in determining the amount of land held by the cultivators. Then, as now, they steadily opposed any measurement of their holdings, and I think it is the general opinion that they then cultivated and do now cultivate more land than they admit.

43. I think there is some reason to believe that the present rents are too high. This is also the opinion of a body which manages estates the rent rolls of which amount to 57 lakhs of rupees. I refer to the Board of Revenue. In the Board's report for 1883-84, there is the following paragraph :—

"This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years, but as a rule a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand as shown on his books. The difference is debited to a *hajut* account, or it is merely shown as a balance against the ryot, or in some cases it is kept alive by instalment bonds executed by the ryot. Almost every estate under the Court of Wards comes under its management with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections for wards' estates is less than the current demand. The result has generally been considered unsatisfactory, but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent. of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent."

The Members of the Board of Revenue, who manage more property than any zemindar or agent in Bengal, consider that not more than 90 per cent. of the rental in estates coming under their management can be realized "without oppressing and harassing the tenantry," or in other words, the present rent-rolls are at least 10 per cent. too high, and cannot be realized.

44. If this be so, and I can see no reason to doubt the experience of the Board, I think the Government of India should pause before it grants to zemindars any further facilities to enhance or any summary method to realize the already excessive rents. I believe it would be far better for both zemindar and ryot if the rents were not so high. The former would not lose anything by giving up what he cannot now realize without some oppression, and he would have the sympathy of every right-minded person in enforcing his rights against such ryots as could but would not pay. It is proposed by section 41 of the Bill to allow the existing rent to be enhanced up to 25 per cent. by mutual agreement. I confess I dislike this proposal. I do not conceive that any person, looking at the nature of the agreements, of which I have already given extracts, will contend that there is any such thing as freedom of contract between landlord and tenant in Bengal. The ryot submits because he cannot help it. It is not reasonable to suppose that a cultivator in this country, who is strongly attached to his holding, would, if he could help it, agree to give up his right of occupancy in the soil, pay all the taxes which may be levied from his landlord, although this is expressly prohibited by law, and fetter himself by, to him, novel restrictions. Yet numbers of the ryots have done it. In the same way they will agree to any enhancement to pay any amount, trusting that the obligation will never be enforced, or they will by some means or other be able to avoid their liability for the increased rent. If enhancement is at all allowed out of courts, then the amount should be so small as will neither tempt the landlord to demand nor the ryot to agree to pay more than is reasonable, such as ten per cent. on the existing rent. From this point of view I consider that full justice to the zemindars is met by the proposal of the Bengal Government that enhancements out of court should not exceed 2 annas in the rupee of the former rent.

45. These objections are of minor importance in comparison to what I consider the great defect in the Bill. It gives no protection to that great mass of ryots who have not obtained a right of occupancy in the soil. Before Act X of 1859 there was hardly any distinction between resident and non-resident ryots in Bengal. Both paid at the customary rate; both were safe from eviction, unless for non-payment of rent. In the draft of Act X of 1859, the present rights given to occupancy tenants, were granted to all resident ryots. This limitation was consistent with the Regulations of the North-West Provinces, which recognized the distinction between resident and non-resident ryots; but was inconsistent with the Statute law of Bengal, which admitted no such distinction. This was not all. When the Bill was circulated, the Board of Revenue in the North-West said that it was a fallacy to regard every "resident ryot and cultivator" to have a right of occupancy in that province, and recommended the 12-years' rule. This was adopted by the Select Committee, who said:

"The laws in force speak of "*khodkash* ryots" as possessing rights of occupancy, and in some places the word *khodkash* seems to be considered as synonymous with "*resident*." Resident was, therefore, the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy, and it appears after much enquiry it was prescribed by an order of the Government of the North-West Provinces in 1856 as most consistent with general practice and recognised rights that a holding of the same land for 12 years should be considered to give right of occupancy. We have followed this precedent, and altered the section accordingly."

46. It was unfortunate for the ryots of the Lower Provinces of Bengal that the law and precedents of those Provinces were not followed instead of the order of the Government of the North-West Provinces. Starting with Regulation 51 of 1793, which had no reference to Bengal, the Committee drew a distinction between resident and non-resident ryots which has never been recognised by the law in force in the Lower Provinces. This was the first mistake. The second was more serious. The North-Western Provinces is (with the exception of Benares) not permanently settled, and the Government officers from time to time when settlements are revised record what they consider the rights of the tenants. In 1856 Government decided on taking 12 years' cultivation as a test of the right of occupancy, but this could in no wise affect the rights of tenants under the Permanent Settlement in the North-West. Much less could it be said to be a guide for legislation in regard to Bengal. Unfortunately this precedent was followed, and the resident ryot, who admittedly was before Act X of 1859 protected against arbitrary enhancement, was after that Act passed liable to pay whatever his landlord might demand. After some time it was decided that he was also liable to ejectment on notice to quit, and now he has no protection against the imposition of a rack-rent or arbitrary eviction.

The provisions of the present Bill in regard to this class of ryots are to my mind extremely imperfect and inadequate. Justice requires that these ryots should be placed in the position they were in 1859. Under the present Bill there is nothing to prevent a zemindar in the future from rack-renting and ejecting them.

If the Legislature, while professing the right to interfere on behalf of the ryots, does not consider it expedient to give them what in my opinion is only fair justice and restore them to the position they held in 1859, the least it can do is to give them substantial compensation for disturbance. Then after agreeing to pay a fair rent they are arbitrarily evicted by the zemindar. The Government of Bengal proposes to check the capricious exercise of power on the zemindar's part by awarding compensation for disturbance up to a maximum of three years' rent. That I consider an inadequate check.

47. In connection with the present Bill the recent land legislation for Ireland has been referred to, and there is no doubt it deserves the most serious consideration. The claim of the tenants in Ireland to compensation for disturbance was weak in comparison with the claim of the ryots in Bengal, and yet the former obtained compensation on the following scale:—

Where the rent is thirty pounds (three hundred rupees) or under, a sum not exceeding seven years' rent; when the rent is above thirty pounds, a sum not exceeding five years' rent.

Where the rent is above fifty pounds and not exceeding one hundred pounds (one thousand rupees), a sum not exceeding four years' rent.

Where the rent is above one hundred pounds and not exceeding three hundred pounds (three thousand rupees), a sum not exceeding three years' rent.

Where the rent is above three hundred pounds and not exceeding five hundred pounds (five thousand rupees), a sum not exceeding two years' rent.

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

This is the scale which Parliament considered fair and equitable, although the legal claim to compensation was weak. Here the claim is strong. In Ireland the tenants had no legal ground for saying "our rights were such and such and we have been deprived of them." Here the ryots have been unwittingly deprived of their rights by recent legislation and recent decisions of the Courts, and I think they may fairly ask, if those rights cannot be restored, as they should, that compensation on the same or a higher scale should be granted to them. If this be not done,—if the right to hold their land as long as they pay a fair and equitable rent be not secured to all cultivating ryots,—then I think it better for them that the Bill should be abandoned and matters allowed to remain as they are. The force of circumstances might in a few years' time necessitate legislation of a far more comprehensive nature in the interests of the tenantry than any now proposed by the Government of Bengal.



EXTRA SUPPLEMENT TO
The Gazette of India.

CALCUTTA, SATURDAY, FEBRUARY 14, 1885.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

BENGAL TENANCY BILL, 1885, No. III.

The following Further Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th February, 1885:—

WE, the undersigned Members of the Select Committee to which 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 was referred, have considered the Bill and the papers noted in the schedule annexed, and have now the honour to submit this our further Report.

It must be understood that in referring to the decisions of the Committee we state the view of the majority where there has been any difference of opinion.

CHAPTER I.

PRELIMINARY.

2. We have made some slight amendments in, and additions to, this chapter, but few of them call for notice here.

The definition of "estate" and that of "proprietor", which is dependent on it, have given rise to the erroneous supposition that it was intended to exclude Government tenants from the operation of the Bill. We have now so amended the definitions as to remove any misapprehension on this point.

3. As it seems reasonable that the provisions of the Bill contained in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III should apply to money recoverable under any enactment as if it was rent, we have added to the definition of "rent" a clause providing that "rent" shall in those portions of the Bill include such money.

CHAPTER II.

CLASSES OF TENANTS.

4. The only amendments calling for notice in this chapter are—

1st—that we have omitted all reference to the raiyat converted into a tenure-holder under section 37 of the Bill No. II, as it has been determined to omit section 37 (see *infra*, paragraph 17); and

2nd—that we have altered section 5 (5) so as to provide that a tenant holding more than 100 bighás shall be presumed, until the contrary is shown, to be a tenure-holder, without raising an issue as to his having sub-let any part of his holding.

CHAPTER III.

TENURE-HOLDERS.

5. We have in section 7 of this chapter included, among the matters to which a Court must have regard in enhancing the rent of a tenure-holder, the questions "whether the tenure was originally granted at a specially low rent for the purpose of reclamation" and "whether any fine or premium was paid on the creation of the tenure."

6. We have omitted section 8 of the Bill No. II, which provided that a Court should not enhance the rent of a tenure to more than double the previous rent.

7. We have in section 9 made the interval which must elapse between successive enhancements of the rent of a tenure the same as in the case of an occupancy-holding, namely, fifteen years.

8. We have omitted the provisions of this chapter specially applicable to patni tenures, and Chapter XVI, relating to summary sale of patni and other tenures for arrears, as we are, on further consideration, reluctant to interfere at present with the existing law regarding patni tenures, and are of opinion that any extension of the patni sale law to other tenures should be reserved for consideration in connection with the Bengal Registration Bill, to which we shall presently have to refer.

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

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

A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of our Bill now under consideration has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

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

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

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

When a transfer takes place by sale in execution of a decree (sections 13 and 14), the procedure will be substantially similar, the notice and the fee being sent to the Collector by the Court, except that, following the lines of the Bill in its earlier stages, we have not provided for the payment of a fee to the landlord when the sale takes place in execution of a decree for arrears.

In the only remaining case of transfer, namely, that of transfer by summary sale, the Collector will have in his own office all the information requisite for the purpose of registration.

11. When a succession to a permanent tenure takes place, the party succeeding will be bound (section 15) to give notice to the Collector and pay to him the landlord's fee and the process-fee above referred to, and the Collector will then proceed as above described.

12. In order to compel the person succeeding to comply with the provisions of this section, we have retained, for the case of successions, the provision of section 18 of the Bill No. II, under which a person succeeding will be debarred from recovering his rent by suit, distraint or otherwise, until he has given the notice and paid the fees prescribed.

CHAPTER V.

OCCUPANCY-RAIYATS.

13. The first alteration in this chapter which appears to call for notice has reference to the area over which the status of settled raiyat is to hold good.

In the 11th paragraph of our first Report we referred to the inconvenience which might arise in certain exceptionally large estates from the status holding good over the whole estate, and this has given rise to considerable discussion. The Bengal Government, in the 22nd paragraph of its report of the 15th September, 1884, stated that "the majority of the officers consulted disapproved of the definition of 'settled raiyat' as given in the Bill," and that "the proposal which found favour was the elimination of the word 'estate' from the definition".

That Government, nevertheless, was of opinion that it was necessary to retain the word "estate" in order to meet the danger of the acquisition of the occupancy-right being prevented by shifting raiyats from one village to another within the estate.

It seemed to us that this danger was not so great as to justify the extension, over all portions of an estate of the status of "settled raiyat" acquired in one portion of it, since estates are frequently divided among numerous tenure-holders, who would have no opportunity of examining each other's books, or knowing anything about each other's raiyats. The danger in either direction is not serious, for in the vast majority of cases the raiyat is practically tied to his own village; and we felt, moreover, that by confining the status to the village we should be proceeding in closer conformity to the original conception of a khudkasht raiyat, which, as explained in the Statement of Objects and Reasons of the Bill, it has been always intended to keep in view.

14. We have in section 22 re-cast sections 28 and 29 of the Bill No. II so as to carry out more precisely the intention with which they were framed, and we have inserted a sub-section (2) providing that if the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder it shall cease to exist.

15. Sections 23 to 26 of the amended Bill take the place of sections 31 to 36 of the Bill No. II; but, except a saving of custom as regards the descent of the occupancy-right in section 26, the only important change they involve is the omission of all provisions regarding the transfer of the occupancy-right, which, apart from the matter of sale in execution of a decree for rent (dealt with in Chapter XIV), we now propose to leave to custom as under the existing law.

16. The reasons for and against the proposal to make the occupancy-right everywhere transferable by an express legislative enactment have been so fully discussed within the last three years, and are so well known to all interested in such matters, that we shall not lengthen this Report by attempting to recapitulate them. It is enough to say that the Government of Bengal, in their letter of the 15th of September last, proposed to leave the law relating to the transferability of the right for the present untouched in Behar, and that on a further consideration of the question we are of opinion that the most prudent course will be to omit the provisions relating to voluntary transfer altogether from the present Bill. This decision has enabled us to omit all reference to the question of pre-emption.

17. The 37th section of the Bill No. II, which provided that raiyats sub-letting their land should in certain cases be deemed to be converted into tenure-holders, has met with much adverse criticism, and we now propose to omit it.

The remaining provisions as to sub-letting we have relegated to Chapter IX, where they will be found with certain modifications and additions.

18. In regard to the enhancement of rent in the case of occupancy-rights the Government of Bengal made certain proposals in their letter of 15th September, 1884, which are summarised in the 84th paragraph of that letter as shown on the margin.*

- * VI.—To recognize the principle that, in the absence of reason to the contrary, the Courts shall regard a rise in the price of staple food-grain as entitling the landlord to an enhancement of rent.
- VII.—To fix the percentage by which the enhanced rent shall exceed the former rent at a definite proportion (one-half is suggested for consideration) of the percentage by which the enhanced price exceeds the former prices, the other portion going as an allowance for increased cost of production.
- VIII.—To assign to enhancements on the ground of landlords' improvements a maximum limit of double the former rent.
- IX.—To abandon the provision for enhancement on the ground of a "prevailing rate," experience having shown that no such rate exists, and that the position assigned to it in the present law has led to the construction of collusive and fictitious rates for the purpose of forcing up rents.
- X.—To abandon fluvial action as a ground of enhancement of rent, but to recognize freedom of contract between landlord and raiyat in regard to new alluvium.
- XI.—To withdraw the arbitrary limitations on enhancements by suit on account of a rise in prices, and to allow contracts for enhancement of rent out of Court up to a maximum limit of two annas in the rupee (12½ per cent.) of the former rent, and for a minimum period of 15 years.
- XII.—To withdraw all restrictions on freedom of contract in respect of the initial rent of all land which may lapse to the landlord from whatever cause.
- XIII.—To re-introduce the provision that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food-grains.

consideration. The Government of Bengal recommended a deduction of one-half on this account.

We recognised the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit we have fixed the deduction at one-third as a general rule.

19. With reference to VIII we did not think we could justify any arbitrary limit in terms of a fractional proportion of the old rent being placed on enhancement when made on the ground of landlords' improvements.

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

21. We were not able to accept the proposal (X) to abandon fluvial action as a ground of enhancement.

22. On the other hand, we have accepted the proposal (XI) to limit enhancements by registered contract (except on the ground of improvement made by the landlord) to two annas in the Rupee (12½ per cent.) carrying with it in all cases a right to hold at the enhanced rent for 15 years, and we have at the same time struck out all the fractional limits placed on enhancement in Court by sections 44 (a), 45 (b) and 47 (b) of the Bill No. II.

23. The restrictions which it was proposed by section 42 to impose in certain cases on the initial rents payable by settled raiyats have, we think, been shown to be impracticable, and we have therefore, as proposed by the Government of Bengal (XI), omitted the section.

24. We were not able to accept the recommendation numbered XIII.

25. The only other amendments in the chapter which appear to call for special notice are as follows:—

- (a) we have required Courts, in dealing with claims to enhancement on the ground of a rise in prices, to take decennial periods instead of quinquennial periods for the purposes of comparison, except when owing to the absence of price-lists or any other cause they find it impracticable to take such periods, in which case they may take any shorter periods;
- (b) we have amended section 39 so that the price-lists prepared under it shall be merely presumptive evidence instead of being conclusive, as provided in the corresponding provision of the Bill No. II. The Bengal Government are of opinion that their arrangements are not at present so perfect as to justify these lists being made conclusive evidence;
- (c) we have in section 40 included among the matters to be taken into consideration by an officer commuting rent the charges incurred by the landlord in respect of irrigation under the system of rent in kind and the arrangements made on commutation for continuing those charges.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

26. We have omitted from the section (50) which enacts the well-known presumption arising from holding at a rent unchanged for 20 years the sub-section which made the presumption applicable to produce-rents, as opinions generally were opposed to it.

27. We have, in section 52, providing for the alteration of rent on the ground of an alteration in the area of the holding, assimilated the provisions of the two clauses (a) and (b), which provide respectively for increase and reduction; and we have inserted the following new sub-section to guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying rent:—

"In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- "(a) the origin and conditions of the tenancy; for instance, whether the rent was a consolidated rent for the entire holding;

"(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

"(c) the length of time during which the tenancy has lasted without dispute as to rent or area; and

"(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit."

We have also brought the section under the general rule that the Court shall not fix a rent which would be unfair or inequitable.

28. We have substituted for the section of the Bill No. II regulating the instalments in which rent is to be payable the following simpler provision, namely:—

"53. Subject to agreement or established usage a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year";

and to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom a larger number of instalments than four may be established, we have inserted in Chapter XIII a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months.

29. We have made certain amendments in the division of the chapter relating to receipts and accounts, but the only one calling for special notice is the insertion of a new section (59) requiring the Local Government to provide and keep on sale forms of receipts and accounts. It will be for the landlords to choose whether they will use those forms, but we believe they will be found convenient.

30. In pursuance of the policy of the Bengal Act for the registration of proprietors, we have inserted the following section:—

"60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate or of his agent authorized in that behalf shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

"But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee."

31. We have likewise modified in some particulars the provisions relating to the deposit of rent, but need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt.

32. We have omitted the second sub-section of section 77 of the Bill No. II, which enacted that, when the right, title and interest of a tenant is brought to sale in execution of a decree obtained by a person other than the landlord, the landlord shall be entitled to have his rent paid first out of the sale-proceeds, and we have so re-cast the section as to make it clear that in the case of a tenure-holder, raiyat at fixed rates or occupancy-raiyat the landlord's remedy for arrears will be sale and not ejectment, and that the arrears will be a first charge on the tenure or holding.

33. We have substituted for section 79 of the Bill No. II a section (67) providing that an arrear of rent shall bear simple interest at the rate of 12 per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due.

34. To meet those cases in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that, until notice of such a transfer is duly served on the landlord, the transferor and transferee shall be jointly and severally liable for arrears of rent accruing after the transfer.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

35. We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an

improvement within the meaning of the Act, and the raiyat will on being ejected be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country with a view to the prevention of famine points to the necessity of this.

36. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building-sites either for new tenants or in cases of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it.

37. We have inserted a section (85) providing that if a raiyat sub-lets otherwise than by a registered instrument the sub-lease shall not be valid against his landlord unless made with his landlord's consent, that a sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years (seven years was the longest term for which an occupancy-raiyat could sub-let under section 38 of the Bill No. II) and that where a raiyat has without his landlord's consent granted a sub-lease by an instrument registered before the commencement of the Act the sub-lease shall not be valid for more than nine years from the commencement of the Act.

38. In dealing with surrender and abandonment the only changes made by us which need here be noticed are the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided (section 86 (6)) that the surrender of a holding which is subject to a registered incumbrance shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment we have provided (section 87 (4)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord or without risking the conversion of these sub-leases into permanent transfers. In the case of sale in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV.

39. We have in section 88 provided that a division of rent shall not be valid as against the landlord without his consent in writing. This we understand to be the existing law.

40. We have amended section 90 so as to make it clear that a landlord is not entitled to enter on and measure land exempt from the payment of revenue.

41. We have in section 92 substituted the acre for the standard bighá as the official standard of measurement, and have empowered a Court or Revenue-officer to direct, where such a course may seem more convenient, that a measurement shall be made by any other specified standard.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

42. In the Bill No. II the two processes known as the record-of-rights and the settlement of rents were dealt with separately, but it seemed to us more convenient that they should be amalgamated, and we have accordingly given to the Revenue-officer who is appointed to settle disputes during the operation of recording rights a similar power to settle disputes regarding rents.

We have, however, provided for two distinct kinds of settlement. Under the ordinary settlement, the officer will only have the power to settle rents when a settlement of land-revenue is being made or a question between the landlord and tenant arises, and such rents as he settles will generally be fixed for a term of years; in other cases his recorded entries will only have a presumptive value; he can, moreover, only reduce rents on the grounds under which reduction is demandable in the Civil Courts. Under the special settlement, which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the Settlement-officer will have power to settle all rents, and will, moreover, have

power to reduce rents on other grounds than those ordinarily applicable. We think that in the exceptional cases in which it may be necessary to have recourse to this procedure the Government should have power to go to the root of the matter, and to put its settlement on a thoroughly stable footing.

TABLES OF RATES.

43. We have decided, in deference to the opinion of many experienced officers and with the consent of the Government of Bengal, to omit the chapter (XI of Bill No. II) providing for the preparation of tables of rates. It was evident that the procedure would only be made use of in rare and exceptional cases, and a more effectual method of treating these cases is provided in the Settlement chapter.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

44. The only amendment calling for notice in this chapter is the insertion of a provision in section 116, that nothing in the chapter (VI) relating to non-occupancy-raiyats shall apply to a proprietor's private lands. This merely expresses what was always intended, though by an oversight it was not previously provided for.

CHAPTER XII.

DISTRAINT.

45. We have inserted two sections of some importance at the end of this chapter. The first (141) provides that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may by order authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The other section (142) added to this chapter empowers the High Court to make rules regulating the procedure under it.

CHAPTER XIII.

JUDICIAL PROCEDURE.

46. Section 147 has already been noticed (*supra* paragraph 28).

47. We have in section 148 added to the sections of the Civil Procedure Code, which are not to apply to rent-suits, section 328, empowering the Court to authorize the Collector to stay an execution sale of land in certain cases.

48. We have in section 153 excepted from the rules restricting appeals in rent-suits cases in which a question of the amount of rent annually payable by the tenant has been determined.

49. We have omitted section 172 of the Bill No. II, which required all mutual claims between the landlord and tenant as such to be inquired into and determined in every suit and proceeding for ejectment.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

50. We have added to the "protected interests" in section 160—

"(e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court or under Chapter X by a Revenue-officer."

The section as it stood would probably have been construed to cover such cases, but we think it well to leave no room for doubt on the point.

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

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

CHAPTER XV.

CONTRACT AND CUSTOM.

53. A question having been raised as to how far section 210 of the Bill No. II, which was intended to have retrospective effect, should be allowed such effect, we have carefully considered each provision of that section, and have come to the conclusion that some of those provisions ought, with reference to this point, to be treated differently from others. The way in which we propose to treat the matter will be best seen from the new section we now propose, which runs as follows:—

Restrictions on exclusion of Act by agreement.

"178. (1) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

- "(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- "(b) shall take away an occupancy-right in existence at the date of the contract, or
- "(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- "(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

"(2) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880,* and before the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

"(3) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

- "(a) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;
- "(b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;
- "(c) take away the right of a raiyat to surrender his holding in accordance with section 86;
- "(d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;
- "(e) take away the right of a raiyat to sub-let subject to, and in accordance with, the provisions of this Act;
- "(f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;
- "(g) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or
- "(h) affect the provisions of section 67 relating to interest payable on arrears of rent."

54. To meet the important case of a lease for the reclamation of waste land to which these provisions are not suitable, we have added the following proviso:—

"Provided as follows:—

- "(i) Nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right."

* This was the date of the publication by the Government of Bengal of the Rent Commission's Report and Draft Bill.

55. We have further provided that the section shall not affect those contracts which are occasionally entered into for the temporary cultivation of orchard land with agricultural crops.

56. We have in section 180 put *utbandi* lands on the footing on which *chur* lands were placed by section 213 of the Bill No. II, that is to say, no occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord. We have further provided that Chapter VI of the Bill shall not apply to such lands.

57. We agree with the Government of Bengal in thinking that it is not desirable to make any special provision regarding the lands known as "*hál-hasili*," and we have accordingly omitted all references to them in this chapter.

58. We have considered the proposals of the Government of Bengal regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should, as provided by section 216 of the Bill No. II, be regulated by local custom, with this addition, however, that, subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a raiyat. We have amended the section (182) on these lines.

CHAPTER XVII.

SUPPLEMENTAL.

59. We have in section 189 added to the powers which may be conferred on officers by the rules to be made by the Local Government—"any power exercisable by any officer under the Bengal Survey Act, 1875."

60. We have also inserted the following new section, which speaks for itself:—

"194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition."

61. Lastly, we have added a section (196) providing that "this Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council." In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

62. In the 99th paragraph of our former Report we mentioned certain points on which we desired further information, and on which we solicited the opinions of the Local Government or High Court or both, and to these it is necessary briefly to allude in so far as they have not been disposed of by the foregoing remarks.

63. The first of these points, which was referred to the Local Government, was "whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation-channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take."

We are fully sensible of the great importance of this question, but on full consideration we agree with the Government of Bengal in thinking that a discussion of it would be out of place in connection with the present Bill, and that it will be most appropriately treated in connection with the irrigation law, which will probably soon come under revision in Bengal.

64. The only other points specially referred to the Local Government, and to which we have not already adverted, were certain proposals to extend the *patni* sale procedure. Those proposals did not commend themselves to the Local Government, and now that the *patni* procedure is to be excluded from the present Bill, they would more properly be reserved for future consideration.

65. The remaining points to which we think it necessary to advert had reference to the question as to the possibility of devising some simplification of the procedure in rent-suits. In paragraph 83 of our former Report we said—"For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction, which would not involve a serious risk of failure of justice." We, however,

proposed that certain suggestions which had been made should be referred for the opinion of the High Court. The reply of the Honourable Judges is among the papers before us, and we regret to find that, as we apprehended, they too are unable to strike out any royal road to the result desired. They disapprove of the specific suggestions made, and they state it as their opinion that the true remedy for the evils complained of is to be found in executive rather than in legislative action, that is to say, in an increase in the judicial staff and a reduction of the court-fees.

Since the reply of the Honourable Judges has been received, further proposals have been submitted to us, and in particular a scheme put forward by Bábú Mohiny Mohun Roy, on which the opinions of certain officers have been taken, but we regret to say we have not found among them anything which would materially abridge the procedure without entailing a risk of serious failure of justice. The executive measures referred to by the High Court will, doubtless, receive careful consideration at the hands of the Government.

66. The publication ordered by the Council has been made as follows:—

<i>In English.</i>		<i>Date.</i>
<i>Gazette.</i>		
<i>Gazette of India</i> ...	...	29th March, and 5th and 12th April, 1884.
<i>Calcutta Gazette</i> ...	...	2nd, 9th and 16th April, 1884.

<i>In the Vernaculars.</i>		<i>Date.</i>
<i>Province.</i>	<i>Language.</i>	
Bengal ...	Bengali ...	29th April, 1884.
	Hindi ...	6th May, 1884.
	Uriya ...	8th May, 1884.

67. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

S. C. BAYLEY.

RIVERS THOMPSON.*

C. P. ILBERT.

LAKSHMESHVAR SINGH OF DARBHANGA.*(a)

J. W. QUINTON.

T. M. GIBBON.*

AMIR ALÍ.*(b)

W. W. HUNTER.*

H. J. REYNOLDS.*

PEARI MOHAN MUKERJI.*(c)

G. H. P. EVANS.*

The 12th February, 1885.

* Signed subject to dissent on certain points.

(a) I sign this Report as it represents the views of the majority, but I reserve to myself the right of recording a separate dissent.

(b) I object to some of the main provisions of the Bill and have recorded a separate dissent.

(c) This Report represents the views of the majority. I object to the main principles of the Bill and record a separate dissent.

SCHEDULE.

Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 197—1-63, dated 13th March, 1884, and enclosures [Papers No. 42].

From Bábú Pronob Náth Ghosál, Naib, Roy Luchmiput Sing Bahadur's Zamindári, Kutabpur, District Rungpur, dated 24th April, 1884 [Paper No. 43].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 491—9-24R., dated 23rd July, 1884, and enclosures [Papers No. 44].

Office Memorandum by Revenue and Agricultural Department, No. 499R., dated 25th July, 1884 [Papers No. 45].

From Officiating Registrar, High Court, Calcutta, No. 1986, dated 8th August, 1884 [Paper No. 46].

Extract from *The Bengali* of 30th August, 1884 [Paper No. 47].

From Officiating Registrar, High Court, Calcutta, No. 2611, dated 15th September, 1884, and enclosure [Papers No. 48].

„ Bábú Kishori Lál Sarkár, dated 21st September, 1884 [Paper No. 49].

„ Secretary, British Indian Association, No. 87, dated 23rd September, 1884, and enclosure [Papers No. 50].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 648—926, dated 23rd September, 1884, and enclosures [Papers No. 51].

Note by Bábú Kishori Lál Sarkár [Paper No. 52].

From Secretary to Government, Bengal, No. 1906T.R., dated 15th September, 1884, and enclosures [Papers No. 53].

„ Officiating Under-Secretary to Government, Bengal, No. 2071T.R., dated 29th September, 1884, and enclosures [Papers No. 54].

Memorial of Committee of Orissa People's Association, dated 21st October, 1884 [Paper No. 55].

Memorial of Middle Tenure-holders of the Sub-division of Jhenidah, District Jessore [Paper No. 56].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 749—9-35R., dated 31st October, 1884, and enclosures [Papers No. 57].

From Officiating Registrar, High Court, Calcutta, No. 2759, dated 3rd November, 1884, and enclosure [Papers No. 58].

From Officiating Registrar, High Court, Calcutta, No. 2943, dated 20th November, 1884, and enclosure [Papers No. 59].

From Honorary Secretary, Behar Landholders Association, dated 27th October, 1884 [Paper No. 60].

From Officiating Under-Secretary to Government, Bengal, No. 2201T.R., dated 9th October, 1884, and enclosure [Papers No. 61].

From Bábú Rajkissore Mookerjee, Cultivator-raiyat, Uttarpara, dated 24th November, 1884, and enclosure [Papers No. 62].

Notes by the Hon'ble T. M. Gibbon [Papers No. 63].

From Officiating Under-Secretary to Government, Bengal, No. 1926—1009L.R., dated 28th November, 1884, and enclosure [Papers No. 64].

From Bábú Umesh Chundra Ghosh, Senior Pleader, Jessore, dated 24th November, 1884, and enclosure [Papers No. 65].

From Bábú Rajkissore Mookerjee, Uttarpara, dated 5th December, 1884, and enclosure [Papers No. 66].

From Secretary to Government, Bengal, No. 2002—1036L.R., dated 4th December, 1884, and enclosures [Papers No. 67].

From Officiating Under-Secretary to Government, Bengal, No. 2013—1041L.R., dated 4th December, 1884, and enclosures [Papers No. 68].

From Officiating Under-Secretary to Government, Bengal, No. 1980—1024L.R., dated 3rd December, 1884, and enclosures [Papers No. 69].

From Secretary, Bhagulpore Landholders Association, No. 52, dated 3rd December, 1884, and enclosures [Papers No. 70].

From Officiating Under-Secretary to Government, Bengal, No. 2085—1075L.R., dated 10th December, 1884, and enclosures [Papers No. 71].

From Bábú Bepin Behari Sircar, dated 1st December, 1884, and enclosure [Papers No. 72].

- From Officiating Under-Secretary to Government, Bengal, No. 2091—1077 L. R., dated 10th December, 1884, and enclosures [Papers No. 73].
- A Review of the Procedure sections of the Bill (No. II), and a few suggestions for the simplification of Procedure, by Bábú Mohiny Mohun Roy [Paper No. 74].
- From Secretary, Behar Landholders Association, dated 13th December, 1884, and enclosures [Papers No. 75].
- From Secretary, Central Committee of Landholders of Bengal and Behar, No. 123, dated 29th December, 1884, and enclosure [Papers No. 76].
- Memorial of Khás Mahál Raiyats of Government Estate Jalamuta, Villages Paikbhera, Har-masah, &c., District Midnapur [Papers No. 77].
- From Bábú Sarat Chunder Mukhopadhyaya, to Private Secretary to His Excellency the Viceroy, dated 27th December, 1884, and enclosure [Papers No. 78].
- From Bábú Rajkissore Mukerjee, Utterpara, dated 8th January, 1885, and enclosure [Papers No. 79].
- From the Maharájá of Burdwan, No. L.9—301, dated 7th January, 1885, and enclosure [Papers No. 80].
- From Officiating Registrar, High Court, Calcutta, No. 126, dated 14th January, 1885, and enclosure [Papers No. 81].
- Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 111, dated 19th January, 1885, and enclosures [Papers No. 82].
- Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 113, dated 17th January, 1885, and enclosures [Papers No. 83].
- From Bábú Ketaki Bilas Rai, Kirtipur, Jessore, dated 26th January, 1885, and enclosure [Papers No. 84].
- Endorsement by Officiating Under-Secretary to Government, Bengal, No. 327-128 L.R., dated 31st January, 1885, and enclosures [Papers No. 85].

Memorandum of dissent from the decisions of the Select Committee on the Bengal Tenancy Bill.

IN signing the Report of the Select Committee on this Bill I wish to place on record my opinion that, having regard to all that has been elicited by the Commissions and enquiries of the last six or seven years, the Bill inadequately meets the necessities of the case which called for legislation. It is unsatisfactory, in so far as it gives insufficient protection to all raiyats against excessive enhancements of rent, and no real protection in other directions to the non-occupancy-raiyat.

To enter briefly into details I note, *firstly*, that the change under which the limit of the "village" has been substituted for the "village or estate" in section 20 of the Bill, will seriously affect the fixity of the "settled" raiyat's tenure. As originally drawn, "estate" formed part of this section, and its adoption as part of the definition had the sanction of the Secretary of State. In that form no doubt the definition met with considerable opposition in Committee, but I was prepared to meet objections by accepting an arrangement whereby a permanent cultivator, when willing to pay a fair rent, should carry his *status* as a settled raiyat to any land in that portion of his landlord's estate as might be situated in the pargana or fiscal circle in which the raiyat resided.

Secondly, I have opposed the "prevailing rate" as a ground of enhancement. There is ample evidence in the recorded literature on the subject to shew that such a thing as a "prevailing rate" of rent does not exist in any part of the country. Under the law, as it stands, it is admitted that the zamindárs have been unable to establish a "prevailing rate" in their suits for enhancement on this ground; and the consequence was that, failing proof, raiyats, and I am afraid that the Select Committee, though animated by the very best intentions, has not provided any positive safeguard against the mischievous tendencies to which I have referred. On the contrary, their proposals on the subject will probably facilitate enhancement up to the *average* of rates prevailing in the village, and will thus place a much stronger power for enhancing rents in the hands of the zamindárs than the present law permitted or ever contemplated.

Thirdly, the Bill as it leaves the Committee almost entirely abandons the non-occupancy-raiyat and the under-raiyat. They are practically unprotected, and such a result appears to me to be contrary to the intention with which the legislation on the rent question was undertaken, and contrary to the conclusions of authoritative opinion that the growth of the right of occupancy, as tending to establish a substantial peasantry, should be encouraged and advanced.

Lastly, the loss of the limitation of the maximum rent to one-fifth of the gross produce is a serious loss, specially as it affects the non-occupancy and under-raiyats. The pro-

posal to limit rents to a fraction of the gross produce in staple food-crops did not originate with me, though I accepted it and suggested the particular fraction of one-fifth. Indeed, had my views been approved in regard to the abolition of the "prevailing rate" as a general ground of enhancement, and in regard to the protection of the non-occupancy-raiyat, I should not have placed the stress I now do on the gross-produce limit. But as the majority of the Select Committee have rejected, one by one, every effectual check on rack-renting adopted by the Government of India in the original Bill, as they have also rejected the equivalents for those checks advocated by me without themselves proposing any substitutes, it seemed to me that the only hope of escape from the danger of a Bill for the unlimited enhancements of rent lay in a recurrence to the proposal made by the Government of India in their first Bill to limit rents to a share of the gross produce. I am, of course, conscious of the objections to which such a gross-produce limitation is open as a matter of theory; but theory and practice do not always coincide, and practically a gross produce limit on rents is indigenous to this country, had been asked for by the landlords, and recommended by the ablest among my predecessors. My views on the subject are not shared by a majority of the Committee, and the proposal fell to the ground. I have always admitted that in some Bengal districts the tenantry can well afford to pay higher rents, and I have endeavoured to provide landlords with reasonable facilities for enhancement. But in Behar rents are already too high, while there are many parts of Bengal in which rents are also excessive. Taking Bengal and Behar together, I cannot contemplate without anxiety a legislative measure whose tendency is to promote, without an ultimate check, a further increase of those rents.

I had hoped that the legislation now in hand, and which has been the subject of discussion and consideration of no less than four Lieutenant-Governors of Bengal, would have carried with it some measure of finality. In its present outcome it seems to me impossible to accept this Bill as a final settlement of the chief questions connected with a Tenancy Bill in the Lower Provinces of Bengal.

RIVERS THOMPSON.

The 12th February, 1885.

Memorandum of dissent from the decisions of the Select Committee on the Tenancy Bill.

ALTHOUGH I think the Bill as it now leaves the hands of the Select Committee an improvement on the Bill submitted to it for amendment, it still contains certain provisions with reference to which I differ with the majority in opinion, and on these points I would beg to record my dissent.

1. I object to the omission of the words "and the whole or part of it is sub-let" from section "5", sub-section "5". The word should be again inserted or the whole of the sub-section omitted.

Under the Bill a tenure-holder is a tenant "who has acquired a right to hold land for the purposes of collecting rents or bringing it under cultivation by establishing raiyats on it." A raiyat, is a person "who has acquired land for the purpose of cultivating it himself or by hired labour."

I cannot understand on what grounds the majority of the Committee deemed it necessary to over-ride the essential difference in the nature of the two tenancies, and to declare that all persons holding more than 33 standard acres of land shall be presumed to be tenure-holders until the contrary is proved.

To me it appears that the first and only enquiry to be made is whether the tenant cultivates it himself or sub-lets the whole or a portion of it. If he cultivates it himself it should be presumed that he is a raiyat until the contrary is proved. If he sub-lets a portion of it, it should be presumed that he is a tenure-holder, until he proves that he originally acquired the land for cultivating purposes, and that the tenants who hold under him are sub-tenants.

Our efforts in this instance should be confined to strengthening the position of the actual cultivators of the soil.

2. I dissent from the decision of the majority of the Select Committee to omit transferability from among the incidents attached to an occupancy-holding.

I have already exhausted every argument I can think of to induce the Government and the Committee to legalize and control transfer and failed to gain their support, it is unnecessary to recapitulate them here, I will therefore only record my dissent.

3. Section 18, Chapter 3.—The provisions of this chapter should be confined to mocrurree holdings, holdings admitted by the landlord to be held at fixed rents, and holdings the rents of which have been declared fixed in perpetuity under decrees of competent Courts. If this is not allowed, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill in place of sections 12 (3) and 13.

All raiyati holdings acquired for the purposes of cultivation whether held at a fixed rent or at a rent subject to enhancement, should only be used for the purpose for which they were acquired, viz., for the purposes of cultivation, and for the growth of crops. There can be no sufficient reason for allowing an ordinary cultivator to be ejected from his holding if he uses it in a manner to render it unfit for the purposes of the tenancy and at the same time to allow raiyats at fixed rates of rent to do, as they think right with the land even to destroying it whatever the rate of rent may be, whether subject to periodical enhancement or not, the purpose for which the land was originally acquired was the same in both instances and should remain so.

If the provisions of the chapter were confined to admitted rights, the injury to the landlord would be lessened, as they stand in the Bill, in every instance that a landlord sues under section 25 (a), the provisions of this chapter will be pleaded to debar suit.

If the above suggestions were adopted, it would not inflict any hardship on the tenant; if the tenant claiming to hold at fixed rates, but whose rights had not been admitted wished to avail himself of the privileges allowed him under this chapter, all he need do is to apply under section 157, to have the nature of his tenancy declared previous to availing himself of them.

If the operation of this chapter is not confined to mocrurree holdings, and holdings the rents of which have been declared fixed by a competent Court, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill, or the landlord will be compelled to bring a suit to set aside every conveyance in which the holding is incorrectly described as a holding at fixed rates, when he receives notice of transfer.

4. The restrictions placed on voluntary enhancement under section 29, will have the effect of compelling the landlord to exact every pice of rent the law will permit him to demand, it prohibits all enhancement out of court, or it will induce the parties concerned to resort to deception and fraud to evade the payment of the heavy costs entailed upon them in a heavy law suit for enhancement of rents, they will fight it out to the bitter end or lie.

5. Section 35 I consider superfluous we have throughout the Bill directed the Courts to decree only fair and equitable rents, therefore to tell the Courts that they shall not decree unfair and inequitable rents is unnecessary. With an experienced judge it will have no weight but an inexperienced judge may attach undue importance to it and in doing so do substantial injustice to one of the parties concerned.

6. Under sections 48 and 49 we have effected too little for the protection of the sub-tenant, the actual cultivator of the soil.

The sub-tenant holding under a registered lease is, I think, amply protected short of allowing him to acquire occupancy-rights in the land, the Committee have gone as far as it is possible to go without encroaching on the rights of others, but the sub-tenant who holds under a verbal agreement or an agreement which cannot be accepted as evidence under the law is not sufficiently protected. I would wish to see the sub-tenant receive the same protection against hasty eviction, rack-renting, &c., as is afforded the non-occupancy-raiyat under the Bill.

7. Section 50 is an improvement on section 64 of Bill No. 2, but it does not go far enough. I am of opinion that the suggestions made in the Bengal Government letter of September, 1884, that the presumption should run from 20 years previous to the introduction of the suit, should be adopted, my reasons for wishing it so I stated in my dissent on the Bill No. 2, therefore need not repeat them here.

8. The penal clauses 59, 74 and 185 require modification as they stand, they will be harsh in their operation and may be used solely for the purpose of giving the landlord annoyance.

9. Section 89—2 prohibiting the landlords measuring lands oftener than once in ten years will have the effect of encouraging encroachments. As the landlords are prohibited from bringing suits for enhancement oftener than once in 15 years there is no necessity for this prohibition and the right to do so will, in all instances, be useful to them to test encroachments.

10. Section 138 limits the area of the landlords zeraut or home cultivation to all land held by him as such for 12 years continuously "previous" to the introduction of the Act, thereby preventing him from acquiring any more land as zeraut after the passing of the Bill.

It does not prevent his cultivating more land as home cultivation, but if he once lets it out of his possession, lets it to another person for one season, he will lose his rights in it for ever.

I think the period he is required to hold it for, in order so acquire zeraut rights in the land should run for a period of 12 years before or after the Act is introduced.

11. Section 173 contains a new provision in law, it permits a judgment-debtor to recover possession of his holding 30 days after it has been sold by decree of Court by paying in the amount of the decree.

I object to it as I think it will have an effect contrary to what is intended.

It will deter would-be purchasers from bidding, thereby allowing holdings to be sold for one quarter their value.

It will encourage hangers on about the Courts to make speculative purchases.

And last not least it will induce the judgment-debtors to be careless in the due payment of their debts.

T. M. GIBBON.

13th February, 1885.

Dissent.

I REGRET I cannot concur with many of the decisions arrived at by the majority of the Select Committee. It seems to me that we have failed to achieve some of the principal objects of the Bill, and that the modifications which the measure has undergone, whilst securing to the landlords substantial advantages, have left the raiyats as defenceless as before.

The Bill was introduced in Council with certain well-defined objects which were of a two-fold character, namely (1) to give reasonable security to the peasant in the occupation and enjoyment of his land; (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent. In order to attain the first object, it was proposed to make the following changes in the existing system:—

- (1) to extend to permanent cultivators, holding land in a particular village or estate, the right to hold that land on payment of a fair rent;
- (2) to make occupancy-rights transferable;
- (3) to introduce a fixed maximum limit for the enhancement of rents; and
- (4) to provide some efficient guarantee to non-occupancy-raiyats against *arbitrary* eviction and *arbitrary* enhancement of rents. As regards the first object, the proposal, no doubt, has been maintained with some modification. But this has certainly not been the case with the others, and I must confess to a feeling of disappointment at the withdrawal of most of those provisions which were from time to time introduced to secure these objects.

The free transfer of occupancy-holdings was, if I may so call it, the keystone of the measure. The custom had grown up in various parts of Bengal and was gradually extending itself to the entire province. Excepting those places where the presence of a foreign element predominated and caused some degree of friction between landlords and raiyats, the tenants who enjoyed the right of free transfer were admittedly more prosperous than, during the years immediately preceding the introduction of the measure in Council, the evidence in favour of the extension of the right of transferability had accumulated considerably. It was accordingly proposed to give a statutory sanction to that right. With reference to Behar, however, a doubt was entertained by the Government of Bengal, and my own knowledge of the circumstances of that province induced me last session to bring forward a proposal to withdraw Behar from the operation of the provision. That proposal, however, was not approved of, and it was resolved to give the right to all occupancy-raiyats throughout Bengal and Behar. During the present session, the provision has been dropped entirely from the Bill. Whilst agreeing to the advisability of leaving to custom the right of free transfer in Behar, I consider that as regards Bengal it would have a mischievous tendency. In every place, even where the right has been freely exercised, such as the Presidency, Rajshahye, Dacca, and Chittagong Divisions, the custom will be dis-puted, with the result that a large portion of the consideration money will pass either into the hands of the landlords or their servants. It would have been far better to recognize transfer-ability throughout Bengal Proper, subject, if necessary, to the payment by the raiyat of a graduated scale of fees upon the consideration money, than to have left it to custom, of which I fear will henceforth be disputed in every instance, to the serious prejudice of the tenant in the exercise of his right. With the safeguards which the Bengal Government proposed to attach to the recognition of the right in Bengal Proper, no injury to the landholding interests need have been feared. I think the mode in which the question has been discussed and decided is likely to produce mischief. Had the question not been raised, this mischief might have been avoided.

2. From the very inception of the Bill, it was considered necessary to introduce a maximum limit on rents. In many parts of the province it was proved by the stern testimony of facts that the enhancement of rent beyond a certain limit implied starvation to the cul-tivators of the soil, and that any endeavour to exact rent beyond that limit ended in failure to the landlord or distress to the tenant. In the interests of the landholding classes themselves it was proposed to provide a check to the system of rack-renting which many of them were disposed to adopt. The East Landholders Association and the late Bábú Kristodás Pál ment which the zamindárs thought proper to demand, the former one-fifth as the highest limit of enhance-ment to determine what proportion should the raiyat be left in enjoyment of after payment of his rent? If experience and the collective evidence of competent observers are of any account, it is clear that the raiyats in Bengal can hardly pay for rent more than one-fifth of the gross produce without trenching upon the bare means of subsistence. If in some places the *jamdandis* shew a higher rent, the question remains is the raiyat ever

able to discharge his liability? Among other evidence, that recently supplied by the Board of Revenue as the result of its experience of wards' estates furnishes a negative answer to this question. It certainly cannot be the interest of anybody to leave the raiyat a bare sub-sistence. Whatever the proportion it may have been considered desirable to adopt, a gross produce-limit appeared to me the most satisfactory and most feasible of all the proposals brought forward to prevent rack-renting. The adoption of this limit would have also enabled the legislature to give some degree of protection to the large body of non-occupancy and under-raiyats who are now practically left without any protection. The withdrawal of the fractional limit upon enhancements in Court is in my opinion likely to prove injurious to the raiyats.

3. I consider the ground of enhancement on the basis of "prevailing rates" as open to serious objection. It introduces, in the form it has now assumed in this Bill, an entirely novel principle into the law of Bengal. The law has hitherto not recognized enhancements up to the average of rates payable, and it seems to me that the recognition of such a principle is not only dangerous, but, without any correlative ground of reduction, unjust. It will end in screw-ing up rents to the factitious average of a large number of rates, over the correctness or reality of which no individual raiyat has any control, and that average will furnish the basis for a fresh increase until the highest possible rate is reached.

4. Enhancement on the ground of increase in the price of staple food-crops is to my mind economically indefensible. When the price of food-crops increases, the price of other necessary articles also increases. Is it fair or reasonable to constitute a rise in the price of staple food-crops as a ground of enhancement when a hundred other circumstances, like the increasing cost of production, increasing cost of the bare necessities of life, &c., tend to show that the raiyat of to-day in the majority of instances is not a whit better off than the raiyat of twenty years ago? Let us take for example an instance (which is not uncommon in Bengal), of a raiyat whose holding is fit for growing, say cotton, and whose cultivation, owing to a fall in the cotton-market, has diminished in value. As the Bill stands such a raiyat would, notwithstanding his contracted ability to pay enhanced rent, be still liable to enhancement should the price of food-grains have risen. In other words, although he gets less for his crop and has to pay more for his food, he is still liable to have his rents increased. I cannot help thinking that the Select Committee have failed to realize the full effects of this ground of enhancement, and I would strongly urge that the old ground of enhancement on the basis of net values should be reverted to.

5. The Bill provides no efficient safeguard against the ejectment of a non-occupancy raiyat to prevent the possibility of his acquiring an occupancy-right.

6. I am not able to understand the object of the factitious difference which has been created between under-raiyats holding under registered sub-leases, and under-raiyats holding verbally or under an unregistered lease. The system of sub-letting is interwoven with the agricultural economy of the country, and the Committee at a very early stage recognized the inexpediency of introducing any provision in the Bill interfering with it. Considerable protection has been given to planters and capitalists taking lands for purposes of indigo cultivation from the raiyats under registered sub-leases. No protection, however, is given to the mass of under-raiyats. It is said that these may secure to themselves the same rights by simply taking regis-tered leases; but it must be remembered that the majority of the under-raiyats are poor to the verge of starvation, and that they are not in a position to demand registered leases.

7. I demur, also, to the provision embodied in the Bill regarding *utbandi* tenures. This provision seems to me to be in direct contradiction to the views of the Secretary of State and the Government of India, that "shifting" should be put an end to. The *utbandi* provisions recognize and legalize the eviction of a raiyat at the mere caprice of the landlord. I had no objection to the proposals of the Bengal Government, to allow land held on the *utbandi* system to be a matter for contract; but I have strong objections to the *utbandi* raiyat being left, as this Bill leaves him, without any practical protection whatsoever.

These are the main and essential points on which I differ from my colleagues; but there are various minor details with reference to which, also, I cannot agree with them.

8. On the whole I regret to think that a measure from which so much was expected should prove so inadequate in its general result. The guarantees to which the raiyats had laid claim, as well on constitutional grounds as on those of equity and expediency, have been either withheld or only partially conceded. Between contending claims the Bill does not in my opinion strike a just balance, and it seems to me that unless some further modifications are made in the direc-tion which I have indicated, it will not answer the purpose of definitely setting at rest the dis-putes between landlord and tenant in Bengal.

AMIR ALI.

MINUTE.

I signed the preliminary Report of the Select Committee last year, on the understanding that I postponed the expression of my opinion on certain questions until the submission of the final Report to Council. Some of the sections to which I then objected have, during the subsequent revision, been removed from the Bill, others have been modified, and I now confine my remarks to four principal points. I desire, however, at the same time to record in general terms my hesitation in regard to several other provisions in the Bill. For the Select Committee has been asked to deal with the entire relation of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land-right in Bengal; for in Bengal almost alone among the Provinces of India, there is no central department of statistics, and until quite recently there was no agricultural bureau, which might in some measure have compensated for the evidence of witnesses heard in the Districts. But, while I regret the defective method of enquiry originally adopted, I acknowledge that, at the stage which the measure had reached when the Bill came before the Select Committee, the time for an effective local enquiry had gone past. The Committee heard the views of several gentlemen in Calcutta on two minor points, but no body of evidence has been collected in the Districts and subjected to cross-examination. The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.

Coming to specific grounds I object, in the first place, to the application of one set of minute provisions for the regulation of rent, to two Provinces in which the relation of landlord and tenant is so widely dissimilar as in Bengal and Behar. [Section 1 (3).] The statements before the Committee show that in Behar, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator; while throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the fundamental differences between Bengal and Behar find no recognition in the Bill. The effect of this has been, in my opinion, to increase the difficulty of making effective provision for either Province. Thus in regard to perhaps the most important question dealt with in the Bill, namely, the restrictions to be placed on enhancement of rents, the Bengal Government declared that to limit rents to one-fifth of the gross-produce was a necessity for Behar, while the imposition of that limit was found indefensible for Bengal. The one-fifth limit has accordingly been dropped, and minor restrictions have been introduced. It seems doubtful to me whether some of these minor restrictions do not go further than is warranted by the facts in Bengal; and it is more than doubtful, considering the statements made on behalf of the Bengal Government, whether these restrictions will meet the necessities of Behar.

I object, in the second place, to the discouragement which the Bill places on the reclamation of waste lands by proprietors at their own expense. Important provisions in the Bill rest on considerations arising out of the pressure of the population on the soil, and on the necessity of protecting the cultivator against the monopoly in land which is thus conferred on the landlord. The most direct remedy for this state of things is to increase the area available for cultivation. Yet the Bill not only gives no new inducement to landholders to reclaim wastes, but places discouragements, which did not exist under the previous law, upon their doing so. As regards lands brought under cultivation by means of reclamation leases, the landlord will be in a rather worse position than before; for the occupancy-right will now commence to accrue to the tenants during the currency of such leases, and it may be enforced immediately on their expiry. As regards lands brought under cultivation by the landlord himself, by means of hired labour, he is in a much worse position than before. Henceforth the landlord, who cuts down heavy jungle, or digs tanks, or drains swamps at a large outlay, by means of his own servants, will, under the provisions of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land: if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-rights immediately begins to accrue. In no case will the landlord be permitted, by special contract in his lease, to bar the growth of occupancy-rights in land which he has reclaimed by his own servants at his own expense. Considering the pressure of the people on the cultivated soil, and the existence of large un-reclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land. Considering that the Bill, in order to deal with the evils of over-population, restricts the former rights of the landholders, I think that such discouragements are not only impolitic but unjust. I purpose, therefore, to move amendments in Council, which will have the effect of protecting a landlord who reclaims at his own expense *bona fide* waste lands, against the

growth of occupancy-rights in those lands during a reasonable period to recoup his outlay, say for thirty years.

In the third place, I object to certain of the provisions for the enhancement and reduction of rents on the ground of a rise in prices [section 39]. The Bill substitutes for an old and a scarcely workable ground of enhancement, namely, a rise in the value of the produce, a much more simple ground, namely, a rise in the prices of staple food-crops. The latter contention would in any case be more easily susceptible of proof. But the Bill further simplifies the burden of proof, by directing that the Courts shall be guided by certain lists of prices to be published in the official Gazette. These lists are to be of two kinds; one set of lists are to record current prices in the future, the other set refer to prices in the past. A new and sharp weapon of enhancement is thus placed in the hands of the landlord; but, subject to conditions on its application imposed by the Bill in favour of the tenants, I believe it to be a fair ground of enhancement. The weapon is two-edged; it cuts against the tenant as a means of enhancement if prices have gone up, and against the landlord as a ground for the reduction of rent if prices have gone down. It is obvious, however, that as the Bill entrusts the Local Government with the duty of supplying the evidence, it should take reasonable guarantees that the evidence thus supplied shall be good evidence. The draft Bill of last year provided that all the price lists officially published, should be conclusive evidence. The Bill as now finally settled directs that the Courts shall presume that the facts stated in the lists are correct unless and until it is proved that they are incorrect; thus giving the value of presumptive evidence to both the sets of lists.

I believe that the lists to be prepared for current prices in the future, under the safeguards provided by the Bill, will merit this degree of credibility: but that the lists, purporting to record prices in the past, do not. This latter class of lists will have to be compiled, *ex post facto*, for a period running back ten or fifteen years, from certain price-lists which were collected at a time when adequate safeguards were not taken to secure their accuracy, and when the effective safeguards now provided by the Bill for future price-lists were not thought of. At the period of their collection, moreover, it was never contemplated to give to them the value of conclusive or presumptive evidence in the Courts. I have examined some of the old lists. I do not think that they afford a safe basis for a recompilation which should be accepted by the Courts either as conclusive or presumptive evidence of prices in the past. They are valuable concurrent evidence, taken together with the evidence to be derived from the business books of grain-merchants, zamindars, and dealers in export produce. I do not think that lists to be mainly compiled from them should now have a greater weight than the original lists would have had under the Evidence Act. I propose, therefore, to move an amendment which will have the effect of leaving the value of presumptive evidence to the lists prepared for current prices in future, but withdrawing that value from the lists to be compiled for prices in the past.

In the fourth place, while not dissenting from the powers granted by section 112 to the Local Government, in certain exceptional circumstances, to reduce rents, I wish to place on record the hesitation with which I have agreed to that provision. The exceptional circumstances contemplated are when the Government has to intervene between landlord and tenant, "in the interests of public order or of the local welfare." On the one hand, the experience of the past, and the statements which have been made in regard to the future, seem to render it expedient that this power should, under due safeguards, be accorded to the Local Government. The Bill, in requiring that the previous sanction of the Governor General in Council must be obtained, provides due safeguards. On the other hand, I do not think that a general disruption of contracts between landlord and tenant, such as is involved by a reduction of rents on a large scale, should be effected by any authority of a less deliberative character than the Legislature itself. If, therefore, it ever becomes necessary to apply this clause to a considerable area, I hope that the process will be conducted under, or receive effect from, an express Act. It is in this hope that I have agreed to the provision in the present Bill.

I have thought it my duty to place on record objections to specific provisions of the Bill, and to mention in general terms my uncertainty in regard to several important classes of rights with which it deals. I ought, therefore, to state clearly that I believe the Bill, taken as a whole, makes substantial improvements on the existing law, and that, where it alters that law, the changes are, with certain exceptions, expedient and just.

W. W. HUNTER.

Dissent.

I DISSENT from this Report, because I am not satisfied that the Bill, as amended by the Select Committee, affords that effectual protection to the raiyat which the measure, as introduced into the Council, was intended to give. What the nature of that protection was, and on what grounds it was thought necessary, can readily be learnt from the Statement of Objects and Reasons, and from the speech delivered in Council on the 2nd March, 1883, by the Hon'ble Member who introduced the Bill. It was the intention of the Bill to secure to the occupancy-raiyat fixity of tenure, fair rent and free sale. The Bill accordingly declared, *first*, that every settled raiyat should have a right of occupancy throughout the village or estate in which he held land at the date of the introduction of the Bill; *secondly*, that his rent should never exceed one-fifth of the value of the gross produce of the land in staple crops; *thirdly*, that he might transfer his holding at his pleasure, subject to a right of pre-emption on the part of the landlord, and that the landlord's purchase of the holding should not extinguish the occupancy-right, but that the right should revive as soon as the land was let to another tenant. The interests of the non-occupancy-raiyat were not less carefully guarded. "Tenants of this class", said the Hon'ble Member who introduced the Bill, "should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and the acquisition by them of the status of settled raiyats should be facilitated in every possible way." The Hon'ble Member quoted with approval a remark made by Sir Ashley Eden, that "no raiyat should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent". In accordance with these principles, the Bill prescribed a maximum limit of rent for the non-occupancy-raiyat; it did not allow him to be ejected on the ground that the term of his lease had expired; and it provided that, if he were ejected for refusing to agree to an enhancement demanded by the landlord, he should be entitled to receive compensation for disturbance.

Such was the Bill which was introduced into the Council, and which was referred to the Select Committee. It was drawn with a full recognition of the character and the gravity of the evils which it was designed to remedy. "What we hope for" (said the Hon'ble Member who introduced the Bill) "is, first, that a stop may be put to the vigorous efforts which are at present being made by landlords in some parts of the country to withdraw land from the operation of the occupancy-right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined; and *secondly*, that where occupancy-rights do, as a matter of fact, exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat". In speaking of the necessity for legislation, and of the kind of legislation required, the Hon'ble Member re-produced a striking passage from the Report of the Famine Commission. "We have received" (the Famine Commissioners wrote) "a large amount of evidence, remarkable in its weight and unanimity, to the effect that in the Bengal Province the relations of landlord and tenant are in a specially unsatisfactory condition. We feel no doubt that the condition of the rent-law and the way in which it is administered in Bengal are a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, owing mainly to this strain of famine. We can feel no doubt that in all the provinces of Northern India, and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. * * * It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy-class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owning no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties 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 the widening the limits of that security, together with the protection of the tenant-at-will in his just rights, and the strengthening of his position by any measure that may seem wise and equitable."

These, I repeat, were the principles upon which the Bill was based, and these objects would have been effectually secured by the Bill as originally introduced into Council. In the amended Bill, fixity of tenure is weakened by the limitation of the definition of a settled raiyat to the village alone; fair rent is deprived of the safeguard (the only ultimate safeguard) of a maximum limit beyond which rent can never be enhanced; and free sale has disappeared altogether from the Bill, or survives only in a section which saves customary rights. The non-occupancy-raiyat has fared even worse, at the hands of the Select Committee, than his occupancy brother. The gross produce limit of his rent is struck out; he is declared liable

to ejection on the ground that the term of his lease has expired; if he refuses to agree to any enhancement demanded of him, he cannot claim a judicial rent for a longer period than five years; and he may be ejected at any time before he has acquired a right of occupancy without obtaining any compensation for disturbance.

It will possibly be said that these alterations, sweeping as they may seem to be, are counterbalanced by other changes which have been made in the Bill, and that, when the account on both sides is fairly summed up, it will be seen that the objects of the original measure have substantially been attained. Let us consider how far this is the case as regards each of the two great classes of raiyats, and, first, as regards the occupancy-raiyat.

It must be admitted that transferability, or the right of free sale, is not an essential provision of the Bill. I believe that (in Bengal at any rate) it might usefully and safely have been conceded; but there were arguments in favour of a different conclusion, and it was open to the Select Committee to decide that transferability would not have the effect of either strengthening or extending the occupancy-right. I do not therefore desire to lay any stress on the abandonment of this provision.

With regard to fixity of tenure, the elimination of "the estate" from the definition of the settled raiyat is, I think, much to be regretted. If no middle course could be found, the Committee had to decide between a definition which might, in a few exceptional cases, entail a slight hardship on the landlord, and a definition which could easily be worked so as to produce, in a multitude of cases, a grievous wrong to the tenant. On this point the decision of the Committee was, in my opinion, a lamentable mistake. At the same time I admit that, as regards fixity of tenure, the position of the occupancy-raiyat is somewhat stronger under the amended Bill than under the present law, and that this object of the Bill has been partially, though still imperfectly, attained.

Fixity of tenure, however, without fair rent is worse than useless, and in the matter of fair rent the Bill signally fails to afford the occupancy-raiyat reasonable protection. He is protected, under the existing law, by the fact that the enhancement provisions of the Act now in force have proved to be unworkable. Such a condition of things is a public scandal, and the Select Committee rightly resolved that just claims to enhancement should no longer be baffled by the uncertain wording or the complicated conditions of the law. But the Committee seem to have overlooked the danger of enlarging the facilities for the use of the enhancement sections without also taking precautions to guard against the abuse of them. The Bill puts enormous powers of enhancement into the hands of the landlords. The sections relating to enhancement on the ground of the prevailing rate have been re-cast in a form which will practically allow the landlord to raise the rent of every raiyat in the village to the highest rate which he can persuade or compel any one to pay. In suing for enhancement on the ground of a rise in prices, the landlord will find the evidence, which it has hitherto been impossible for him to adduce, provided by Government ready to his hands. He will have nothing to do but to lay before the Court the official price-lists, and a decree in his favour will follow as a matter of course.

The feeble palliatives which the Bill provides are impotent to restrain the evils which the working of the enhancement sections is calculated to produce. It is declared that no enhancement shall be decreed in excess of what is fair and equitable; that the rent of a raiyat shall not be enhanced at intervals of less than 15 years; and that, in extreme cases, the Government of India may interpose, and may depute an officer, not, as usual, to enhance rents, but to reduce them. The first of these provisions may occasionally be of use in tempering the rigour of the law, but it is of too vague and indeterminate a character to afford any adequate protection. The second will make the pauperizing process more gradual, but not less certain or complete. And what shall we say of the third? Where is the wisdom of enacting a law the natural operation of which may produce a state of things which will require the law to be not merely suspended, but reversed? But in truth what is most to be feared is not such outrageous oppression as would call for the interposition of Government under this special provision of the Bill. What is most to be feared is that the gradual and steady operation of the enhancement sections will be a permanent bar to all improvement in the condition of the occupancy-raiyats. They will have no inducement to raise larger crops or to cultivate more valuable products, for they would be selling for the benefit, not of themselves but of their landlords. The machinery of this Bill they can neither resist nor evade.

These evil consequences would have been avoided, if the Select Committee had accepted two of the recommendations of the Government of Bengal. That Government desired, first, to restrict enhancement on the ground of the prevailing rate to those individual cases which it was originally intended to meet, and secondly, to prescribe an absolute limit beyond which no claims to enhancement should be allowed. The Government of Bengal saw that, if the landlord's demand were restricted to one-fifth of the gross produce in staple crops, rack-renting would be effectually stopped, the cultivation of the more valuable crops would be encouraged, and the agricultural advance of the country would be ensured. Unhappily, these views were not accepted by the majority of the Select Committee, and the amended Bill leaves the occupancy-raiyat without any adequate security in the matter of fair rent.

With respect to the non-occupancy-raiyat, the original Bill was designed to protect him against unreasonable exactions, and to facilitate his acquisition of the right of occupancy. I have shown what stress was laid on these objects, and especially on the second of these objects, by the Famine Commissioners and by the Hon'ble Member who introduced the Bill. It is therefore somewhat remarkable that the amended Bill leaves the non-occupancy-raiyat entirely at the mercy of his landlord as regards his rent. When first admitted to occupation he must pay such rent as may be agreed upon between himself and his landlord. It is true that, if he is afterwards called upon to agree to an enhancement, he may demand a judicial rent for a term of five years. But this provision will be inoperative, for the raiyat will be aware that, unless he comes to terms with his landlord in the matter of rent, the landlord will not formally demand an enhancement, but will sue to have him ejected. Those who know the peasantry of Bengal know that a raiyat will agree to pay any rent rather than face the alternative of ejection from his holding. The provisions of Chapter VI of the Bill will therefore enable the landlord to exact from the non-occupancy-raiyat the highest rent which the land can possibly bear, a rent which will leave the tenant nothing more than a bare subsistence: and the demand of enhancement may be repeated year after year.

It is remarkable, as I have observed, that the amended Bill affords the non-occupancy-raiyat no protection as regards his rent. But it is still more remarkable that it does nothing to facilitate his acquisition of the right of occupancy. It provides, it is true, that he shall not contract himself out of the power to acquire the right. But this stipulation is useless so long as the Bill affords a simple and effectual means of ensuring that the right shall never accrue. The right can be acquired only by 12 years' continuous occupation of village-land. The Bill leaves it in the power of the landlord to rack-rent the non-occupancy-raiyat during eleven years, to evict him in the twelfth, and then to re-admit him and begin the process again. In the populous parts of the country, the raiyat, who cannot live without the land, will have no resource but to submit.

Can it be alleged that such provisions as these redeem the pledges made when the Bill was introduced, or place the non-occupancy-raiyat in the position which he may equitably claim to hold? What was his status under the Regulations of 1793—the contract to which the landlords and their advocates so continually appeal? He was entitled (as Mr. Justice O'Kinealy has shown) to hold at the customary rate, and was not liable to eviction, except for non-payment of rent. What is his status under this Bill? He is a mere tenant-at-will, with absolutely no rights beyond those which his landlord may be pleased to allow him. It may not be possible to revert at the present day to the conditions of 1793, but at least it is reasonable to ask that the legislation of 1885 shall not place the non-occupancy-raiyat in a worse position than he held in 1859.

I cannot admit that there is any force in the plea that the landlords, as a body, are not likely to strain to the utmost the powers given them by the Bill. The legislature is not justified in putting one class of men at the mercy of another class, on the chance that the latter will use their irresponsible power with moderation. And I must add that I feel no assurance that, as regards the accrual of the occupancy-right, these powers will be moderately used. I have already quoted the words in which the Hon'ble Member who introduced the Bill referred to "the vigorous efforts now being made by landlords to prevent the natural growth of occupancy-rights". There is overwhelming evidence before the Council to show that this feeling among the landlord class is widely spread and deeply seated. I apprehend that landlords will not fail to use largely the opportunities which this Bill will give them. They will not merely prevent the growth of the right over lands now held by non-occupancy-raiyats, but, as occupancy-holdings from time to time fall into their hands by death, abandonment or surrender, they will treat the new tenants of these holdings in the same manner. "There could be no greater misfortune to the country", said the Famine Commissioners, in a passage which I have already quoted, "than that the numbers of the occupancy-class should decrease". The provisions of the amended Bill seem to me to threaten the country with this misfortune.

For these reasons I am unable to assent to the Report, or to regard the Bill, in the form which it has now assumed, as an adequate and final settlement of the questions raised in this great controversy. If the Bill is to be accepted, it must, I think, be accepted only as an instalment of the legislation necessary to place the relations of landlord and tenant in these Provinces on a secure and satisfactory basis.

H. J. REYNOLDS.

Minute of Dissent.

The present rent law has been in operation for the last 25 years. One would have thought that legislation which aimed at an amendment of that law would be directed to such defects and objectionable provisions in it as judicial administration during this long period had brought to prominent notice. But this is far from the actual state of things. Upon one point, indeed, there was a consensus of opinion. The Government and the zamindars alike were agreed that the present procedure for the recovery of rent was lamentably defective. So acutely did the Government feel the difficulty that they caused special enactments to be passed by the Local Council for securing for themselves a summary procedure for the recovery and settlement of rent in their own estates, while the zamindars were left to follow the procedure which Government in their own case were compelled to abandon. When, again, the obligation of collecting the road and public works cesses was imposed upon the landholders, distinct promises were made to them that they should obtain statutory facilities for the recovery of rent by suit in Court. And when two Bills were introduced for the purpose in the Local Council (and neither of them was carried through) it was observed by the President from his place in the Local Council that "only the procedure sections (those for the more effective realisation of rents) should be proceeded with." So far, therefore, the very facts, which point to legislative action clearly show that there was no necessity for a substantive amendment of the Rent Law. There was besides the unwarrantable Proclamation issued by Sir George Campbell in 1872, setting forth that "it is perfectly lawful to unite in a peaceable manner to resist any excessive demands of the zamindars; but it is not lawful to unite to use violence and intimidation." For, the Pubna disturbances which occurred about this time, and the significant declaration of the raiyats that they had become the direct tenants of Her Majesty showed not that they were rising in arms against a Government which they meant to condemn as unmindful of their requirements, but that they considered themselves powerful for the assistance they had secured and that they were possessed of the upper hand over their landlords to whom they were liable for arrears of rent. In fact, before the Report and draft Bill of the Rent Commission were published in July 1880, no complaint was made on behalf of the raiyats about the harsh operation of any of the sections of the law and no suggestion for a revision of its fundamental principles emanated from any judicial officer. On the contrary, Sir Barnes Peacock had expressed as his decided opinion that the occupancy section was operating unjustly against the legitimate interests of the landholders and that it should be abolished. And it would be extraordinary to treat Sir Barnes Peacock's recommendation or the Government promise of a summary procedure for the recovery of rent as evidence of necessity or justification of a Bill like the one before Council which, in our opinion, makes serious inroads upon the ancient rights and privileges of the landholders. The draft Bill of the Rent Commission was based almost wholly upon theory and speculation, and its many innovations have only been shown up but never proved justifiable in the different stages through which it has since passed. In the meetings of the Select Committee, on which we had the honor to sit, the authority of the Rent Commission was invoked in support of several of the provisions of the revised Bill; in some cases the opinions of the Bengal Government contained in their letter of the 15th of September last was appealed to; in some the opinions submitted by public officers on the requisition of the Bengal Government were pressed into service; and in others again, it was advanced that it would be unwise to disturb the resolutions passed by the Committee last year. Authority ranging under one or other of these heads was no doubt forthcoming in support of the different sections of the revised Bill, but we do not see how this could be convincing to the Legislature in the absence of evidence duly tested by cross-examination by the members of the Select Committee. The advantages of cross-examination are sufficiently well-known and it would certainly be no disrespect to the most talented person or the best qualified expert if a man of inferior ability sought from his place in the Supreme Legislative Council of the country to satisfy himself by such orderly enquiries as happened to suggest themselves to him. And until such opportunity is offered to the most junior member of the Council, its deliberations must remain very unsatisfactory to itself and to the outside public. The private opinions of even judicial officers, when not confined to experiences of the actual operation of particular sections of the law, do not possess much value, and it would be dangerous to introduce new provisions in a difficult branch of the law on the basis of untested opinions of subordinate officers. When a learned judge of the High Court reads the Regulations to mean that "no lease was valid till it had been submitted to, and approved by, the Revenue Authorities;" and when another learned Judge of the High Court adduces the passage in Regulation II of 1793, viz., "the property in the soil was never before formally declared to be vested in the landholders" as "conclusive on the point that the soil was not the property of the zamindars," we believe no apology is needed for our not placing implicit faith in the extra-judicial opinions of distinguished officers of Government. As regards the condition of the people and the necessity of radical changes in the law, in other words, the policy of the measure, if high officers of State, judicial and executive, may speak with any authority, it is no small accession of strength to those who are opposed to the main principles of the Bill to be able to say that a majority of Divisional Commissioners and not a few District Judges, share in their views.

But these opinions and the opinions of experienced Subordinate Judges on the operation of the different provisions of the present law have in many cases been undervalued by the majority of the Select Committee and consideration shown for the opinions of much less experienced officers upon a perfectly unsupportable estimate of personal weight. We shall have occasion further on to refer to some of these opinions. As regards the general features of the Bill it appears to us that vested rights of landholders have been interlarded with without the sanction either of juridical principles or the formally declared authority of the Executive Council; that rights have been created in favor of one class of subjects and at the uncompensated cost of another class which, to say the least, are of dubious benefit to the country at large, and looking to the large question of growth of population and famine difficulties the changes are simply calculated to augment, rather than relieve, the pressure on Government. The changes proposed to be introduced by the Bill will have the further effect of making, in opposition to well-established principles of Government the judicial administration subordinate to the Executive authorities in many respects. And lastly, the changes alluded to are sure to bring about such an extent of litigation and uncertainty in dealings out of Court, that we shudder to think of the subject barely as inhabitants of the country and apart from our interests as landholders and from our feelings as the representatives of the landholders of Bengal and Behar. By a consensus of opinion, official and non-official, the result of the operation of the present law has been to place the whole body of raiyats in a condition of prosperity superior to what they previously enjoyed, and to what is enjoyed by the corresponding classes of people in any the smallest corner of this immense continent of British India. There would be no objection to that condition being made still better if it could be done without interfering with the welfare of the other classes. But we strongly believe that far from benefiting the tenantry the measure, in its present shape, if put in operation, will effect their ruin as a class, or in any case of the honest and poorer portion of them, by endless and harassing litigation. The very discussion of the measure upon the lines disclosed in the Bill is fraught with dangerous consequences upon the rural economy of the country and the firm social relations between class and class of the subject community, and between all classes and the Government at the head. We shall now proceed to examine some of the objectionable provisions of the Bill in detail.

Section 5. (5)—The rule that whenever the area of a holding exceeds one hundred bighás, the raiyat shall be presumed to be a tenure-holder, is arbitrary and opposed to fact. There are many districts in which holdings, each exceeding a hundred bighás, are not uncommon, but the tenants thereof are raiyats all the same. As no written engagements are usually exchanged, landholders will find great difficulty in rebutting the presumption which this clause will raise, while on the other hand the divisions and sub-divisions created by Hindu and Muhammadan rules of succession will ere long present the spectacle of tenures comprising of only 20 or 30 bighás of land cultivated by the holders thereof.

Sections 8 and 36.—The power given to the Court to direct in the case both of tenure-holders and raiyats, that the enhancement of rent shall be gradual, is novel. As the enhanced rent represents what the landlord is entitled to get, and what the Court considers to be fair and equitable under the circumstances of the case, the provision in question is wholly indefensible. Lord Bramwell truly observed with reference to this provision:—"Now what consideration would influence the Court; I do not know. whether if the tenant had got half a dozen children it would be a hardship upon him to have his rent suddenly enhanced I do not know. We do not see how that can be taken into account, indeed, what could be taken into account really under such a clause as that."

Sections 9 and 37.—The change of the minimum period from 10 to 15 years for which an enhanced rent should obtain currency, is equally arbitrary. Both in the draft Bill of the Rent Commission and the Bill introduced into the Council, the period was 10 years. Although landholders are lawfully entitled to claim enhancement whenever there is a rise in the value of produce and consequent depreciation of the exchange value of money, the limitation of 10 years would be an effectual check to oppressive repetitions of claims for enhancement, but considering the strides the country is daily making in material progress the extension of the period is wholly unwarrantable.

Section 18.—The provision to extend to a raiyat holding at a rent or rate of rent fixed in perpetuity the same rights of transfer and succession that belong to a tenure-holder is wrong in principle. The same considerations which have induced the committee to expunge the sections regarding free sale of occupancy-rights hold good in the case of these raiyats as forcibly as in the case of other occupancy-raiyats. The landholder's objections to a free sale no less than economic considerations in the interests of the raiyats do not lose a particle of their force, whether the raiyat is protected from enhancement or he is liable to pay a fair and equitable rent. The practical operation of the section would, moreover, be productive of the greatest confusion. Every raiyat will claim to hold at a rent or rate of rent fixed in perpetuity, as by so doing he would not only secure to himself a right of free sale, but also protect himself from the conclusion that his rent is liable to enhancement. It would be suicidal on his part to behave himself otherwise than as a raiyat contemplated by this section and thus without any struggle with his landlord to confess himself a raiyat whose rent is liable to enhancement. But what is the Registering Officer, the Court and the Collector to do when a raiyat applies under Chapter III for the registration of a transfer of his holding? Is the Registering Officer or the Collector to enquire and decide in every such case whether the holding is protected from enhancement, or is he to exercise an arbitrary discretion in the matter? Again, is the section to apply to a

raiayat who holds at a rent or rate of rent fixed in perpetuity, but whose rent has nevertheless been enhanced by reason of improvements made by his landlord or by reason of his having been found in possession of more land than what he pays rent for? The difficulty would, to a certain extent, be remedied if it were provided, that the provisions of Chapter III should be made applicable only to those raiyats whose rents are protected from enhancement by a registered lease or judicially declared title.

Section 20 (5).—This sub-section provides that for one year after a man has ceased to hold any land as a raiyat in a village he shall continue to be a settled raiyat in that village. This is wholly anomalous. A man cannot have ceased to be a raiyat and still continue to be a raiyat at one and the same time. The provision contained in Section 87 in respect of apparent and not actual abandonment would be a sufficient protection to the raiyat in cases contemplated by this sub-section which involves a contradiction in terms.

Section 20, Sub-section 7.—The rule of presumption created by this sub-section is a downright perversion of the law of evidence. Nothing is more easy for a raiyat who has held land for 12 years than to prove his possession by the production of his rent-receipts. It is not altogether an easy matter for the landholder to prove the negative. Even supposing that there has been no change of hands in the proprietary title, a landholder would be unable to prove his papers if within 12 years there have been changes, as there frequently are, by deaths, dismissal and otherwise, in his collecting agency. The difficulty would be unsurmountable in the case of auction-purchasers who would have no means whatever at their disposal for rebutting the presumption.

Section 21.—The provision contained in sub-section 1, to the effect that a settled raiyat shall have a right of occupancy in all land for the time being held by him cannot be supported on any considerations which justify the accrual of a right of occupancy. It is no reason that because a man has a right of occupancy in a certain plot of land that the right should extend by possession for a single day to every plot of land that might be lot to him. This is directly opposed to the Despatch of the Secretary of State. It is, moreover, a provision which will act injuriously on the settled raiyats themselves. They will hardly get new lands for cultivation which landholders will take care to let to non-occupancy raiyats and strangers with a view to prevent the accrual of a right of occupancy.

Section 21 (2).—The effect of the operation of sub-section (2) would be to give a raiyat a right of occupancy in land which he has held "at any time between the 2nd day of March, 1883, and the commencement of this Act," although such land might have passed to the possession of the landholder or another raiyat by abandonment, surrender or transfer at some time within that period. Nothing could be a more fruitful source of litigation.

Section 22, Sub-section 1.—This sub-section introduces the doctrine of merger in a matter relating to landlord and tenant not for the purpose of preventing in the spirit of the Ruling reported in 10 Indian Law Reports, Calcutta 45, the acquisition of a right within a superior right, but for the purpose of merging an existing right in the superior right. For reasons explained by Sir Barnes Peacock in a case reported in 10 W. R. 15, this is quite opposed to the system of land-tenures and the condition of the country. The provision is the more objectionable as it saves the right of third parties in the land. The landholder would, therefore, get the land which comes to his possession by purchase, ejectment, abandonment or surrender subject to all the encumbrances created by the out-going tenant. Provisions have been made, it is true, in subsequent sections for defining what would be deemed to be valid encumbrances in different cases, but the language of this sub-section is absolute.

Section 25.—As the provision for a free sale of occupancy-holdings has been abandoned, this section should provide for ejectment for non-payment of rent. A sale of the holding at the instance of the landholder in execution of a decree for rent would, in every case, heap upon the raiyat additional costs which the sale proceeds might not cover and would thus entail loss both upon the landholder and the raiyat. Ejectment would be a simple and effective remedy to the landholder, while the raiyat would always be able to prevent it whenever his holding is worth more than the amount of the decree.

Section 29 (1).—It might well be taken as an established fact that the price of produce has quadrupled since 1793, and at least doubled within the last 30 years. The productiveness of land has also increased immensely. The restriction which this section imposes upon enhancement by contract to 2 annas in the rupee is therefore most arbitrary. The rule involves a serious infringement of the rights of landholders. The right which the Government of India, when introducing the Bill, assumed it possessed of determining the rates of rent payable by raiyats to their landlord has, I venture to think, been found to be non-existent. A close examination of it will show it to be wholly unfounded. The question, it is well known, engaged the attention of a Select Committee of the House of Commons in 1832, and the conclusion to which they came after a searching enquiry can hardly be ignored at the present moment. They observed:—"unless the Government should either, by public or private purchase acquire the zamindari tenure, it would under the existing Regulations be deemed a breach of faith, without the consent of the zamindars to interfere directly between the zamindar and the raiyat for the purpose of fixing the amount of land tax demandable from the latter under the settlement of 1792-93." The proposed restriction is, however, altogether uncalled for by the circumstances of the country. No evidence whatever has been adduced to show that the raiyats in any parts of these Provinces are rackrented; all the evidence on the contrary goes to show that landholders have been extremely moderate and forbearing in the matter of settlement of rent with their raiyats. The ratio which rent bore to the value of annual produce at the

time of the Permanent Settlement varied according to Sir Jhon Shore from $\frac{1}{2}$ to $\frac{3}{4}$ ths, and although the landholders were clearly entitled to get from time to time such enhanced rents as represented the changed value of money according to that ratio, it is an undisputed fact that the ratio which rent bears to the annual value of produce at the present day ranges in different parts of these Provinces from $\frac{1}{10}$ to $\frac{3}{4}$ ths. Apart therefore from the question of legal rights the restriction in question is a great injustice to the landholders. The effect of the rule on the economic condition of the country would be an unmixed evil. The experience of every country has confirmed Arthur Young's observation that low rents always act as a damper upon industry and ultimately tells seriously upon the condition of agriculture and the prosperity of the cultivating class. The restriction in question will no doubt be felt by the raiyats as a benefit for a few years but ere long the profits of the holdings will give rise to a large class of under-raiyats, increase sub-infeudation to an alarming extent, and thus make a definite area of land feed two, perhaps, three families of raiyats in the place of the one that it is now feeding. In these Provinces where, according to the figures given in Dr. Hunter's Statistical Accounts, more than one-fourth of the average cultivable area is still uncultivated, not one of the least deplorable consequences of such a state of things would be to check the extension of cultivation and the progress of emigration. The question presents another aspect. Would this legislative embargo effectively control the law of demand and supply? Can the legislature force the principles of political economy to bow to its dicta? If a raiyat and his landlord agree between themselves as to the extent to which the rent should be enhanced, ways and means would not be wanting to give their agreement the form of a binding contract. After the terms have been agreed upon the landholder may sue the raiyat for enhancement at a certain figure and the raiyat may confess judgment in Court, or the raiyat may give the zamindar's as *salami* the capitalized value of the increase in excess of the enhancement allowed by law. The parties may have recourse to other shifts and devices to defeat the law. But perhaps the history of the provision is its strongest condemnation. The draft Bill (section 71) of the Rent Commission provided that there should be no limit to enhancement by contract. That provision was maintained in the draft Bill (section 63) of the Bengal Government, and also in the draft Bill (section 63) which was sent up to the Secretary of State in Council. It was the Bill which was sent up to the Secretary of State in Council. It was the Bill which was introduced in Council in March 1883, which for the first time provided (section 59 (2)) that the increased rent should not exceed 6 annas in the rupee. The Select Committee in the course of deliberations last year reduced the limit to 4 annas in the rupee (section 41). At a meeting of the Select Committee, held on the 8th ultimo, a motion was made on the part of the Bengal Government to reduce the maximum limit to 2 annas in the rupee, but it was not supported by a single member, and it was therefore not carried. The motion was renewed on a subsequent date in connection with the question of a maximum limit to enhancement by suit in Court and carried by a majority. It should be further observed that the extension of the minimum time from 10 to 15 years during which the enhanced rent should obtain currency, was for the first time made by the Select Committee last year; the draft Bill of the Rent Commission, the draft Bill of the Bengal Government, the draft Bill of the Government of India, and also the Bill which was introduced in Council in 1883, all fixed the minimum period at 10 years. The objections to this limit which we have mentioned with reference to tenures apply with double force in the case of raiyati holdings.

Section 29 (2).—This sub-section contemplates an exercise of powers by the registering officer which is likely to do the raiyat more harm than good. Registering officers are not expected to exercise judicial powers, and yet in the face of his opinion under this sub-section, it would be difficult for a raiyat to prove in the Civil Court that he was not at the time in a sound state of mind, or that he was not competent by reason of his minority or other disability to enter into the contract.

Section 30 (b).—The alterations made by this section in the grounds on which a suit for enhancement of rent may be instituted would deprive landholders of enhancement which is justly due and at the same time introduce unnecessary complications in the law to the injury both of the landholder and of the raiyat. There will be no enhancement on the ground of a rise in price unless the rise is in respect of the price of the staple food-crops. By section 39 (7) the local Government has to determine what shall be deemed to be staple food-crops in these provinces, and it appears from a letter written by the Revenue Secretary to the Government of Bengal to the Secretary of the British Indian Association, dated the 23rd February 1884, that "the Lieutenant-Governor would probably declare to be staples the two food-grain crops (apparently rice and wheat) which appear * * to be most largely produced in each district." The effect of this alteration would be very harmful. The landholder would get no enhancement for a large rise in the price of jute, sugarcane, or potato, if there has been no rise in the price of rice; while on the other hand a raiyat cultivating simply jute, sugarcane, potatoes or pulses would have to pay not only enhanced rent to his landlord but also to spend more money for his living if the price of rice has risen although the price of these other crops has fallen or remained stationary. It is easy to see that in some cases the operation of this section would be disastrous to the raiyats.

Section 30 (c & d).—The alteration made in the ground of enhancement relating to increase of the productive powers of the land is equally objectionable. These clauses provide for enhancement when the increase is due either to improvements effected by the landlord, or by fluvial action; but there are other causes of improvement for which the landlord is undoubt-

edly entitled to get enhancement of rent. Where, for instance, a change in the course of a river, a new railway, a new public road or a new Government embankment frees land from periodical inundations or from frequent trespasses by cattle or wild animals, any rule which deprives the landlord of his share of the benefit of the improvement militates against the very principle on which enhancement on the ground of improvement of the land is based. The alteration in this ground of enhancement has necessitated the introduction of a number of sections about landlords' improvements, and enquiries into the same and registration thereof which might well have been omitted.

Section 31 (a).—There is no justification for the rule contained in this clause to the effect that a landholder, claiming enhancement on the ground that the rent paid by a raiyat is below the prevailing rate should prove the rates of rent paid during a period of not less than 3 years. If the majority of the raiyats of a village have agreed to pay a certain rate of rent and paid that rent by reason of a rise in the price of produce or improvement of the land, why should the landholder have to wait for 3 years before he could sue the remaining dozen or score of raiyats for enhancement of rent at that rate? If these raiyats have any grounds entitling them to continue to hold at a lower rate of rent they may prove such ground as well at the time as 3 years after.

Section 32 (a).—Enhancement of rent on the ground of a rise in price of produce would be more visionary than real if, in addition to the other limitations, the restrictions contained in this section are allowed to stand. The Court is required to ascertain the price by comparing the average prices during the 10 years' immediately preceding the date of suit. An average of such a long period will necessarily reduce the rate of enhanced rent and deprive the landholder of his proper dues. It would be enough, for the purpose of determining whether a rise in price is merely casual or steady if the average of 3 years is taken. In connection with this matter it is noticeable that section 38, which provides for reduction of rent on the ground of a fall in the price of produce does not contain the rule to which I object. In all fairness, the rule of procedure should be the same in both cases, but from the way in which section 38 is worded there is nothing to prevent the Court from decreeing reduction of rent on the basis of an average of 2 or 3 years.

Section 32 (b).—The restriction to enhancement contained in this clause is based on a wrong assumption of facts and on false reasoning. The clause provides that, for the purpose of determining the enhanced rent according to the rule of proportion, the average price should be reduced by $\frac{1}{3}$ rd of the excess, that fraction representing the increased cost of cultivation. The portion of the Report of the Bengal Government (segment 44), on the basis of which the rule has been introduced, proceeds on wholly erroneous data from beginning to end. Enhancement by the rule of proportion as contained in the first part of this clause involves three different contingencies as regards the costs of cultivation. The costs of cultivation (1) might have increased in the same ratio as the price of produce; (2) they might have increased in a less ratio; (3) they might have increased in a greater ratio. If these costs be taken into consideration the result, by the rule of proportion, would be wholly unaffected in the first case; the landholder would be entitled to get more in the second case in the shape of enhanced rent than he would otherwise get, and it is only in the third case that the raiyat would be entitled to a reduction in the enhanced rent. But where is the evidence to show that the costs of collection have increased in a greater ratio than the price of produce? The statement made by some of the officers to the effect that the costs have increased goes for nothing, as they may have increased in the same or in a less ratio than the price of produce. To illustrate our meaning we shall take a hypothetical case. Let the value of the annual produce of a bigah of land be Rs. 8, of which Rs. 3 represents the costs of cultivation, Rs. 3 the rent and Rs. 2 the profit of the raiyat, and let the rise, as assumed by the Bengal Government for purposes of illustration, be 25 per cent. in prices, so that the value of the annual produce has become Rs. 10. Then, under the simple rule of proportion, the enhanced rent would be Rs. 3-12, the profit of the raiyat under the rule of proportion would be Rs. 2-8, and the balance Rs. 3-12 would represent the costs of cultivation. The rule of proportion, therefore, assumes that the costs of cultivation have risen in the same proportion as the price of produce—an assumption which in a majority of cases is far more favorable to the raiyat than to the landholder. It is this which induced the learned Judges in Thakurany Dasi's case to hold that the cost of cultivation should not be taken into calculation in working the rule of proportion. The report of the Bengal Government states: "Thus if prices rise 25 per cent. they would increase the rent $12\frac{1}{2}$ per cent., and allow the other $12\frac{1}{2}$ per cent. to go as an allowance for increase in costs of production." It is easy to see that this is both arithmetically and logically erroneous. If $12\frac{1}{2}$ per cent. be allowed for costs of cultivation out of the landholder's share, the actual allowance for such costs would be $37\frac{1}{2}$ per cent.

Section 33 (a).—The necessity of registering landlord's improvements created by this section would involve an amount of expensive enquiry which few landholders will care to invite, and the result will, therefore, be to deprive them of enhanced rents to which they are fairly entitled.

Section 34 (b).—Where land is washed away or covered with sand, it is the landlord who suffers. A portion of the land on which lay the security for his revenue is gone. The raiyats who held the land would be welcome to cultivate other plots of lands, but the loss to the landholder is irretrievable. As some compensation for such cases, might not they reasonably ask that they should be allowed the whole benefit of improvements in land caused by natural causes?

Section 38 (b).—The same rule of procedure as regards the determination of average prices should hold good both in cases of enhancement and reduction of rent. If it be an average of 10 years in the one case let it be the same also in the other.

Section 40.—Few provisions in the Bill will do more harm to the Behar landholders than the provision contained in this section for the commutation of produce rent into money rent on the application of the raiyat. The institution of payment in kind is one eminently deserving of every encouragement at the hands of the legislature. A Government settlement-officer has rightly observed: "It gives the landlord a fair profit in any improvement he may make; the rents are self-adjusting; the tenant is not driven into debt to meet a fixed demand; if he borrows, he borrows from his landlord, a less exacting creditor than the village banker; a feeling of mutual interdependence and self-interest is created between landlord and tenant; the former is more than a mere rent collector, his own prosperity depends on that of the cultivator." If commutation is allowed at the instance of the raiyat it would entail all the trouble, expense and litigation inseparable from settlements of money rent, involve raiyats in debt, and seriously affect the cause of agriculture. Lands for which produce rents are paid usually require the co-operation of the landholder for their cultivation. In most places, as in the districts of Patna and Gya, such co-operation is indispensable. The utter uselessness of attempts on the part of individual raiyats to cultivate such lands without the help of the landholder is nowhere better explained than in the very valuable letter written on the subject by Babu Bhupen Sing, Government Pleader of Gya. He writes: "Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the *ahars* and *pynes*, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly, because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan; thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking, and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, anything but practicable within the bounds of possibility; fourthly, because, assuming, even for the sake of argument, the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each raiyat having paid for the common reservoirs and water-channels would claim the priority of irrigating his fields, and try to assert his rights or supposed rights, by means, fair or foul, which would often lead to serious affrays, resulting in the 'breaking of bones and shedding of blood, and sometimes terminating in murders and man-slaughters.'"

Chapter VI.—The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat. He may (section 85) sub-let his holding so as to make the sub-lease binding for 9 years, although his own tenure might be for a much shorter time. The landlord will have no power to eject him for refusal to pay enhanced rent. He must serve upon him a notice of enhancement, sue him in Court, and it is only when the raiyat refuses to pay rent at the rates paid by occupancy-raiyats that the landlord may get a decree for ejectment. A non-occupancy-raiyat may (section 79), as a matter of right, dig a well, and erect a dwelling-house and out-offices on his land and make any other improvement after having first served a notice on his landlord requiring him to do so. When a decree for ejectment is passed the Court may extend the time beyond 15 days, the raiyat will be entitled to get from his landlord the price of the crops, if any, on the land or the cost of the preparation of the land and also (section 82) compensation for improvements made by him. If the landlord applies for a record and settlement of rights, or if the process is forced upon him by the Local Government, the rent of the non-occupancy-raiyat, whether enhanced or reduced, will hold good for 5 years. All these provisions are violent inroads upon well-recognized rights of landholders. It appears to us, however, that the effect of their operation would be to place non-occupancy-raiyats in a much worse position than at present. Having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short term leases with a view to protect his interests and thus reduce non-occupancy-raiyats to mere tenants-at-will. For the purpose of providing for the comparatively small number of cases in which landholders have not or may not protect themselves by contract, a number of sections have been introduced in different parts of the Bill which might well be omitted. They simply add to the radical aspect of the measure without doing any corresponding good.

Chapter VII.—I shall discuss the provisions of this chapter along with section 85 which might well have formed a part of this chapter.

Section 50 (2).—The operation of the rule of 20 years' presumption has been most injurious to the landholders. Instead of merely giving the raiyat a facility for proving that he and his ancestors before him have been in possession by payment of rent at a uniform rate since 1793 in cases where he has been actually in such possession, it has, like a rule of prescription or of limitation, created rights where none existed before. By the very circumstances of their position the landholders have been unable in most cases to rebut the presumption. Those landholders whose families have been in possession of estates since 1793 form a very insignificant number, the vast majority having acquired their estates by purchase since that time, and as it is notorious that the records of landholders are badly kept, and the climate of the country is inimical to the preservation of old records, it is easy to see that excepting a very few cases landholders have

been wholly unable to discharge the burden laid upon them by law. The injustice of this rule of presumption has been exposed by none so well as by the Hon'ble Mr. Reynolds in the report which accompanied his draft Bill. He is supported in this respect by a large number of experienced Revenue Officers, District and Subordinate Judges, who were consulted by the Bengal Government on the subject. Mr. H. L. Dampier, Mr. E. E. Lewis, Mr. G. N. Barlow, Mr. Kean, Mr. D. W. Doyle, Mr. R. Porch, Mr. A. Weekes, Mr. C. B. Garrett, Mr. J. Tweedie, Babu Srinath Rai, Babu Bhagaban Chandra Chakerbutty, Babu Naffar Chandra Bhutta, Syed Moazim Hossein and others have recommended either the abolition of this rule of presumption or a material modification of it. Considering that the rule is opposed to the recognised principles of evidence, that it is opposed to the fact that from $\frac{1}{4}$ to $\frac{3}{4}$ of the area of these provinces was waste at the time of the Permanent Settlement, that it has been in operation for the last twenty-five years during which all who really required it and many more have had their titles judicially declared, that it places in the way of auction-purchasers, seeking to get their just dues, obstacles which are practically insurmountable, and that it would operate in future with double hardship upon the landholder, it is but fair to him that the rule should be expunged from the Bill. The justice and necessity of its abolition cannot be better supported than by referring to section 190 of the Bill. When Government with all the means and appliances which a well-kept and organised system of accounts placed at their disposal, find it necessary to protect their own interests by freeing those khas mehals which have never been permanently settled (and these form the majority) from the operation of this rule of presumption, how much more imperative must be the necessity for an amendment of the law in the interests of private landholders?

Section 50 (3).—The question as to in what cases the rule of 20 years' presumption, notwithstanding that land has been added to or taken from a holding should apply should be left to the decision of the Courts, according to the merits of each case. A hard-and-fast rule, that the presumption shall apply to all cases of consolidation or reduction of holdings may be fraught with great mischief. The remarks of Sir R. Couch in this connection contained in a ruling reported in 21 W. R. 267 are well worth considering.

Section 56 (4).—Considering that section 58 gives the tenant full remedy for refusal or neglect on the part of his landlord to give him a receipt in proper form, this sub-section is wholly unnecessary. It is likely to prove a fruitful source of litigation by holding out to the tenant a prospect of discharge from all liability, if he can shew that his landlord has not put in some one particular in his receipt although it might have been from ignorance or oversight.

Section 58.—A demand of the receipt by a letter under a registered cover should precede the institution of a suit for recovery of penalty. The section, as it is, would offer a great temptation to the tenant to refuse to take the receipt and sue his landlord for recovery of double the amount paid by him.

Section 61.—Clauses (c) and (d) of this section are objectionable. A landholder's agent might have once refused to take rent from a raiyat on the ground of his not being a recorded tenant, or on the ground of some dispute as to the amount of rent, but that is no reason why it should be assumed that he would refuse to take rent at all future time, notwithstanding that the matters in dispute have been settled. There should be a tender of payment in every case before deposit is allowed. Nor should the raiyat be allowed to constitute himself a judge of his landlord's title, and to deposit his rent in Court on the plea that by reason of a suit instituted by a third party, against his landlord, he feels a *bond fide* doubt as to his title to receive it.

Section 64 (1).—If this sub-section were made applicable only to rents deposited under clause (d) of section 61, we should have nothing to say; but we strongly object to it as it clearly refers to all classes of deposit of rent. The Court should certainly have no power to pay money to B, when the raiyat has deposited to the credit of A.

Sections 74 and 75.—Exception should have been made in these sections in regard to such impositions "in addition to actual rent" which are allowed by law. Take for instance the case of zamindari dawk charge, which is by law (Act VIII of 1862, B.C.) payable by the zamindar, but which he may (section 9) stipulate with his raiyats for payment by them. Take again, the case of the road cess. It is payable by law both by the raiyat and his landlord in certain proportions, but there is nothing to prevent the latter to bind the former by contract for the payment of the whole amount by him. Sec. 4, Indian Law Reports, Calcutta, 576. The Salamy which the landholder is clearly entitled to get for parting with a portion of his rights, e. g., allowing the tenant to take earth for brick-making, should also be expressly excepted. This is the more necessary, as the penalty provided in section 74 is very heavy.

Sections 76—83.—These sections, about improvements and compensation for improvements have been strongly objected to by landholders. If they are allowed to stand, landholders should be given the prior right to make an improvement, where both they and their raiyat wish to make it; the right of non-occupancy raiyats to make improvements should be taken away, and the difference in this connection between an occupancy-raiyat holding at a fixed rent or fixed rate of rent, and other occupancy-raiyats should be abolished. Section 77 furnishes another instance of the great confusion which will arise, if this distinction is maintained. It is provided in clause (3) that if there is a dispute between the raiyat and his landlord "as to the right to make an improvement," the Collector should "decide the question and his decision shall be final." The Collector must therefore determine finally and conclusively, although quite in an incidental way, whether a raiyat holds at a fixed or enhancible rent.

Section 85.—The effect of the various provisions of the Bill regarding sub-letting and under-riyats would be to give a great impetus to the progress of the institution, although both the Secretary of State in Council and the Government of India have expressed a desire that the institution should be discouraged. A registered sub-lease will be ordinarily binding for nine years, the sub-lessee's rent may not be enhanced beyond a certain percentage over the lessors' rent, in certain cases of sale of the lessors' title the sub-lease cannot be avoided, and even in cases of abandonment by the lessor he will have the right to hold on if he agrees to pay the rent payable by his lessor. These provisions would be more harmful to landholders and their riyats than a provision of free sale of occupancy holdings with the restrictions which the revised Bill imposed upon it.

Section 86 (2).—The Bill provides for a notice of six months to be given to the riyat in a case of ejectment. It is fair to the landholder that he should receive a notice of an equal period in a case of surrender.

Section 86 (3).—This clause is objectionable. The notice may fairly be presumed if the landholder lets the surrendered land to another riyat in the beginning of the year, but to presume it in any other case would be doing him wrong. To presume the service of the notice from the fact that the riyat has taken a new holding in the name of a relative or friend would be contrary to all rules of evidence, and to raise the presumption from the fact that the riyat has ceased for three months to live in the village, would be to expect the landholder to act in a way quite opposed to the provisions of section 87. When the question is one of continued liability of the riyat to pay rent, he will be presumed to have surrendered his holding simply from the fact of his having ceased to live in the village for three months, but when the question is one of the landholder's right to re-let land which has been abandoned, no abandonment will be presumed till the expiry of the year, in which the riyat so abandons, and not even then till the Collector on the application of the landlord has published a notice in the locality. It is provisions like these which have given the Bill such an one-sided character.

Section 87.—The attempt made in this section to formulate the nature of evidence required to prove an abandonment, has singularly failed. A riyat must (1) abandon his residence; (2) omit to make any arrangement for the payment of rent, and (3) cease to cultivate the land, before he can be said under the section to have abandoned his holding. In the case therefore of a pykust or non-resident riyat, there can be possibly no abandonment of a holding, unless the riyat abandons his native village belonging to a different landholder. The landholder will have no right to let the lands abandoned by a pykust riyat to another riyat until the pykust riyat "abandons his residence," a contingency which may never happen. Again, there is no reason why a landholder should have to wait for one year, and lose his year's rent, if he is satisfied that the riyat has really abandoned his holding. The provision for the publication of notice contained in clause (2) and for the recovery of possession by the riyat contained in clause (3) would be a sufficient check against any *malâ fides* of the landholder.

It should be also observed that clause (3) extends the time within which a riyat may sue to recover possession from one year to two years. This extension of time is under the circumstances of the case, altogether unnecessary, and it will complicate matters, and give rise to litigation. If the land be let in the meantime to a settled riyat of the village, and if he lets it to another under-riyat under a registered sub-lease, what an amount of confusion would be caused?

Section 90.—This section takes away important rights of landholders as regards measurement. If the riyat refuses to attend the measurement and point out his land, clause (2) will place him in no worse position than a riyat who has attended and pointed out his land. In both cases, the measurement will be presumed to be correct unless the contrary is shewn. The most noticeable defect in the section is however, the absence of any provision for cases in which a landholder, usually an auction-purchaser, is unable to ascertain the riyats who are in possession of the lands of his estate. A landholder may under such circumstances, it is true, make an application under the Record-of-Rights Chapter, but it would throw upon him not only a deal of expense and trouble but would place him at the mercy of the Revenue-officer.

Sections 93-100.—The strong support which the Bengal Government gave in their Report to the provision for the appointment of managers in joint estates was based on an erroneous assumption that it was the existing law. That law was, however, repealed in 1874 when other obsolete enactments were repealed. Since then no necessity has been made out for a provision like this which will place in the hands of a small fractional shareholder of an estate the power of seriously annoying and injuring his co-sharers. Considering that the holders of small estates collect their own rents from the riyats, the appointment of a manager by Court will eat up all their profits. The facilities which the law and the rulings of the Courts have given for the partition of joint estates have rendered such a provision as this wholly unnecessary.

Sections 101-114.—Both among landholders and riyats this is one of the most unpopular portions of the Bill. These sections give to the Executive Government a power to convulse rural society to an extent far exceeding anything which any differences arising out of the ordinary relations of landlord and tenant can create. Even under circumstances of agrarian disturbances neither of the contending parties would avail themselves of these provisions. The Agrarian Disturbance Act of 1875 remained a dead-letter so long as it was in the Statute Book. The Select Committee have made these provisions much more objectionable than before by introducing a section (section 111) which gives the Revenue-officers power to reduce exist-

ing rents either on the grounds allowed by law or on any other ground, and we think that in justice to the landholders and in the interests of the riyats themselves, these sections should be omitted.

Section 116.—A record of proprietor's private lands should be made only on his application, as it would otherwise put the landholder and his riyats to great expense and trouble at a time when there is perhaps perfect peace and harmony between the parties and when neither of them is prepared for the enquiry. The provision empowering the Local Government to order such an enquiry at any time they please, and without any application on the part of the riyats or their landlord, is, therefore, highly objectionable. Section 120 involves an anomaly. If a landholder after having cultivated by his own servants a piece of land for 12 years before the passing of the Act, turns it into riyatti land, he will still be enabled after a lapse of 15 or 20 years, when the record will be made, to claim it as his private land and to get it so recorded.

CHAPTER XII.—The provisions relating to distraint amount virtually to an abolition of the institution. They will give the landholders no greater powers than what the Code of Civil Procedure gives to every plaintiff who may wish to get an attachment before judgment. The landholder looks upon the crops as the security for the recovery of his rent. The sale of the houses and the goods and chattels of riyats is often times quite inadequate to meet the landholder's claim. In the case of non-resident riyats the crops raised by them are the landlord's only security for his rent. If they remove the crops before paying the rent the landholder generally loses his rent for the year. The procedure contained in this chapter would therefore result in this, that while the landlord is engaged in making application to the Court and satisfying it of the *bona fides* thereof, the riyat will quietly remove his crops and the former will not only lose his rent but also the costs of the application. It is a misnomer to call that a distraint which is nothing more or less than a process of Court. The present law on the subject does not give the landholder any power which might be possibly abused. He can only attach the crops, but he cannot interfere with the riyat's doing what he likes with the crops without the assistance of the Court. It is the fear of the consequences if the riyat removes the distrained crops that constitute the landholder's whole security for the rent. There have been no complaints on the part of judicial officers of any abuse of the power which the present law allows with impunity. On no point, on the contrary, have public officers expressed themselves more forcibly than in condemnation of the procedure contained in the Bill and in support of the existing law. The Presidency Conference, the Patna Conference, the Rajshahi Conference, the Burdwan Conference, the Orissa Conference and a number of individual officers have recommended the retention of the existing law.

Section 153 (b).—The rule allowing an appeal in all cases should not be interfered with. Rent suits should not be judged by the amount of the claim. Very often they possess an importance to which the value of the suit is no index. All those whom we have consulted are of opinion that it is much better that they should have the constitutional right of an appeal than that their suits should be finally decided by special officers selected by the local Government.

Section 154.—The time within which a suit for enhancement may be instituted should be extended to the first 9 months in order to enable the landholder to judge from the condition of the crops whether he should institute the suit in a particular year. No one would like to institute a suit for enhancement when the prospect of the crops is gloomy or distress is impending over the country.

Section 155 (1).—Provision should be made for service by Court of the notice of ejectment. If it were left to the landholders, as this sub-section does, the service would be denied in most cases and the enquiry would entail unnecessary expense and delay.

Section 156.—A decree for ejectment severs the relation between landlord and tenant. If there be crops on the land they go with the land to the landholders, as ruled in a case reported in 5 Indian Law Report, Calcutta, 135. This section lays down a principle and provides for an elaborate enquiry quite in opposition to the judge-made law on the subject. A riyat may be ejected only at the close of the year when the crops have been reaped. There is, therefore, no necessity for this section. Moreover, when a riyat's interest may be sold outright four times in the year, a provision regarding crops in cases of ejectment only would give the riyat an illusory protection.

Section 160.—This section introduces serious changes in the present law regarding what are called the protected interests. There could be no objection to a lease for building or manufacturing purposes granted at a fair rent being protected from avoidance on the sale of the superior tenure as provided in the present law, but this section goes much farther. A lease of land whereon manufactories have been erected, perhaps without the consent of the landholder, and reserving a nominal rent is declared a protected interest by this section; as also judicial leases granted to non-occupancy riyats and permanent leases granted by the out-going tenure-holder. The effect of these provisions will be that it would be in the power of a tenure-holder to create leases in the names of his servants and relations which would absorb the entire profits of the tenure and then put it up to sale by making default in the payment of rent. Most tenures would be rendered quite valueless in no time if these provisions are retained.

Sections 161-168.—These Sections introduce alterations in the existing law which will prove a fruitful source of litigation. No necessity whatever was felt for provisions like these. If the sale be made in the first instance subject to the registered encumbrances, and then, after the sale proceeds have been found to be inadequate, a second sale be made with power to avoid such encumbrances, it would saddle the judgment-debtor with unnecessary costs, reduce the market value of the tenure and delay the realisation of money due to the landholder. These

evils would be greatly enhanced if the procedure be extended by the Local Government to sales of occupancy holdings under Section 168.

Section 177.—The preamble of Regulation V of 1812 shows that although the Legislature of 1793 enjoined the exchange of written engagements between landholder and tenant, the raiyats of these Provinces in a body deliberately refused to enter into written engagements which would make it obligatory on them to pay as rent, cesses, and abwabs which they had been paying as benevolences, and that that Regulation was passed, among other objects to provide for such refusal. Since that time there has been vast progress in the material prosperity of the country, in the spread of education and in the condition of the raiyats. They might well therefore be left to the resources of their own judgment in matters relating to their own interests. They will be perfectly free to contract away their liberties and become emigrants in a strange country, to borrow money at usurious rates of interest involving their ultimate ruin, and to mortgage their holdings or sell them in some cases, and yet this section imposes restrictions upon freedom of contract in a variety of matters in which they are the best judges of their own interests. It is very doubtful how far these would be effective in practice and how far they would prevent parties from having recourse to shifts and devices for the purpose of evading the law. These provisions, it should be observed, offer a striking contrast to the provision contained in section 192. In the case of private landholders, free contract is restricted in the interest of raiyats; in the case of Government no contract entered into by a landholder with his raiyats before the property came into the hands of Government would be respected if it interfered with the right of Government to assess fair and equitable rent upon the land.

Section 182.—This Bill should have nothing to do with homestead lands in towns and trading places. Where homestead lands do not form part of a raiyatti holding its incidents should be left to custom and contract.

Section 184.—The schedule to which this section refers has extended from one year to two years the time within which a raiyat dispossessed by his landlord may sue to recover possession. We see no reason why this alteration in the existing law should be made.

Section 186.—A provision which converts into a criminal offence acts, otherwise not criminal, which relate to the daily transactions of life is most objectionable. The provisions of the section are, moreover, very one-sided. In the case of the landholder, for instance, an "attempt to distrain" would be a criminal offence, but in the case of the raiyat not only is an attempt to resist distraint or remove distrained crops not criminal, but he may remove crops stored for division or appraisal under the Danabundy system without subjecting himself to any penalty, civil or criminal.

Sections 191 & 192.—For reasons stated in different parts of this Dissent, these two sections should be omitted and Government should be placed in exactly the same position regarding landholding rights as private landholders.

Section 196.—We do not see either the necessity or the value of this section. If the Acts of the Local Legislature in any way conflict with the provisions of this Bill such Acts would be rendered inoperative by the Indian Councils Act, 1861. If those Acts provide for matters not embraced by this Bill they would have the force of law without any provision like this.

Schedule I.—We strongly object to the sections of Regulation VIII of 1793 mentioned in this schedule being omitted. They contain the most important provisions on which the Permanent Settlement was based, next in importance only to the provisions fixing the revenue in perpetuity.

We desire to say, in conclusion, that the Bill does not provide for any summary procedure for the recovery of rent. By making an express provision for decrees directing recovery of rent by instalments, by extending the time before a sale can take place from 20 to 30 days from the date of the proclamation, and by giving the Courts discretion to extend beyond 15 days the time within which a raiyat might protect himself from ejectment by payment of the decreed amount, the Bill has, on the contrary, thrown additional obstacles in the way of recovery of rent.

Considering the importance of the measure and the material changes in the Bill made by the Select Committee since their Preliminary Report was submitted last year we think that it should be republished before its provisions are taken into consideration by the Council.

PEARI MOHAN MUKERJI.
LAKSHMESHVAR SINGH.

12th February 1885.

I wish to add that I regret that my unavoidable absence from the Meetings of the Select Committee in the last stage of their labors and the very short time at my disposal between the receipt by me of the draft report of the majority of the Committee and the date fixed for the submission of the report to the Council, prevents me from recording my opinions at greater length. I adhere to the opinions expressed in my last year's dissent. The measure as a whole is even now opposed to the just rights of the proprietors of land and detrimental to the best interests of the entire community. If not withdrawn, it still requires further and serious consideration by the light of actual ascertained facts and circumstances of the country as opposed to mere opinions and *ex-parte* reports.

12th February 1885.

LAKSHMESHVAR SINGH.

No. III. THE BENGAL TENANCY BILL, 1885.

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SCHEDULE I.—REPEAL OF ENACTMENTS.

SCHEDULE II.—FORMS OF RECEIPT AND ACCOUNT.

SCHEDULE III.—LIMITATION.

Bengal Tenancy Bill.

(Chapter I.—Preliminary.—Secs. 1—3.)

No. III.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B., the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

SECTION means the corresponding section of the Bill No. II, dated March, 1884.

A
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.

WHEREAS it is expedient 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; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

[Section 1.]

1. (1) This Act may be called the Bengal Tenancy Act, 1885.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.

[C. B., s. 1.
B. B., s. 1.]

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

XIV of
1874.[C. B., s. 2.
B. B., s. 2.
Section 2.]

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khas mahals and revenue-free lands not entered in any register:

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(6) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

(10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Bysak, where the Fashi or Amlî year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

Bengal Tenancy Bill.

(Chapter II.—Classes of Tenants.—Secs. 4-5.)

(Chapter III.—Tenure-holders.—Secs. 6-7.)

[D. § 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.]
 (12) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihar and Orissa, made in the year 1793.

[Section 3 (9).]

[Section 3 (11).]
 (13) "Succession" includes both intestate and testamentary succession.

[C. B., s. 1. B. B., s. 3. Section 3 (12).]
 (14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

[Section 3 (13).]
 (15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

[Section 3 (14).]
 (16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

[Section 3 (15).]
 (17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

CHAPTER II.

CLASSES OF TENANTS.

[Section 4.]
 4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats, and
- (3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—
 (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

[Section 5.]
 5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bring-

ing it under cultivation by establishing tenant on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat the Court shall have regard to—

- (a) local custom; and
- (b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

Bengal Tenancy Bill.

(Chapter III.—Tenure-holders.—Secs. 8-15.)

Enhancement of rent.

(3) In determining what is fair and equitable the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

- (a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and
- (b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

[C. B., s. 10(a). B. B., s. 11(b). Section 9.]

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

[C. B., s. 10(b). B. B., s. 11(c). Section 10.]

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be altered for fifteen years. If again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Other incidents of tenures.

[Section 12.]

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

[C. B., s. 13. B. B., ss. 13 & 17. Section 11.]

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

[D. § 25. C. B., s. 40. B. B., s. 37. Section 13.]

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any

law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

- (a) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and
- (b) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Bengal Tenancy Bill.

(Chapter III.—Tenure-holders.—16-17.)

(Chapter IV.—Raiyats holding at fixed rates.—Sec. 18.)

(Chapter V.—Occupancy-raiyats.—Secs. 19-22.)

Other incidents of tenures. [Section 18 (2).]

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, and succession to, a share in permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

[Section 23.] 18. A raiyat holding at a rent, or rate of rent, Incidents of holding fixed in perpetuity—at fixed rates.

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

[C. B., s. 13, B. B., ss. 12 & 17.] (b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

[Section 24.] 19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

[Section 26.] 20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has been continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyat holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(3) A person holding land as an ijaradár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijará or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijará or farm.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Secs. 23-31.)

Incidents of occupancy-right.

Incidents of occupancy-right. [B. B., s. 69, Section 31 (a).]

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

[D. s. 42, B. B., s. 21 (2), Section 31, cl. (c).]

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

[C. B., s. 20 (c), B. B., ss. 21 (2), 21, 69 (2), Section 31, cl. (d).]

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

[C. B., s. 20 (c), B. B., s. 21 (2), Section 31, cl. (e) & (h).]

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: Provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Enhancement of rent.

[B. B., s. 21 (2), Section 31, cl. (f).]

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

[B. B., s. 21 (2), Section 31, cl. (g).]

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

[Section 41.]

29. (1) The money-rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions:—

(a) the rent must not be enhanced so as to exceed by more than two annas in the year the rent previously payable by the raiyat;

(b) the contract must fix the rent for a term of at least fifteen years.

(2) The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 74 and 175 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.

(3) Nothing in sub-section (1), clause (a), shall apply to a contract by which a raiyat binds

himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(4) The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules for the guidance of officers registering contracts under this section.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely:—

(a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—“Fluvial action” includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Secs. 32-38.)

Enhancement of rent.

- (c) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

[Section 45.]

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;
- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;
- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

[Section 46.]

Rules as to enhancement on ground of landlord's improvement.

33. Where an enhancement is claimed on the ground of a landlord's improvement—

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;
- (b) in determining the amount of enhancement the Court shall have regard to—
- the increase in the productive powers of the lands caused or likely to be caused by the improvement,
 - the cost of the improvement,
 - the cost of the cultivation required for utilizing the improvement, and
 - the existing rent and the ability of the land to bear a higher rent;
- (c) a decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase of productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

- (a) the Court shall not take into account any increase which is merely temporary or casual;
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in the foregoing sections the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable. [Section 48.]

Enhancement by suit to be fair and equitable.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached. [C. B., s. 23. B. B., s. 24. Section 49.]

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits. [B. B., s. 143. Section 50.]

Limitation of right to bring successive enhancement suits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely:—

(a) on the ground that the soil of the holding has without the fault of the raiyat

Reduction of rent.

become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists.

Price lists. [C. B., s. 122. B. B., s. 145. Section 52.]

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area, like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area within the said period of one month presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown thereby are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Secs. 39-40.)

(Chapter VI.—Non-occupancy-raiyats.—Secs. 41-43.)

Commutation.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent. [C. B., s. 86. B. B., s. 90. Section 53.]

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

- the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;
- the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and
- the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats. [Section 54.]

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission. [Section 55.]

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46. [Section 56.]

Conditions of enhancement of rent.

Bengal Tenancy Bill.

(Chapter VI.—Non-occupancy-raiyats.—Secs. 44-47.)

(Chapter VII.—Under-raiyats.—Secs. 48-49.)

[C. B., s. 79 (5) B. B., ss. 26, 72 (5), Section 58.] 44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

[Section 59.] 45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

[Section 60.] 46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section; unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the following percentage of the same, namely:—

- (a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and
- (b) in any other case—twenty-five per cent.

49. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent.—Secs. 50-54.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to amount of rent.

[D., ss. 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15. Section 64.]

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

[D., ss. 18, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.]

52. (1) Every tenant shall—

- (a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the holding of land which having previously belonged to the holding was lost by diluvion or otherwise without any reduction of the rent being made, and
- (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his holding

as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

Payment of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for

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(Chapter VIII.—General Provisions as to Rent.—Secs. 55—61.)

Payment of rent. any specified local area, authorizing a tenant to pay his rent by postal money-order.

[D., s. 101, C. B., s. 56, B. B., s. 48.] (3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

[Section 69.] 55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and accounts.

Receipts and accounts. 56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may from time to time prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

[C. B., s. 51, B. B., s. 49, Section 71.] 57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. (1) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land

Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Application to deposit rent in Court. 61. (1) In any of the following cases, namely:—

- when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

Deposit of rent.

(d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered, in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

62. (1) If it appears to the Court to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered; in case (c) of that section, by the co-sharers to whom the rent is due; and in case (d) of that section, by the person entitled to the rent.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the land-

lord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of rent.

65. Where a tenant is a tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

66. (1) When an arrear of rent remains due in respect of the holding of a non-occupancy-raiyat or an under-raiyat at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are

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(Chapter VIII.—General Provisions as to Rent.—Secs. 62—66.)

Deposit of rent.

(d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered, in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

62. (1) If it appears to the Court to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered; in case (c) of that section, by the co-sharers to whom the rent is due; and in case (d) of that section, by the person entitled to the rent.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the land-

lord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of rent.

65. Where a tenant is a tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

66. (1) When an arrear of rent remains due in respect of the holding of a non-occupancy-raiyat or an under-raiyat at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are

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(Chapter VIII.—General Provisions as to Rent.—Secs. 67—71.)

Arrears of rent.

paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court reopens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

[D. § 101.
C. B., s. 56.
B. B., s. 48.
Section 79.]

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

[D. § 68.
C. B., s. 90.
B. B., s. 96.
Section 80.]

63. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

[D. § 69.
C. B., s. 91.
B. B., s. 97.]

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

[D. § 69.
C. B., s. 91.
B. B., s. 97.]

69. (1) Where rent is taken by appraisement or division of the produce,—

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

70. (1) When a Collector appoints an officer under the last foregoing rents, section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent.—Secs. 72—75.)

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 76—79.)

Liability for rent on change of landlord or after transfer of holding.

[D. § 68.
C. B., s. 90.
B. B., s. 96.
Section 80.]

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Illegal Cesses, &c.

[D. § 69.
C. B., s. 91.
B. B., s. 97.]

74. All impositions upon tenants under the denomination of *abwab*, *mahab*, *but*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

[D. § 64.
C. B., s. 83.
B. B., s. 84 (a).
Section 86.]

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

[D. § 69.
C. B., s. 91.
B. B., s. 97.]

76. (1) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed

directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77. Where a raiyat holds at fixed rates, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

78. (1) Where a raiyat has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

(3) If a question arises between the raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all

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Improvements. works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

[Section 81.] **80. (1)** A landlord may, by application to such Registration of land Revenue officer as the Local lord's improvements. Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

[Section 82.] **81. (1)** If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

[C. B., ss. 20 (a) and 29. Section 83.] **82. (1)** Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejection of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and suffi-

Improvements.

Acquisition of land for building and other purposes. cient, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Sub-letting.

Sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has without the consent of his landlord granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Surrender and abandonment.

Surrender and abandonment. [D. § 12 (3). C. B., s. 79 (3). B. B., s. 72 (2). Section 85.]

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

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(7) Save as provided in the foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government by rule directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Sub-division of tenancy.

88. A division of a tenure or holding or distribution of the rent payable thereon, in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

[D. § 18 (4). C. B., s. 75 (4). B. B., s. 72 (4). Section 86.]

Sub-division of tenancy. [C. B., s. 81 (a). B. B., s. 81 (a). Section 87.]

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Ejectment.

Ejectment.
[C. B., s. 79
(5), (6) & (7).
B. B., s. 72
(5), (6) and
(7).
Section 98.]

89. No tenant shall be ejected from his holding except in execution of a decree.

Measurements.

Measurements.
[D. § 58.
C. B., s. 75.
B. B., s. 67.
Section 99.]

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases:—

- (a) where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;
- (b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;
- (c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

[D. § 94.
B. B., s. 176
& 177.
Section 100.]

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

[D. § 94.
B. B., s. 76(a).
B. B., s. 98
(2).
Section 101.]

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the

acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

- (a) inconvenience to the public, or
- (b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

- (a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or
- (b) in any case appoint a manager.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be

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(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 97—100.)

(Chapter X.—Record-of-rights and Settlement of Rents.—Secs. 101-102.)

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

101. (1) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

- (a) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;
 - (b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;
 - (c) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and
 - (d) where a settlement of revenue is being made in respect of the local area.
- (3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant;
- (b) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation, quantity and boundaries of the land held by him;
- (d) the name of his landlord;
- (e) the rent payable;
- (f) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

necessary to appoint a manager under clause (b) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

[C. B., s. 68(3).
B. B., s. 58(3).
Section 106.]

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

IX (B.C. of 1879.

[C. B., s. 67.
B. B., s. 59.
Section 107.]

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removeable by the order of the District Judge, and not otherwise.

[C. B., s. 68.
B. B., s. 60.
Section 108.]

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

100. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

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- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (h) the special conditions and incidents, if any, of the tenancy.

[Section 112.] 103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

[Section 118 (3).] 104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (d), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

[Section 119 (4).] (3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents.

[Sections 115 & 118 (7).] 105. (1) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

[Sections 114 & 118 (2).] 106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure XIV of 1882. for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 108 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter.

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same record as ascertained or settled under section 104.

109. (1) Every record made under this chapter shall distinguish between the undisputed entries in the record and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

111. When an order has been made under section 101,—

(a) a Civil Court shall not, until the final publication of the record, entertain a suit, or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a local Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

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(Chapter X.—Record-of-rights and Settlement of Rents.—Secs. 112-115.)

(Chapter XI.—Record of Proprietors' Private Lands.—Secs. 116-120.)

(Chapter XII.—Distraint.—Sec. 121.)

112. (1) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

- (a) power to settle all rents;
- (b) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

[Section 120.] 113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years.

The period of fifteen and five years shall be counted from the date of the final publication of the record.

[Section 121.] 114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

[Section 122.] 115. When the particulars mentioned in section 102, clause (d), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as

khāmār, nij or nij-jot, and in Behar as zirāt, nij, sir or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105, 106, 108 and 109 shall apply.

120. (1) The Revenue-officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as khāmār, zirāt, sir, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and
- (b) cultivated land which is recognized by village usage as proprietor's khāmār, zirāt, sir, nij, nij-jot or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

DISTRRAINT.

121. Where an arrear of rent is due to the landlord of a raiyat or under-tenant, and has not been due for more than a year, and no

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security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator—

- (a) any crops or other products of the earth standing or ungathered on the holding;
- (b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead;

Provided that an application shall not be made under this section—

[B. B., ss. 71, 25.]

- (1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or
- (2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or
- (3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss. 104 & 105, Section 140.]

122. (1) Every application under the last foregoing section shall specify—

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;
- (b) the name of the tenant;
- (c) the period in respect of which the arrear is claimed;
- (d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;
- (e) the nature and approximate value of the produce to be distrained;
- (f) the place where it is to be found, or such other particulars as may suffice for its identification; and
- (g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of

Civil Procedure for the signing and verification of plaints. XIV of 1882.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may if it thinks fit make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Execution of order of distraint.

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer

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(Chapter XII.—Distraint.—Secs. 126—136.)

shall affix copies of the demand and account on the outer door of the house in which he usually resides.

[B. B., ss. 109 & 110, Section 144.]

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

[B. B., s. 113, Section 145.]

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

[B. B., s. 114, Section 146.]

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

[B. B., s. 114, Section 147.]

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

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(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s. 124.
Section 155.]

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B. B., s. 126.
Section 156.]

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

[Section 157.]

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

[Section 158.]

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any

case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Civil Courts under this chapter, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply to the Civil Court under this chapter:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

142. The High Court may from time to time make rules consistent with this Act for regulating the procedure in all cases under this chapter.

CHAPTER XIII.
JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall

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be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

145. Every nâib or gumâshtha of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

148. The following rules shall apply to suits for the recovery of rent:—

(a) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification;

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(e) a written statement shall not be filed without the leave of the Court; [D., § 103.
C. B., s. 184.
B. B., s. 206.]

(f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not; [BB., s. 214.]

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears; [D., §§ 177 & 223.
C. B., ss. 155 & 197.
B. B., ss. 171 & 219.]

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. [C. B., s. 198.
B. B., s. 220.]

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due. [Section 164.]

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due. [Section 165.]

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs. [Section 166.]

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[Section 167.] 152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

[D. § 179. C.B., ss. 157 & 220. B.B., ss. 173 & 242. Section 168.] 153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[C.B., ss. 96 & 98 (b). B.B., ss. 128 & 130, cl. (2). Section 169.] 154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

[B.B., ss. 21 & 22, cl. 4 & 5. C. 41, s. 14. Section 170.] 155. (1) A suit for the relief against forfeiture of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a con-

tract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under subsection (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of pro-

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(Chapter XIV.—Sale for Arrears under Decree.—Secs. 159—162.)

ceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

[C.B., s. 50. B.B., s. 73.]

(d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[Section 173.] 157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

[C.B., s. 151. B.B., s. 168. Section 174.] 158. (1) The Court having jurisdiction to determine a suit for the possession of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

(a) the situation, quantity and boundaries of the land held by the tenant;

(b) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(c) the rent payable by him at the time of the application.

(2) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

[Section 175.] 159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests", but with power to annul the interests defined in this chapter as "incumbrances":

Provided as follows:—

(a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case herein-after mentioned in that behalf;

(b) the power to annul shall be exercisable only in manner by this chapter directed.

160. The following shall be deemed to be protected interests within the meaning of this chapter—

(a) any under-tenure existing from the time of the Permanent Settlement;

(b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(d) any right of occupancy;

(e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

161. For the purposes of this chapter—

(a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(b) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to sale in execution of a decree for arrears of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attach-

*Bengal Tenancy Bill.**(Chapter XIV.—Sale for Arrears under Decree.—Secs. 163—168.)*

ment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the parganná, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

[D. § 152.
C. B., s. 203.
B. B., s. 225.
Section 179.]
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163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder issues simultaneously the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

- (a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and
- (b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

[C. B., s. 206.
B. B., s. 228 (a)
and Expt.
Section 180.]

164. (1) When a tenure or holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections, desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and

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notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D., § 246.
C. B., s. 211.
B. B., s. 233.
Section 186.]

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

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- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

[D., § 153.
C. B., s. 204.
B. B., s. 226.
Section 187.]
XIV of
1882.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;
- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and
- (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulting tenant, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable

[D., §§ 35, 35, 154.
C. B., s. 205.
B. B., s. 227.
Section 188.]

[D., §§ 35, 36, 154.
C. B., s. 205.
B. B., s. 227.
Section 189.]

XIV of
1882.
[C. B., s. 206.
(1).
B. B., s. 230
(1).
Section 190.]

*Bengal Tenancy Bill.**(Chapter XIV.—Sale for Arrears under Decree.—Secs. 175—177.)**(Chapter XV.—Contract and Custom.—Secs. 178—180.)*

under the decree with costs, and, for payment to the purchaser, a sum equal to five per cent. of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale:

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

XIV of 1882.

[Section 191.]

XIV of 1882.

[Section 192.]

III of 1877.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

B. B., s. 206.

B. B., s. 2.

Expi.

Section 193.]

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

[Section 210.] 178. (1) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(b) shall take away an occupancy-right in existence at the date of the contract, or

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

(a) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(c) take away the right of a raiyat to surrender his holding in accordance with section 86;

(d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(e) take away the right of a raiyat to sub-let subject to and in accordance with the provisions of this Act;

(f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(g) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

(h) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

Permanent mukarrari leases.

180. (1) Notwithstanding anything in this Act, a raiyat—

(a) who in any part of the country where the custom of *utbandi* prevails, holds land ordi-

utbandi, *chur* and *dearah* lands.

(b) who holds land under that custom and for the time being let under that custom, and

(c) who holds land of the kind known as *chur* or *dearah*,—

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom,

in case (b), in the *chur* or *dearah* land—

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be *chur* or *dearah* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

*Bengal Tenancy Bill.**(Chapter XV.—Contract and Custom.—Secs. 181—183.)**(Chapter XVI.—Limitation. Chapter XVII.—Supplemental.—Secs. 184—187.)*

narly let under that custom and for the time being let under that custom, and

(b) who holds land of the kind known as *chur* or *dearah*,—

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom,

in case (b), in the *chur* or *dearah* land—

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be *chur* or *dearah* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

[Section 215.] 181. Nothing in this Act shall affect any incident of a *ghatwālī* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

[Section 216.] 182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

[Section 217.] 183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

[Section 218.] (2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

185. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(a) distrains or attempts to distrain the produce of a tenant's holding, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

Bengal Tenancy Bill.

(Chapter XVII.—Supplemental.—Secs. 188—194.)

Agents and
representa-
tives of land-
lords.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

[Section
222.]

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint-landlords to act
collectively or by common
agent.

Rules under Act.

[Section
223.]Rules under
Act.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules regarding procedure, powers of officers and service of notices.

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

[Section
224.]

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situated in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

193. The provisions of this Act applicable to Rights of pasturage, suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable "Rent" and in respect of any rights of pasturage, forest-rights, and rights over fisheries and the like.

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing

Tenant not enabled by
Act to violate conditions
binding on landlord.

Bengal Tenancy Bill.

(Chapter XVII.—Supplemental.—Secs. 195-196.)

(Schedule I.—Repeal of Enactments.)

in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for
special en-
actments.
[D. § 2.
C. B., s. 4.
Report of
Rent Commis-
sion, § 3.
B. B., s. 4.
Section 228.]

195. Nothing in this Act shall affect—

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(d) any enactment relating to the partition of revenue-paying estates;

(e) any enactment relating to patni tenures which is not expressly repealed by this Act; or

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

Construction
of Act.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.
Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamindars, independent taluqdars and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattapur, Kummadihour, and Bagrae, at present included in the zila of Midnapur.	Section 7.

SCHEDULE I—contd.

Number and year.	Subject of Regulation.	Extent of repeal.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

*Bengal Tenancy Bill.**(Schedule II.—Forms of Receipt and Account.)*

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (RAIYAT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—

<i>Nukdi</i> , Bighás	; rent Rs.
<i>Baculi</i> , Bighás	; Maunds ; or Rs.

{	Julkur, Rs.
{	Bunkur, Rs.
{	Phulkur, Rs.

{	Road Cess, Rs.
{	Public Works Cess, Rs.
5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—

<i>Nukdi</i> , Bighás	; rent Rs.
<i>Baculi</i> , Bighás	; Maunds ; or Rs.

{	Julkur, Rs.
{	Bunkur, Rs.
{	Phulkur, Rs.

{	Road Cess, Rs.
{	Public Works Cess, Rs.
5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

DETAILS OF PAYMENTS (LANDLORD'S PART).

[illegible][illegible]

FORM OF ACCOUNT.

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c.)	Bighás	Rate	Rs. A. P.
	<i>Nakdi</i>				
	Government Cesses		Bighás	Maunds	Rs. A. P.
	<i>Baculi</i>				
	Julkur	...	...	...	...
	Bunkur	...	...	...	...
	Phulkur	...	...	...	...
	4. Demand of the year	...	...	Maunds	Rs. A. P.
	5 Balance of former years (Bakaya)	...	...	...	...
	6. Total demand (current and arrear)	...	...	...	Rs. A. P.
	7. Paid each on account of	Current demand	...	...	...
		Arrear demand	...	...	...
	8. Paid in kind	...	...	Maunds	...
	9. Balance outstanding at end of year				Rs. A. P.
	10. Signature of the Landlord or his authorized Agent				

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c)	Rate	Rs. A. P.
		<i>Nukdi</i>		
		Government Cesses		
		<i>Baouli</i>		
		Julkur ...	...	...
		Bunkur ...	...	...
		Phulkur ...	...	...
		4. Demand of the year ...	...	...
		5. Balance of former years (Bakaya) ...	...	...
		6. Total demand (current and arrear) ...	...	...
		7. Paid each on account of { Current demand ...	...	...
		{ Arrear demand ...	...	...
		8. Paid in kind ...	...	...
		9. Balance outstanding at end of year		
		10. Signature of the Landlord or his authorized Agent		

Bengal Tenancy Bill.
(Schedule III.—Limitation.)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenureholder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months	The date of the service of notice of the deposit.
(b) in other cases	Three years	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years	The date of dis-possession.

PART II.—Appeals.

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days	The date of the order appealed against.

PART III.—Applications.

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years	(1) The date of the decree of order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India



EXTRA SUPPLEMENT TO The Gazette of India.

CALCUTTA SATURDAY, MARCH 14, 1885.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th March, 1885, and is hereby promulgated for general information:—

ACT NO. VIII OF 1885.

THE BENGAL TENANCY ACT, 1885.

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SCHEDULE I.—REPEAL OF ENACTMENTS.

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Bengal Tenancy Act.

(Chapter I.—Preliminary.—Secs. 1-3.)

An Act 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.

WHEREAS it is expedient 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; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Tenancy Act, 1885.

- (2) It shall come into force on such date (hereinafter called the commencement of this Act) as the

Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.

- (3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

- (2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

- (3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

- (4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context:—

- (1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khas mahals and revenue-free lands not entered in any register.

- (2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

- (3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

- (4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

- (5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

- (6) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

- (7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

- (8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

- (9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

- (10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

- (11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Bysak, where the Fasil or Amlí year

*Bengal Tenancy Act.**(Chapter II.—Classes of Tenants.—Secs. 4-5.)**(Chapter III.—Tenure-holders.—Secs. 6-7.)*

prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

(13) "Succession" includes both intestate and testamentary succession.

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats, and
- (3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, (namely) :—

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bring-

ing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

- (a) local custom; and
- (b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

*Bengal Tenancy Act.**(Chapter III.—Tenure-holders.—Secs. 8-15.)*

Enhancement of rent. (3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

- (a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and
- (b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Other incidents of tenures.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely :—

- (a) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and
- (b) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee

*Bengal Tenancy Act.**(Chapter IV.—Raiyats holding at fixed rates.—Secs. 16-20.)**(Chapter V.—Occupancy-raiyats.—Secs. 21-22.)**Other incidents of tenures.*

prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

18. A raiyat holding at a rent, or rate of rent, Incidents of holding fixed in perpetuity—
at fixed rates.

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed for the purposes of this section to have continuously held land in a

village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyat holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(3) A person holding land as an *ijaradár* or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his *ijara* or farm.

*Bengal Tenancy Act.**(Chapter V.—Occupancy-raiyats.—Secs. 23-30.)**General.*

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in *ijara* or farm.

*Incidents of occupancy-right.**Incidents of occupancy-right.*

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

*Enhancement of rent.**Enhancement of rent.*

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(a) the contract must be in writing and registered;

(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

Provided as follows:—

(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely):—

(a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

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(Chapter V.—Occupancy-raiyats.—Secs. 31-36.)

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(d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

(c) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

32. Where an enhancement is claimed on the ground of a rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average

prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(b) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase

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(Chapter V.—Occupancy-raiyats.—Secs. 37-40.)

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yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 378 of the Code of Civil Procedure.

*Reduction of rent.**Reduction of rent.*

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely):—

(a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

*Price-lists.**Price lists.*

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

Commutation.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

*Bengal Tenancy Act.**(Chapter VI.—Non-occupancy-raiyats.—Secs. 41—46.)*

- Commutation.* (b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and
- (c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.
- (5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.
- (6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.
42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.
43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46 :
Conditions of enhancement of rent. Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely) :—
- (a) on the ground that he has failed to pay an arrear of rent ;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;

- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

*Bengal Tenancy Act.**(Chapter VII.—Under-raiyats.—Chapter VIII.—General Provisions as to Rent.—Secs. 47—52.)*

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely) :—

- (a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and
- (b) in any other case—twenty-five per cent.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

- (a) on the expiration of the term of a written lease ;
- (b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement.

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

*Bengal Tenancy Act.**(Chapter VIII.—General Provisions as to Rent.—Secs. 53—57.)*

Alteration of rent on alteration of area. (2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

Payment of rent.

Payment of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and accounts.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

*Bengal Tenancy Act.**(Chapter VIII.—General Provisions as to Rent.—Secs. 58—63.)*

Receipts and accounts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Deposit of rent.

61. (1) In any of the following cases, namely:—

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his

rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(d) when the tenant entertains a *bond fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

- in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,
- in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and
- in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and in case (d) of that section, by the person entitled to the rent.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

*Bengal Tenancy Act.**(Chapter VIII.—General Provisions as to Rent.—Secs. 64-69.)**Deposit of rent.*

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

*Arrears of rent.**Arrears of rent.*

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at

the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court reopens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

69. (1) Where rent is taken by appraisement or division of the produce,—

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

*Bengal Tenancy Act.**(Chapter VIII.—General Provisions as to Rent.—Secs. 70-75.)**Produce-rents.*

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of

the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Liability for rent on change of landlord or after transfer of tenure or holding.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Illegal Cesses, &c.

74. All impositions upon tenants under the designation of *abwáb*, *maktút*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding

Bengal Tenancy Act.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 76—80.)

two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements. 76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
- (b) the preparation of land for irrigation;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and
- (f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide 78. If a question arises between the raiyat and his landlord—

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repairs in case of repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

80. (1) A landlord may, by application to such Revenue officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

- (a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;
- (b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Bengal Tenancy Act.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 81—86.)

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejection of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Surrender and abandonment.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

*Bengal Tenancy Act.**(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 87-90.)**Surrender and abandonment.*

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the

case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Sub-division of tenancy.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

Ejection.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

(a) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

*Bengal Tenancy Act.**(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 91-98.)**Measurements.*

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

*Managers.**Managers.*

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section,

the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

*Bengal Tenancy Act.**(Chapter X.—Record-of-rights and Settlement of Rents.—Secs. 99-104.)**Manager.*

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

101. (1) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following (namely):—

(a) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(c) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and

(d) where a settlement of revenue is being made in respect of the local area.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

(a) the name of each tenant;

(b) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(c) the situation, quantity and boundaries of the land held by him;

(d) the name of his landlord;

(e) the rent payable;

(f) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(h) the special conditions and incidents, if any, of the tenancy.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is

*Bengal Tenancy Act.**(Chapter X.—Record-of-rights and Settlement of Rents.—Secs. 105-112.)*

paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (d), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

105. (1) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

109. (1) Every record made under this chapter shall distinguish between the undisputed entries in the record to be presumptive evidence, and the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

111. When an order has been made under section 101,—

(a) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

112. (1) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that

the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council.

Bengal Tenancy Act.

(Chapter XI.—Record of Proprietors' Private Lands.—Secs. 113—120.)

(Chapter XII.—Distraint.—Sec. 121.)

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khāmār, nij or nij-jot, and in Behar as zirāt, nij, sir or kamāt, where any such land is held under a lease for a term of years or under a lease from year to year.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer

may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

120. (1) The Revenue-officer shall record as a proprietor's private land—

(a) land which is proved to have been cultivated as khāmār, zirāt, sir, nij, nij-jot or kamāt by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village usage as proprietor's khāmār, zirāt, sir, nij, nij-jot or kamāt.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

DISTRRAINT.

121. Where an arrear of rent is due to the landlord of a raiyat or under-tenant, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

(a) any crops or other products of the earth standing or ungathered on the holding;

(b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead;

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(Chapter XII.—Distraint.—Secs. 122-126.)

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

122. (1) Every application under the last foregoing section shall specify—

(a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(b) the name of the tenant;

(c) the period in respect of which the arrear is claimed;

(d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(e) the nature and approximate value of the produce to be distrained;

(f) the place where it is to be found, or such other particulars as may suffice for its identification; and

(g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products

*Bengal Tenancy Act.**(Chapter XII.—Distrain.—Secs. 127—136.)*

distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner

of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrears for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the default, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section,

*Bengal Tenancy Act.**(Chapter XII.—Distrain.—Secs. 137-142.)**(Chapter XIV.—Judicial Procedure.—Secs. 143-144.)*

the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 131 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be

impracticable for a landlord to realize his rent by an application under this chapter, to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

CHAPTER XIII.

JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits. XIV of 1882.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

*Bengal Tenancy Act.**(Chapter XIII.—Judicial Procedure.—Secs. 145-151.)*

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

146. The particulars referred to in section 53 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

148. The following rules shall apply to suits for the recovery of rent:—

(a) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit:

(b) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification:

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served:

(e) a written statement shall not be filed without the leave of the Court:

(f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not:

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears:

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

*Bengal Tenancy Act.**(Chapter XIII.—Judicial Procedure.—Secs. 152-156.)*

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

155. (1) A suit for the ejectment of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a con-

tract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be), fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of pro-

*Bengal Tenancy Act.**(Chapter XIV.—Sale for Arrears under Decree.—Secs. 157—162.)*

ceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

- (d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

157. When a plaintiff institutes a suit for the Power for Court to fix ejectment of a trespasser he fair rent as alternative may, if he thinks fit, claim as to ejectment. alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

158. (1) The Court having jurisdiction to determine a suit for the possession mine incidents of ten- of land may, on the ap- plication of either the land- lord or the tenant of the land, determine all or any of the following matters, (namely):—

- the situation, quantity and boundaries of the land;
- the name and description of the tenant thereof (if any);
- the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

- the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

159. Where a tenure or holding is sold in execution of a decree for arrears purchaser as to avoidance due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests", but with power to annul the interests defined in this chapter as "incumbrances":

Provided as follows:—

- a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

- the power to annul shall be exercisable only in manner by this chapter directed.

160. The followings shall be deemed to be protected interests within the meaning of this chapter:—

- any under-tenure existing from the time of the Permanent Settlement;
- any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;
- any right of occupancy;
- the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;
- any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
- any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance."

(a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(b) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attach-

*Bengal Tenancy Act.**(Chapter XIV.—Sale for Arrears under Decree.—Secs. 163-167.)*

ment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

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163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

- in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

- in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

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

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

*Bengal Tenancy Act.**(Chapter XIV.—Sale for Arrears under Decree.—Secs. 168-174.)*

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

- there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;
- the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

XIV of 1882. Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

- the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;
- his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and
- he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable

*Bengal Tenancy Act.**(Chapter XV.—Contract and Custom.—Secs. 175-179.)*

under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside:

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in that behalf, notify the incumbrance to the landlord, causing a copy of the instrument to be served on him in the prescribed manner.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

- shall bar in perpetuity the acquisition of an occupancy-right in land, or
- shall take away an occupancy-right in existence at the date of the contract, or
- shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;
- take away or limit the right of an occupancy-raiyat to use land as provided by section 23;
- take away the right of a raiyat to surrender his holding in accordance with section 86;
- take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;
- take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act;
- take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;
- take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or
- affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

- nothing in this section shall affect the terms or conditions of a lease granted ~~bona fide~~ for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of arable land with agricultural crops.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent mukarrari lease, from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

Bengal Tenancy Act.

(Chapter XV.—Contract and Custom.—Secs. 180-183.)

(Chapter XVI.—Limitation. Chapter XVII.—Supplemental.—Secs. 184-187.)

Útbandi, chur and dearah lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

- (a) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or
- (b) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of útbandi and for the time being held under that custom, or

in case (b), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

181. Nothing in this Act shall affect any incident of a ghatwál or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVI.
LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

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

CHAPTER XVII.
SUPPLEMENTAL.
Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

- (a) distrains or attempts to distrain the produce of a tenant's holding, or
- (b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or
- (c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Bengal Tenancy Act.

(Chapter XVII.—Supplemental.—Secs. 188-194.)

Agents and representatives of landlords.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Rules under Act.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules regarding procedure, powers of officers and service of notices, consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

- (a) any power exercised by a Civil Court in the trial of suits;
- (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and
- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situated in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

- (a) land-revenue is for the first time made payable in respect of the land, or
- (b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

193. The provisions of this Act applicable to Rights of pasturage, suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any Rights of pasturage, forest-rights, or rights over fisheries and the like.

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle

Bengal Tenancy Act.
(Schedule I.—Repeal of Enactments.)

any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—
- the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
 - any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;
 - any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
 - any enactment relating to the partition of revenue-paying estates;
 - any enactment relating to patni tenures, in so far as it relates to those tenures; or
 - any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

Construction of Act.

196. This Act shall be read subject to every Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

SCHEDULE I.

(See section 2.)
REPEAL OF ENACTMENTS.
Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamindars, independent taluqdars and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the sils of Cuttack, including the parganas of Pattaspur, Kummadihour, and Bagrae, at present included in the sila of Midnapur.	Section 7.

SCHEDULE I—contd.

Number and year.	Subject of Regulation.	Extent of repeal.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Bengal Tenancy Act.
(Schedule II.—Forms of Receipt and Account.)

SCHEDULE II.
FORMS OF RECEIPT AND ACCOUNT.
(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

- Serial number of Receipt
- Estate ; Village ; Tháná
- Tenant's name , Son of
- Particulars of the holding—
Nukdi, Bighás ; rent Rs.
Baouli, Bighás ; Maunds ; or Rs.
Jalkur, Rs.
Bunkur, Rs.
Phulkur, Rs.
Road Cess, Rs.
Public Works Cess, Rs.
- Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

- Serial number of Receipt
- Estate ; Village ; Tháná
- Tenant's name , Son of
- Particulars of the holding—
Nukdi, Bighás ; rent Rs.
Baouli, Bighás ; Maunds ; or Rs.
Jalkur, Rs.
Bunkur, Rs.
Phulkur, Rs.
Road Cess, Rs.
Public Works Cess, Rs.
- Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

- When a tenant makes a payment on account of rent, he may declare the year or 'the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.
- If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

DETAILS OF PAYMENTS (TENANT'S PORTION).

Bengal Tenancy Act.

(Schedule II.—Forms of Receipt and Account.)

Date of payment, and name of person through whom paid.	NUGEL	BAGGILL	JULIUS, & C.	CESSES.
	Current on account of . kist .	Current on account of crop .	Current on account of kist .	Current on account of kist .
	Arrear on account of year , kist .	Arrear on account of year , crop .	Arrear on account of year , kist .	Arrear on account of year , kist .

[illegible]

FORM OF ACCOUNT:

Bengal Tenancy Act.

(Schedule II.—Forms of Receipt and Account.)

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c.)	Rate	Rs. A. P.
Naldi				
Government Cesses				
		Bighás	Maunds	Rs. A. P.
Bacoli:				
	Julkur	...	...	...
	Bunkur	...	...	...
	Phulkur	...	...	...
			Maunds	Rs. A. P.
4.	Demand of the year	...	...	...
5.	Balance of former years (Bakaya)	...	...	...
<hr/>				
6.	Total demand (current and arrear)	...	...	Rs. A. P.
7.	Paid each on account of	Current demand	...	...
		Arrear demand	...	...
		Maunds		
8.	Paid in kind	...	...	...
<hr/>				
9.	Balance outstanding at end of year			Rs. A. P.
10.	Signature of the Landlord or his authorized Agent			

FORM OF ACCOUNT.

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c.)	Bighás	Rate	Ra. A. P.
<i>Natás</i>					
Government Cesses					
			Bighás	Maunds	Ra. A. P.
<i>Baonás</i>					
	Julkur	...	...	...	...
	Bunkur	...	...	...	...
	Phulkur	...	...	...	...
4.	Demand of the year	...	...	Maunds	Ra. A. P.
5	Balance of former years (Bakaya)	...	...	...	...
<hr/>					
6.	Total demand (current and arrear)	...	...	...	Ra. A. P.
7.	Paid each on account of	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> <div>Current demand</div> <div>Arrear demand</div> </div> </div>	...	...	...
8.	Paid in kind	...	...	Maunds	...
<hr/>					
9.	Balance outstanding at end of year				Ra. A. P.
10.	Signature of the Landlord or his authorized Agent				

Bengal Tenancy Act.
(Schedule III.—Limitation.)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejection shall be the penalty of such breach.	One year	The date of the breach.
2. For the recovery of an arrear of rent— (a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding. (b) in other cases	Six months Three years	The date of the service of notice of the deposit. The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years	The date of dis-possession.

PART II.—Appeals.

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
From any order of a Collector under this Act, to the Commissioner.	Thirty days	The date of the order appealed against.

PART III.—Applications.

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years	(1) The date of the decree of order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR
GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS UNDER THE PROVISIONS OF
THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

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

PRESENT:

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

LAND ACQUISITION (MINES) BILL, 1885.

THE Hon'ble MR. HOPE introduced the Bill to provide for cases in which mines and minerals are situate under lands which it is desired to acquire under the Land Acquisition Act, 1870, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, Sir Steuart Bayley and the mover. He said:—"Considering the other important business which is before us on the present occasion, I think my colleagues will probably consider it sufficient if I refer them to the Statement of Objects and Reasons for a detailed explanation of the provisions which the Bill contains, without detaining the Council for the purpose of going into the various points in detail."

The motion was put and agreed to.

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

The motion was put and agreed to.

INDIAN SECURITIES BILL, 1885.

THE Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the law relating to Government securities. He said:—"The main object of the Bill is to legalise and conform the law to the practice obtaining in

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

The motion was put and agreed to.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Reports of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal be taken into consideration. He said:—

OBJECT OF SPEECH.

To review the work of Select Committee.

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

Constitution of the Committee.

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

Work of the Committee.

"The Committee sat 35 times last session, and 28 this session, each meeting lasting generally 3½ hours. The correspondence they had to study fills a shelf some 8½ feet in length, and, whatever charge may be brought against them, that of want of industry is certainly not sustainable. I make these

remarks not merely that I may take this opportunity of expressing the thanks of the Government of India to the Committee for their unwearying labours and the great assistance they have given, but also in order to show to the Council that in a Committee so constituted the decisions of the majority may be accepted as at least *prima facie* likely to be sound, and as certainly the result of an impartial and most earnest desire to do justice in the clash of conflicting interests. Its prima facie value.

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

"The original definition made the Bill apply to all land entered in any of the general registers of Government, and if any one will turn to section II, clause V (Vol. 1, page 137) of the Bengal Board's Rules they will see that all *khass mehals* and *raiayatwari* tracts, all lands even temporarily occupied by Government for public purposes, and all waste and other lands not assessed to revenue have to be entered in these registers. It is difficult to understand how any one should suppose in these circumstances that it was the intention of Government to exempt their own estates. I can only suppose that the proviso which appeared in Bill No. II, referring to certain Government taluks, was not fully understood. That proviso had reference to some *noabad* taluks in the Chittagong district, which, though for revenue purposes treated as tenures were for convenience sake entered in the register of estates, and it was in order to prevent a wrong deduction as to the nature of these tenures being founded on the fact that they were entered in the estate register that a late member of the Bengal Board of Revenue asked for the insertion of the proviso. For the purposes of this Bill it was not wanted, and it has accordingly been struck out, but I repeat emphatically that it was never the intention of Government to exempt its own estates from the substantive provisions of this Bill, and out of abounding caution we have inserted words which can leave no doubt on this point. Original definition applied to all lands entered in Government registers. And therefore to all Government estates. Explanation of proviso. Since omitted.

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

"In Bill No. II, the presumption was made conditional on the person having

subletting a portion omitted.

actually sublet a portion of his holding, but it seemed to the majority of the Committee that, if the presumption arising out of the size of the holding has any validity at all with reference to the object of the initial taking, the question of whether an acre or two is subsequently at a particular time sublet, is quite irrelevant. Of course if a large portion or the whole of it is sublet, this fact affords an indication of the original object of the holder which the Court would take into consideration, but it seemed wiser not to clog the presumption, by making it depend on the sublease of an arbitrarily fixed proportion of the holding—a proportion which would, in practice, be very difficult to prove, and we have therefore left it to depend entirely on the size of the holding.

Tenure-holders. Substantive position unchanged.

"In the chapter on tenure-holders we have left the substantive position of the tenure-holder as regards his liability to enhancement unchanged. We have however somewhat modified the provisions of the original Bill relating to limitations on enhancement, and to registration on transfer. Under the original Bill the Courts, if granting enhancement against a tenure-holder, were bound to leave him not less than 10 per cent. and not more than 30 per cent. of his net rental. The minimum was subject to some alteration in the case of improvements made by the tenure-holder. The enhanced rent was also not to be more than double the previous rent, and was not to be again enhanceable for a period of ten years.

Limitations on enhancement omitted.

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

What the Courts are to look to.

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

Registration of transfers.

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

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

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

"A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of our Bill now under consideration, has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

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

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

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

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

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

"A very full discussion of the first question will be found at pages 5 and 6 of the Statement of Objects and Reasons, the gist of which is summed up in the statement that the Bill as introduced in Council makes 'the acquisition of the status of the khudkasht, or as he is termed in the Bill the settled, raiyat, depend not on the holding of one and the same plot of land for 12 years, but on the holding of any raiyati land (whether the same or not does not matter) in the same village or estate for a period of 12 years whether before or after the passing of this Act.' That is to say, the Bill originally proposed to continue all occupancy rights already acquired; to define as above the status of a settled raiyat, and to provide that the settled raiyat of a village or estate as thus defined should have occupancy rights in all lands which he might legally occupy in that village or estate. Bill No. II went a step further. The discussion in Council two years ago brought out the fact that whatever might have been the effect of Act X of 1859 as to the legal acquisition of occupancy rights, it was, in practice, exceedingly difficult to prove those rights. The proportion of persons having acquired occupancy rights was estimated at from 90 to 70 per cent. of all the raiyats in the country, but unfortunately, as was said in the course of the discussion, those rights were 'moral' rights, and it was a matter of extreme difficulty for the individual raiyat to enforce in his own case by legal proof the rights which were generally admitted to have accrued to the raiyat in the abstract. Acting on this view, the Select Committee introduced into Bill No. II the presumption which will now be found at section 20 (7) of the Bill before the Council. The presumption runs as follows: 'When it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for 12 years continuously held that land or some part of it as a raiyat.' The Committee justified it as warranted by the existing state of things in the Lower Provinces, and because, while the presumption tends to simplify litigation, it is one which the landlord can have no difficulty in rebutting where it does not hold good. This presumption the Committee desire to maintain, and the only change they have introduced during their late session in this part of the Bill is the elimination of the words 'or estate,' thus limiting the right to the village in which the raiyat cultivates. As this decision of the Committee has been very forcibly attacked by His Honour the Lieutenant-Governor and some other members of the Committee, it is right that I should explain to the Council the reasons which led me, as representing the Government of India, to vote with the majority on this occasion. Acquisition of the right. Presumption of status. Elimination of the words "or estate."

Point noticed by the Select Committee.

"The inconveniences attending the retention of 'the estate' in the definition of settled raiyat was touched on in the Select Committee's Preliminary Report of last year, and the point was one of those referred by the Bengal Government for the opinion of its officers. The great majority of those officers were against the retention of the words. This fact will be found in the 23rd paragraph of the Bengal Government's letter of the 15th September last, where also are given the reasons which led His Honour the Lieutenant-Governor to dissent from the opinion of that majority, and to insist on the extension of the status of settled raiyat to the estate as well as to the village.

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

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

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

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

Objections to retention of "estate".

"It is simply the area registered in our books under one number, and liable to be sold as a single unit in case of arrears of revenue being unpaid. For rent purposes it has no meaning. It is not all the area owned by a landlord, for a landlord may have many estates. It is not the possession of a single landlord, for it may be divided among numerous shareholders. It may be part of a village, or it may be 100 villages. It may be the property of one man, or the property of 100 men. It may be managed direct by the landlord or indirectly by a number of agents, or it may, as in the case of the Burdwan Rājā's estates, be let out into innumerable *patni* or permanent tenures (these tenure-holders subdividing it again); and in these circumstances what is one estate in the Collector's books becomes, for rent purposes, several hundred different estates, the immediate owners or managers of which have no concern with one another, can see nothing of each other's books, and know nothing of each other's raiyats. The Burdwan estate is of course an exceptional instance from its size, but to a smaller extent the same thing happens all over the country, and it is on this point that the objection is most difficult to meet. The effect would be to say that a man having once acquired occupancy-rights in any part of an estate should retain those rights with respect to any land which he may in any way acquire in any other part of the estate. Now, an estate, as I have shown, may be, and frequently is, subdivided among numerous tenure-holders or numerous managers. Any of these men may perhaps be able to say if any particular person has settled rights in his own particular tenure, but he cannot possibly know this in regard to the other tenures of the estate. He may let a man into his village as a non-occupancy raiyat, and the latter can immediately turn round and say that having acquired occupancy-rights in a village twenty miles away belonging to another tenure-holder, he claims to have them also in his new land. Clearly the Lieutenant-Governor's argument, deduced from the landlord's ability to know the character of his own raiyats, does not apply to cases of this class, and from this point of view his position is not an easy one to defend. The only reason for retaining the word 'estate' in the definition is to prevent a landlord from shifting his raiyat's holding from one village to another within his estate and so breaking down the occupancy-right. Now to this argument the

Danger of shifting examined.

Lieutenant-Governor himself supplies the answer. He urges that 95 per cent. of the raiyats are so poor that they cannot hold land away from their own residence. This, if it shows that the danger to the landlord would not be great from retaining the word 'estate', also shows that the possibility of shifting raiyats, except within reach of their residence, is equally limited. The advantage to the raiyats of carrying with them the occupancy-right from one village to another within the same estate is very small, for it is shown that 95 per cent. of them are not in a position to take advantage of it, and the only raiyats who could take advantage of it, are those who have abandoned their own village, and its application in their case would be a misuse of the power and contrary to the proposed intention of the Bill.

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

"I suppose that, when the Bill becomes law, nine-tenths of the tenants will have secure occupancy-rights in the land they cultivate, and of the remaining tenth it is but an infinitesimal portion that can be exposed to the danger above explained.

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

Advantage of confining the khudkasht rights to the village.

Intermediate device.

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

Incidents of occupancy-right. Transferability.

My own adherence to it.

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

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

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

"To check this tendency, or at least to nullify its evil effects, was the intention of the provisions inserted as section 37 of our Intermediate Bill No. II. The scheme is explained fully in paragraph 27 of our Preliminary Report of last year. The main point of it was that an occupancy raiyat, who sub-lets more than half his holding, should be deemed to be a tenure-holder, and thus his sub-raiyats should be in a position to acquire rights of occupancy. But it was felt that this would envelope all rent-litigation in such clouds of uncertainty that it could only be permitted to take effect on the tenure being registered, and on this difficulty the whole scheme was wrecked. It was the very general opinion of the officers consulted, that in such cases registration would never be spontaneously sought for, and could not be enforced, and in view of the general objection taken to it on this score it was withdrawn. All that we have felt ourselves able to do in this direction is to provide in a subsequent portion of the Bill (section 85), that a sub-lease, given without the landlord's consent, shall not be valid against him unless registered, and that no sub-lease for a term of more than nine years shall be registered. To such sub-leases we have given some protection which I shall refer to hereafter, but if it is really desirable to check sub-letting, about which I am personally very doubtful, it will certainly not be done by leaving the sub-lessee defenceless against his lessor.

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

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

"It would have meant that in every case before a contract could be registered, an exceedingly complex judicial enquiry should take place—an enquiry, too, in which the Revenue-officer would be practically powerless, as the only evidence available would be that of the two parties, who were *ex hypothesi* in agreement as to the terms. The approval of the Revenue-officer, though, if confined to

the form of the contract, strictly in accordance with the conditions of the Permanent Settlement, was felt, when extended so as to cover the question of the fairness of the conditions, to leave too wide a discretion to the Revenue-officer—a discretion, moreover, which, for the reasons above given, he would in practice be powerless to exercise.

"The registering officer will now, under the amended section, merely have to see that the agreement is not contrary to the express stipulations of the contract sections of the Bill, and that the raiyat understands it and is willing to enter in to it. Approval of the registering officer no longer required.

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

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

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

"One point remains under this head. We have, in order to lessen the harassment caused by frequent enhancements, provided that the enhanced rent, whether under contract or under decree of Court, should run for 15 years. Period during which fresh enhancement is barred extended to 15 years. This is an extension of the term (10 years) originally proposed by the Rent Com-

mittee, but it is only half of that (30 years) recommended by the Famine Committee. It is a very substantial boon to the raiyat, but is, we consider, perfectly just and necessary.

Enhancement in Court.

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

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

Three grounds.

- (1) the prevailing rate;
- (2) increase of productive powers of the land;
- (3) increase in average prices of produce.

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

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

Prevailing rate.

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

Reasons suggested of abandoning the prevailing rate.

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

"In the absence of a real prevailing rate, the Courts have to take the average of the most prevalent rates in the vicinity. This means that A's rent is to be enhanced because B and C, being in debt, or otherwise at their landlords' mercy, have agreed, or pretended to agree, to pay enhanced rates. There is ample evidence that, apart from the natural effect of such competition-rents as have replaced customary-rents, bogus-rents are fabricated and kept on the jamabandis with a direct view to bring up the standard of the prevailing rate. Proposals have been made to exclude from consideration in determining the

prevailing rate the effect of recent initial or competitive rents, but in the long run this would be impossible, and any way it does not cover the whole ground. These considerations led the Lieutenant-Governor to propose the absolute abandonment of the section, except where a prevailing rate is established by a Settlement-officer under Chapter X. The question was very fully discussed in Committee, and the result is given in paragraph 20 of our Report, which runs as follows:—

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

Reasons which prevailed with the Committee for retaining it.

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

Modifications in form.

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

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

Alteration in law to facilitate proof.

"We have, I think, by this scheme redeemed the pledge that Government would put the power of enhancement 'on such a footing that it will readily be

Deduction to cover increased cost of production.

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

Remaining grounds of enhancement.

"In regard to the two remaining grounds of enhancement, namely, increase in productive powers caused by landlords' improvements and by fluvial action, I would only mention here that we have provided facilities for at any time registering and recording landlords' improvements, and we have decided that under the head of fluvial action the Courts shall not take into account any increase which is merely temporary or casual.

Limitations on enhancement.

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

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

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

Gross-produce limit.

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

Reasons for abandoning it.

Failure of scheme for table-of-rates.

"Before, however, the Committee had begun its labours, the Lieutenant-Governor had, at the instance of the Government of India, deputed selected officers to four or five experimental areas to ascertain if, as a matter of fact,

rents had any such fixed and stable relation to classes of soil and produce as would enable the Revenue-officer to fix any table-of-rates based on existing facts. The result of the enquiry was disastrous to the scheme of a table-of-rates. It was found in almost each area subjected to enquiry not only that the multiplicity of rent-rates was almost inexhaustible, but that little relation could be traced between the existing rates and the quality of the soil. Consequently the table-of-rates as an adequate general machinery for regulating rents had to be abandoned, and the matter relegated to a great extent to the discretion of the Courts; and with the table-of-rates went the process of ascertaining and recording in an accessible form the average gross produce of each class of soil.

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

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

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

"The relative size of the holding will similarly interfere with the applicability of the test. The same margin of produce per bigha left to the raiyat may be quite adequate where he holds 20 bighas, and may mean absolute starvation where he holds 4 only.

"Another very serious objection to the scheme is this: as population advances the average area of each man's holding must diminish, and consequently the raiyat will require a larger proportion of the gross produce of his holding for the mere support of himself and his family. A less proportion will therefore remain as rent for his landlord. This is a necessary tendency while population increases at its present rate, and is, moreover, wholly confined to unscientific agriculture for subsistence. At the beginning of this century we have, in the Regulation I of 1804* for invalid jaghirs, a clear proof that Government then thought a cash rent equal to two-fifths of the gross produce a fair standard. To-day the Government of Bengal think one-fifth the maximum consistent with

* Section IX (6):—

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

Dangerous effect of fixing a permanent standard in face of increasing population.

safety. If the Government of that day had been called on to fix a general standard they would have fixed it probably at two-fifths. It would be as dangerous for us to lay down now a permanent standard of one-fifth up to which, by the inevitable law which makes water find its level, rents would surely rise, as it would then have been for Government to lay down the standard at two-fifths. Until you can limit the amount of population to be fed you cannot with any safety say what proportion of the gross produce shall go to the landlord and raiyat respectively.

Committee objected to its principle and doubted its efficiency in practice.

"The Committee therefore, after full consideration condemned the principle of the gross-produce limit, because it left out of consideration other elements of equal or more importance in determining a fair rent. It took no thought of the cost of cultivation or of the size of the holding, or of the relative productiveness of it. They also objected to it in practice, because they thought the problem was one which the Courts could not solve, and because the attempt to solve it must add overwhelmingly to the cost of rent-suits—a burthen, which, as the *onus probandi* is on the raiyat, must inevitably fall on him in a large number of cases. So far we had not discussed the special fraction which it was proposed to introduce. Last autumn the Bengal Government again urged in the strongest terms the imperative necessity of retaining the gross produce limit as the only ultimate check on enhancements which might otherwise, under the prevailing-rate scheme, become destructive to the raiyat, and which certainly could not with safety be borne in Behar.

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

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

Possibility of applying it after special enquiry.

Finally abandoned.

Fractional limits condemned.

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

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

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

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

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

"Around this raiyat, whatever he be called, a severe conflict has arisen. Some of the minutes of dissent declare that a great deal too much has been done for his protection, others say that he is entirely unprotected. Mr. Reynolds says the Bill 'affords him no protection as regards his rent, and that it does nothing to facilitate his acquisition of the right of occupancy.' Babu Feari Mohan Mukerji says: 'The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat.' The Maharaja of Durbhunga agrees with the latter, Mr. Amir Ali with the former. His Honour the Lieutenant-Governor also says the Bill 'leaves the non-occupancy-raiyat practically unprotected, and that on this point the Committee have departed from the intentions of the legislature and the conclusions of authoritative opinion.' Difference of opinion.

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

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

leave the non-occupancy-raiyat absolutely at the mercy of the zamindar without protection of any kind; the other party, in its endeavour to stop up every gap by which a zamindar could possibly find a means to injure his tenant, would force the zamindar to retain for ever, subject to a heavy fine, any paikasht raiyat he had once admitted on the land, and would make the acquisition of occupancy-rights inevitable.

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

Protection under the existing law.

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

Protection under the Bill.

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

Alteration made by the Committee.

"The Bill, as originally introduced, was silent as to ejectment after the initial lease, and the check it proposed on undue enhancement was (1) a gross produce limit, and (2) that the zamindar should pay compensation for disturbance graduated according to the ratio of enhancement demanded. It is on these points that the Government of Bengal objected to the conclusions of the majority, and asked us to go back to the original Bill. In regard to compensation for disturbance, I may say that at the original discussion in Council it was more objected to than any provision in the Bill, and it was condemned, not only, as I have already mentioned, by the Lieutenant-Governor but also in stronger terms by Mr. Reynolds. He said: 'the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. We have not the least experience to show how this provision would work in India, and the principle of it seems to me objectionable.' We found that Mr. Reynolds' condemnation was endorsed by others whose opinions we could not disregard, and we abandoned it. As a substitute the judicial lease for five years was proposed and accepted, and so far the difference between the safeguard provided in the original Bill and that now given is that whereas, under the old Bill, the non-occupancy-raiyat objecting to pay the enhanced rent demanded of him could be ejected at the landlord's discretion subject to the payment of a fixed sum of money, he can now have the rent fixed by the Court; if he refuses to pay this rent he must go; if he accepts he is secure in his holding for another five years.

Abandonment of compensation for disturbance.

Substitution of judicial rent with a five years lease.

Effect of this protection.

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

Initial lease.

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

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

Objection of the Government of Bengal.

Reasons for retaining the rule.

Dangers inherent in it.

"Thus restricted I should not have supposed that the right could do serious harm, but the contention of Mr. Reynolds has received valuable support from the quarter whence he can least have expected it, and the representative of the zamindars corroborates his prediction that they will use this provision to the utmost of their power to prevent the accrual of the occupancy-right. He says, and he ought to know, that 'having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short-term leases, with a view to protect his interests, and thus reduce non-occupancy-raiyats to mere tenants-at-will.' It is true they have the power at present, and to some extent, perhaps, make use of it, but I had not expected such authoritative testimony to the fact that the zamindars prefer a set of serfs to stable and improving tenants; and I confess that if anything could make me doubt the wisdom of the decision arrived at by the Committee, it would be the gratuitous testimony of the Babu to the evil use which will be made of it.

View of Babu P. M. Mukerji.

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

Gross-produce limit.

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

Protection vis-a-vis.

Problem remains to be solved.

"I come now to Chapter VIII, which is headed General Provisions as to Rent. The chapter opens with the sections which contain the well-known

The 20 years' presumption.

presumption that a tenure-holder or raiyat, who has held for 20 years at an unchanged rate of rent, shall be presumed to have held at that rent from the time of the Permanent Settlement and shall therefore not be liable to enhancement.

Not to apply to produce-rents.

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

Nor to recorded and registered holdings.

Question of period for calculating the presumption.

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

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

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

"The majority of the Committee held that the presumption arising from the fact of a man holding for 20 years at an unchanged rent is in itself a wise provision of law without any reference to its dependence on the existence of the tenure or holding at the time of the Permanent Settlement, that it was in most cases easier for a zamindar who may be expected to keep regular books to prove if rent had been changed, than for a raiyat who does not keep books to prove that it has not been changed, and that as the law had been in its present shape on the statute-book for a quarter of a century, it was inexpedient to alter it. I myself voted with the minority on that occasion, but I am not anxious to see the decision of the Committee disturbed.

Decision of Committee to maintain the existing law.

Increase of area.

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

Instalments.

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

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

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

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

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

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

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

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

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

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

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

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

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

Improvements.

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

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

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

Surrender.

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

Abandonment.

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

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

Protection of third parties.

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

Merger.

"The only other point in the chapter to which I need draw attention is that we have omitted section 141 of the original Bill, which dealt with the

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

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

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

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

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

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

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

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

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

"The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has

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

Provisions in the original Bill.

been fixed or ascertained and the amount of the rent fixed or ascertained. This jamabandi will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for 10 years.

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

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

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

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

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

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

"What we have done then has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground

that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

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

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

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

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

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

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

Alterations made by Select Committee.

Two processes amalgamated.

Reasons for the change.

Powers of Revenue-officer.

Special Judges and High Court to hear appeals.

Landlords empowered to apply for settlement.

Ordinary settlements.

Special settlements.

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

Divergent views as to the Settlement Chapter.

My own opinion.

Tables of rates.

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

Abandoned.

Khamar or private land.

"We have made some alterations in the provisions regarding *khamar* or *zirât* land.

Meaning of the word.

"A reference to paragraphs 18 and 19 of the Statement of Objects and Reasons will show the intentions of Government in respect to surveying and recording *khamar* land. It must be explained that the word *khamar*, and the other words used in the Bill, have a great variety of significations, but in this Bill, as in Act X of 1859, the only distinction we wish to draw, or are in any way concerned with, is between that private land of the zamindars in which occupancy-rights do not accrue, and land which is not the zamindar's private land in which they do accrue. It was to meet a very real evil, *viz.*, the tendency to absorb into the landlord's private land large areas of land in which raiyati rights had grown up—an evil of the existence of which in Behar there is ample evidence—that Government took power in the Bill to record and mark off for the future in specified local areas all such land as is no longer open for the acquisition of occupancy-rights. The injury of the past could not be undone, but in a part of the province where the wholly agricultural population is not less than 800 to the square mile, it is obviously right to prevent any further encroachments in the future to the stock of raiyati land. We have supplemented the provisions of the original Bill by a section which allows a landlord at any time to get his private land recorded, so as to obviate the difficulty which might occur if he has to bring evidence of a past state of facts on a survey being ordered at some distant date, and we have given the tenant a converse power.

Instructions to guide the Revenue-officer or Courts.

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

Distraint.

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

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

Chapter XIII.—Judicial Procedure.

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

"That Statement then went on to say—

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

Explanation in Statement of Objects and Reasons.

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

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

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

"In our intermediate report we explained what we had been able to do, which was as follows:—

Changes made by Select Committee in their Intermediate Report.

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

"We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Courts Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

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

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

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

"We have provided (section 178) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

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

Questions referred to the High Court.

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

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

'Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a Judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.'

Reply of the Judges.

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

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

'It would, the Judges believe, be extremely dangerous to enact any such provision as that proposed in clause (6) of paragraph (2), to restrict the right to claim a re-trial where a decree has been given *ex parte*, and on this point they agree entirely with the Select Committee. It is true, as has been represented to the Committee, that landlords are frequently involved in unnecessary expense and delay by the tactics of their raiyats who deny service of summons, but it seems absolutely essential, in order to prevent fraud by dishonest agents of landlords in collusion with the process-servers, that raiyats against whom decrees are passed *ex parte* should have an opportunity for applying for a re-hearing.'

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

'The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would therefore have been a matter of satisfaction to them had they been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zamindars. It is, however, scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.'

Remedies proposed by the Judges.

"The Judges go on to point out that the only remedies for expense and delay are to be found in the lowering of fees and in the multiplication of Courts. On these points I am not in a position to say anything here, save

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

"The general scheme of the Sale chapter was very fully explained in paragraphs 124-132 of the Statement of Objects and Reasons, and as we have not departed from the general scheme I will not go over the whole ground again, but merely explain the slight modifications of detail which we have ventured to introduce. We have included among 'protected' interests, that is to say those which cannot be voided by the purchaser, the right of a non-occupancy-raiyat to hold for five years at the rent fixed by a Court.

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

"We have, in order to shorten proceedings, inserted in section 168 a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

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

"Having decided that no alteration should be made by this Bill in the existing law relating to the incidents of the patni tenure, we have consequently excluded those sections which dealt with the sale procedure applicable to those

and similar tenures. It will be for the Government of Bengal to deal with the question of making this procedure applicable to the summary sale of other tenures which may be registered under the Bill now before the Lieutenant-Governor's Council.

Contract sections.

"I have a few remarks to make on Chapter XV, which brings together in one focus all the provisions we think it necessary to make in limitation of contract. The necessity of interfering with freedom of contract was fully discussed at the second reading of the Bill, and was then affirmed by the Council. I shall not therefore further discuss this question. I shall only deal with our alterations, and, first, I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limitations into three classes, the first one referring to all contracts whether past or future, the second to quite recent contracts, the third to future contracts only. In the first class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy-rights, to destroy occupancy-rights already in existence, to allow ejectment without process of law, to prohibit improvements. The second class deals with contracts, purporting to bar the accrual of occupancy-rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to. In the third class, which only restricts future contracts, we have simply put in legal form the general statement that neither the accrual of the occupancy-right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease.

Reclamation leases.

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

Chur and utbundi.

"We have put *chur* lands and *utbundi* lands on a special footing, which is practically the same as that of the ordinary raiyat under Act X of 1859. No occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever amount may be agreed upon between him and his landlord. We have omitted the chapter in the original Bill relating to *bastu* or homestead lands, and have brought all our legislation on this point into one brief section, to the effect that homestead land when not held as part of the holding shall be dealt with according to local usage; and when local usage cannot be ascertained, then it shall be treated as if it were ordinary raiyati land. The varieties of local usage were so many and of such importance that any regulations which could have been framed must have done harm and have been found inapplicable in many places.

Supplemental Chapter.

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

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

patients for a little time while I offer some remarks as to the value which should be attached to the two opposing lines on which the minutes of dissenting members proceed, and the real amount of protection given to the raiyat by the labours of the Select Committee.

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

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

"I wish, however, to say, a few words on those objections which are directed against the general scope of the Bill. It was not to be expected that a Bill of such importance and complexity as this—a Bill which has to deal with absolutely conflicting interests, which purports to set a limit on the power of one class to absorb the fruits of the industry of another class, and which has to regulate their relations in regard to the two leading interests of property and power—it was not to be expected that such a Bill could meet with universal acceptance or could fail to give cause of offence to those who on either side take extreme views. There are some who, if their views were carefully analysed, would see in the raiyat nothing but a serf, who look upon his rights as only interests carved out of the landlord's absolute property in the soil, and as being therefore entirely dependant on the landlord's will and pleasure. There are others who look upon the raiyat as having the true property in the soil, and the landlord only as the tax-collector for the State, as one therefore who should have no more part in settling what that tax is to be or from whom it should be taken than a collector of any other State assessment. Between these two extreme points there are many halting-places, and the dissents show that, while some of our members would have guided us some way towards the latter point, others would have had us adopt the high landlord view of the position and look mainly if not solely to his interests. The dissents are naturally coloured by the dominant idea in the mind of either party, and will, I think, to some extent have the effect of neutralising each other in the public mind. What I would ask the Council to consider is, whether it is true that in the words of one party we have 'signally failed to afford the occupancy-raiyat reasonable protection,' and as regards the non-occupancy-raiyat 'have neither given protection as regards his rent nor facilitated his acquisition of the right of occupancy'—whether it is true, in the words of the other party, that the 'measure is opposed to the just rights of the proprietors of the land and detrimental to the best interests of the country.' Insufficient protection to raiyat.

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

"Under the existing law the position of the occupancy-raiyat may be thus described. In the first place, he has a great difficulty in making good his title to occupancy-rights. He must prove that he has held every particular field of his holding for 12 consecutive years, and in the absence of trustworthy village-records the proof is often impossible. He and his forefathers may have resided in the village for generations, but evidence of this is entirely immaterial to the issue. He may be able to show that he has held some land in the village in every year of the last 12, but if the fields have been changed his claim to the occupancy-right cannot be maintained. Secondly, the law, not content with making the proof of occupancy-rights very difficult to the raiyat, allows him to Under the existing law.

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

and under the Bill.

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

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

"*Thirdly*, the Bill puts an effectual check on incessant enhancements. Whether the raiyat's rent be determined by a Court or by private agreement, in either case the Bill says that it shall not be again enhanced for fifteen years. The Bill also puts a strict limit to the amount of enhancement by agreement, and that this protection is considered of real value by the dissentients is shown by the importance they have attached to it. The changes made in the grounds of enhancement in Court have already been discussed. The only change that is in any way likely to prove prejudicial to the raiyat is the enhancement on the ground of a rise in prices, and that not because it is unfair, but because it is workable, while the old law was admittedly impracticable. Even this concession the landlords profess to regard as 'visionary'.

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

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

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

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

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

"To pass now to the non-occupancy-raiyat. I have already, with reference to Chapter VI, gone so fully into a comparison of his position under the Bill with that under the old law, that I need not take you over the ground again; but admitting that a certain amount of peril lies in the power of a landlord to eject him at the expiry of his initial lease when he is first admitted under a registered lease, and when the landlord sues within six months of its expiry, I would ask you to look at the effect of our provisions as a whole. The raiyat can, under the above circumstances, be ejected, but otherwise he cannot be. If the landlord wishes to enhance his rent, he can only do so by a registered agreement or by suit in Court. The raiyat is not to be ejected for refusing an enhancement, but the Court will fix a fair rent and he can hold on at this rent for five years. He cannot contract himself out of the right to acquire occupancy-rights. The Bill allows the period during which he holds under a lease and the period during which he holds at a judicially fixed rent to count towards the accrual of occupancy-rights; and yet we are told that all these things are vain. Neither in the necessity of registering initial agreements and agreements of enhancement, nor in the right to sit on unless ejected by suit within six months of the expiry of the initial lease, nor in the right to a judicially fixed rent with its period of five years, neither in any of these things nor in all of them put together is any protection afforded to the non-occupancy-raiyat nor is anything done to facilitate his acquisition of the right of occupancy. I leave it to you, gentlemen, to decide what weight should be attributed to accusations such as these.

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

The non-occupancy-raiyat.

Landlords' objections.

Personal examination of witnesses.

Probable reasons of the Rent Commission for foregoing this method.

may well have thought that more light would be thrown upon the problem by the opinions and knowledge of the judicial and executive officers, whose business it is to enquire daily into the relations of individual landlords and tenants, than by collecting evidence which, on the side of the rich and powerful, would be forthcoming in abundance, and would be put before them with all possible skill and ability, while on the part of the poorer and humbler side it would be no one's business to collect it, nor could it, in the shape of personal knowledge, be got at save with infinite trouble and at some peril to the witness.

Such a course not open to the Select Committee.

Method adopted by the Committee.

Reason of great variety of opinions.

Difficulty of legislating for the whole of Bengal.

"These and other similar considerations may have led them to prefer the method they adopted to that of a Commission going about to take evidence. I am not concerned to discuss the question whether they were right or wrong, for there is very much to be said on the other side; it is sufficient to point out that, when the legislature had once decided the general lines on which we were to proceed, it was no longer open to the Select Committee to adopt this method. Such a course is neither usual nor desirable. In fact the whole constitution of Select Committees of this Council renders it impracticable for them to go about the country collecting evidence. In what we did, however, we adopted, I think, an equally efficacious method. We have, during the past two years, submitted every section of the Bill twice over to the most thorough sifting at the hands not only of persons interested, but of experienced and impartial officers, judicial and executive, and to Committees which could test the experience and opinions of one officer by confronting them with the experience and opinions of another officer; and if the result has been a great variety of opinions, it is not merely because human nature is so constituted that opinions must differ on questions involving most important and antagonistic interests—questions in which the everlasting debate between old and new, between those who have and those who have not, must come to the front, but also because the facts themselves differ so widely; the facts of one estate are not the facts of another estate; the facts of one part of the country are not the facts of another part of the country. It is one of the misfortunes of legislation that in this country as well as in others, but more in this country perhaps than elsewhere, we have to make our laws applicable to a number of heterogeneous units of area and population, united together only by one common Government. We have to legislate in the interest of the average, and to neglect what is local and exceptional. This leads no doubt to difficulties. We have to insert some provisions which, in parts of the country, are not wanted; we have to omit other provisions which, in some parts of the country, are certainly desirable. Accepting this as the necessity of our position, not only have we endeavoured to get the fullest measure of light and knowledge to bear on our deliberations, we have also endeavoured to guide ourselves by that light and knowledge. We have given time—ample, abundant and overflowing—for the elaboration of criticisms, and for the collection of opinions, and the criticisms and opinions so collected and elaborated have been carefully and laboriously digested. The amount of literature that has gathered round this subject is such that no one except under the sternest sense of duty could possibly read, much less assimilate, it, and it really leaves nothing new to be said on any point in this wilderness of controversy.

"The Bill was before the public in one shape or another for three years before it was introduced into this Council, and during the two years it has been before the Select Committee every section has been discussed and re-discussed from every possible point of view. I can safely say that never has a Bill been introduced into this Council which has had so much thought and consideration expended upon it by the outside public. There is really a ghastly irony in the accusation that we are now giving no time for consideration and are asking you to pass the Bill with undue and indecent haste; I am unwilling to look upon such an accusation as made in a malicious spirit, but it is really difficult to suppose that any one can attach serious credence to it. I can understand the advocates of the zamindars wishing to drop the Bill altogether. I can understand, though I cannot sympathise with, those advocates of the raiyats who would see this Bill abandoned in the hope that this may necessitate a more drastic

measure being passed hereafter; but what I do not understand is, how any one, who regards public and not personal interests, can wish that a growing agitation should be inflamed, and that dangerous passions should be further exaggerated, by a renewed and useless discussion of matters which further discussion cannot possibly further illumine. Yet this is, I understand, the recommendation made by the representatives of the zamindars. In fact, what I am now saying is really addressed to what is practically the first disputed question for the Council to decide. You have to consider whether this Bill should be re-published with a view to a fresh collection of opinions, involving a fresh consideration by the Select Committee, and the hanging up of the whole subject for another year, when precisely the same tactics would be repeated. I would answer that there must be some point of finality in all this discussion. The whole scope of the work of the Select Committee, since the Bill was last re-published, has been to prune excrescences and to cut away novelties. Our alterations during this session have not been such as to insert any novel provisions of serious importance into the Bill, nor such as to offer material for discussion outside the well-worn lines. We have ample evidence from various parts of the country—from Mymensingh in the east to Behar in the west, from Rungpore in the north to Orissa in the south—that the agitation on this subject cannot safely be prolonged, and that whatever is done in regard to the Bill should be done finally and at once. I believe I shall have the support of His Honour the Lieutenant-Governor in saying that it would, in his opinion, be seriously injurious to the interests of the province if legislation is now postponed, and I have no hesitation therefore in asking you to reject the amendment that the Bill should be re-published, and to decide on proceeding at once with the consideration of our Report and of those amendments of which notice has been given."

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

"My hon'ble friend Sir Stuart Bayley has, on the part of the Government of India, acknowledged our services in generous terms, and whatever may prove to be the value of those services I am sure that not one of us failed to appreciate the gravity of the work on which we were engaged, and the momentous results that must follow on our recommendations; for the task which this Council has undertaken, and on which we were required to advise it, namely, the revision and amendment of the Statute-law respecting the rights and interests of landlords and tenants in Bengal, is certainly second in importance to no measure which has come before it during the present generation. That law affects vitally the interests, the well-being, even the very means of subsistence, of a population of 60 millions of people, for the bulk of whom agriculture furnishes the sole means of support. With such a law, when it works well on the whole, no wise Government would interfere; but when it has been found mischievous in its operation, when it has been left behind by the progress of the agricultural classes, or has ceased to be applicable owing to altered economic conditions, then it is the duty of the Government to step in, and to bring the law into accordance with the requirements of the time. In fulfilment of this duty the Bill was introduced, and referred to the Select Committee, whose report, now on the table, we are, I hope, about to take into consideration. That report expresses the opinion of only a majority of the Committee on the points with which it deals. It was not to be expected that unanimity should prevail respecting a measure purporting to regulate questions so numerous, so delicate and so important, among members holding such antagonistic views as those entertained by extreme partisans on the side of the landlords and of the tenants. It was hopeless to think that those who considered that the tenantry throughout Bengal and Behar were living in such a state of contentment and prosperity that any attempt to amend their condition by law was altogether uncalled for could be brought to agree on provisions for that purpose with others who

believed that a diametrically opposite state of things existed, that the condition of the peasantry in many parts of the provinces was deplorable, and that the defects and abuses of the law by which this has been allowed and encouraged called for a speedy and drastic remedy.

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

"Nor can this moderation be justly condemned so long as it effects the essential objects of the Bill. If there is one point more than another with which we have been impressed in the course of our deliberations, it is that the Government of Bengal is far behind other Governments and Administrations in the possession of accurate information respecting the condition and relations of the agricultural community. The existence of the Permanent Settlement relieved that Government from the necessity in its own pecuniary interest of making a record of rights in land—a measure the importance of which was realised at an early period in those provinces where settlements of land-revenue recurred at periodical intervals; and the mode of collecting the revenue by the single process of selling the defaulting estate at head-quarters deprived it of an agency in the interior of the districts, charged with the duty of making itself and its principals thoroughly acquainted with the landed classes, and all facts bearing on their condition. This being so, we felt that we were travelling along a somewhat dark road, and that a safe arrival at our destination was not likely to be achieved by rapid driving. The revised Bill undoubtedly does not go as far in the direction of tenant-right in its broadest sense as the Bill originally introduced, but it provides, I believe, adequate remedies for evils the existence of which is undoubted. It strengthens the defences of the raiyat at points which have proved to be weak; it does not provide him, at the expense of the landlord and possibly to his own destruction, with torpedoes to ward off attacks which there are no good grounds for anticipating.

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

"The land of Bengal is divided into 110,456 estates, owned by about 120,000 proprietors; subordinate to these proprietors come a body of middlemen whose numbers can be only guessed at; they are probably about a million. Lastly, there are 10 millions of raiyats. Of these last, occupancy-raiyats form by far the most numerous and important class. About their numbers also there is much uncertainty; the lowest estimate I have seen puts them at 60 and the highest

at 90 per cent. of the whole number of raiyats, and, being the permanent agency by which the cultivation of the soil is carried on, they are the backbone of the agricultural organism of the country. It is clear from this that the provisions respecting them will have effects far more wide-reaching than those relating to the other classes of the agricultural population, and that if we have failed in adequately protecting the rights essential to their welfare, we have failed in the most important portion of the duty laid upon us. To show that we cannot justly be reproached with such failure I shall, following the example set by my hon'ble friend, ask you again to consider how the Bill found the occupancy-raiyat and how it has left him.

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

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

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

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

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

"Under Acts I of 1839 and VIII of 1860, a raiyat who claimed occupancy-right in any land was obliged to prove that he had held that land for 12 consecutive years immediately before the dispute arose. The unexpected effect of this provision was to make the acquisition of the status depend upon the will of the landlord, who had merely to shift the tenant about from one field to another, or, simpler still, to have the patwari's papers, which were the chief evidence the Courts had to go upon, manipulated so as to show a change in the tenant of the holding or of some of its constituent fields. By either of these measures he

might prevent the accrual of the occupancy-right, or defeat it when it had accrued. The Bill renders these methods of getting round the intention of the law, if not impossible, at least a matter of great difficulty. Occupancy-right will henceforward depend, not on the holding of any particular land for 12 years, but on holding as a raiyat for that period any land in the village in which the right is claimed. To prevent the accrual of the right the landlord must turn the raiyat out of the village altogether—a much stronger measure and probably more unprofitable than shifting him about from field to field within the village; while, on the other hand, the raiyat will find it much easier to prove that he has held some land in the village for 12 years than that he held the same land for that period. The same reasoning applies to the falsification of the patwari's papers. Such falsification will now be made more difficult to effect and more easy to detect. All raiyats are practically declared to be possessed of the occupancy-right in their holdings whose tenure of any land in the village as a raiyat has lasted for 12 years from the 2nd of March, 1871, or any subsequent date; so that no amount of shifting within the village will now avail to extinguish the raiyat's occupancy-right in land held by him, and no tampering with village-papers short of omitting the raiyat's name altogether will be effective for the same object.

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

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

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

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

"The existing law allowed of the ejectment of an occupancy-raiyat from his holding if the amount of a decree against him for arrears of rent was not paid within 15 days. This provision furnished landlords with a ready weapon for destroying the occupancy-right. It gave them a direct interest in dealing oppressively with their tenantry, and it has not been everywhere allowed to remain a dead-letter. The Bill puts an end to all this. It recognises the principle that the occupancy-raiyat has a valuable interest in his holding which the landlord cannot be allowed to confiscate, by enacting that an occupancy-raiyat shall not be liable to ejectment for arrears of rent, but that his holding shall be liable to sale in execution of a decree for such arrears, and that the rent shall be a first charge on the holding. The interest of the tenant will thus be saved from forfeiture when he is unable, from calamities of season

or other misfortune, to meet his landlord's demands, and he will obtain so much of the market-value of it as remains after the claim for rent has been fully satisfied.

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

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

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

"By giving greater fixity of tenure we have restricted the landlord's power to exact capricious enhancements, and our next duty was to regulate the power of enhancement directly conferred on him by law. There were twofold—enhancement by contract and enhancement by suit. The present law places no restriction on enhancement by contract. This was a point on which the Local Government laid very great stress, and at their instance we have provided that all contracts for the enhancement of rent must be registered, that the enhancement is not to exceed the previous rent by more than two annas in the rupee, or 12½ per cent., and that the rent is to be fixed for the same term as is fixed in case of enhancements by suit.

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

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

"The first of the grounds on which enhancement is authorized by the present law is 'the prevailing rate'. This ground I should gladly have seen

omitted from the Bill. It appeared to me that, looking to the impossibility of now discovering a parganá rate in most parts of the two provinces, and considering the abuses which have been proved to have attended the working of this ground of enhancement and the greater facilities afforded to the landlords for enhancements on other grounds, they would have had no just cause of complaint if this had been abolished. The question, however, was decided otherwise by the Select Committee, and their decision has been accepted by the Executive Government. But while so deciding they felt that some attempt should be made to prevent the possibility of the manufacture of bogus rates to be used as a lever for raising rents all round: and have laid down a rule, to be found in section 31, which will, we hope, be effective for this end. My hon'ble friend Mr. Reynolds has an amendment on the paper which he considers will be much more effective for the same purpose. Both the section and the amendment agree in providing that there must be a substantial difference between the rent sought to be enhanced and the prevailing rate, and that the prevailing rate is to be ascertained with reference to what has been actually paid for not less than three years, and both enable the tenant to show as a bar to enhancement that there is a sufficient reason for his holding at such an exceptionally low rate. Thus, whether the amendment be accepted or not, the tenant who has been allowed to hold at a low rate for special reasons will be protected from enhancement; only rents which are substantially below the prevailing rate will be enhanced, and the prevailing rate must be not a bogus rate, but one actually paid for such a period as will be a guarantee for its *bond fide* character.

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

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

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

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

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

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

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

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

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

arrived at after a careful consideration of all the circumstances. That such a discretion will be inoperative in checking unfair and inequitable enhancements I cannot bring myself to believe.

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

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

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

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

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

"I have, I fear to the great weariness of my hearers, enumerated in detail the provisions respecting the rent of the occupancy-tenant, because it is on this point mainly that we are accused of having done least for him, or rather of having rendered his position worse than it is at present; but the objection underlying the arguments of some at least of the assailants of the Bill on this ground is not that we have done too little for the raiyat but that we have done too much for the zamindār. They oppose really any ground of enhancement which can be made workable. They think that the raiyat will be better off by taking his chance under the existing law, which is so difficult for the Courts to give effect to, than if subjected to rules, however guarded, which can be made a reality. They are loud in their clamours against the restrictions by which it is proposed to qualify the rules in the Bill, but they have failed altogether to suggest others of a more satisfactory nature, or to substitute grounds of enhancement which would be free from the abuses to which they believe that these will be liable. We, on the contrary, think that no grounds of enhancement should be offered to landlords which the Courts are unable to work; and, while recognising reasonable and workable grounds of enhancement in the Bill, we have, to the best of our ability and judgment, made such provisions as will prevent their working unfairly or inequitably. By doing so we withdraw a strong encouragement hitherto held out to irregular enhancements, and, instead of a fitful and uncertain protection arising from the difficulty of working the rules, we give to the tenant the security that the rules cannot be worked to his injury.

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

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

"Finally, we have by the Record-of-rights chapter laid the foundation of a system which will in time extend to Bengal the benefits which have elsewhere been found to follow in the preparation and maintenance of an accurate record of the rights of the different classes having interests in the soil. This system cannot be brought into force over the whole country at once, and must of necessity be gradual in its operation, but as it spreads it will dispel the darkness as to agricultural facts which has so long covered these provinces, will

determine the mutual rights of landlords and tenants where they are uncertain, and by furnishing both with a correct measure of those rights will increase the value of landed property, will remove causes of strife, will deprive the powerful of pretexts for enhancement, and will strengthen the weak to withstand oppression."

The Hon'ble THE MAHARAJA OF DURBHUNGA said:—"I regret that I cannot support the motion of the hon'ble member that the Bill should be taken into consideration. In my opinion it is not submitted to the Council in a form in which we can reasonably be asked to consider it. It comes before us disapproved and discredited by all parties. The raiyats are as much opposed to it as the zamindars; and are we, who are legislating in the interests of the zamindars and the raiyats, altogether to disregard their wishes and their opinions? Is there a single raiyat or a single zamindar in the country who desires that this Bill should be passed? And if it is an undoubted and an undisputed fact that neither zamindars nor raiyats desire this measure, will this Council be justified in forcing it upon them? Are we to suppose that zamindars and raiyats are alike ignorant of their true interests? Surely they may be trusted to know whether a law will injuriously affect them or not. But if we are to disregard the expressed wishes of the parties who will be affected by the proposed legislation, upon whose opinion is the Council to rely? Are we to rely on the Select Committee? The Select Committee consisted of eleven members, but out of this number only three have signed the Report without reservation. All the other members have on most important particulars dissented from the Report. The Report, therefore, and the Bill, which has been drafted in accordance with the report, is practically the Report and Bill of three members only: and two out of the three hon'ble members have no practical experience of Bengal. The Bill, therefore, comes before us discredited and disowned by the majority of the Select Committee itself. If the Select Committee had been unanimous in their recommendations, some sort of justification might have been found for proceeding further with a measure which has been so universally condemned. But with this great divergence of opinion among the members of the Select Committee, there seems to me no other alternative but to withdraw the Bill. It cannot be expected that the members of this Council should accept the Report of the Select Committee as an authoritative document. If the members of the Select Committee are not themselves agreed as to the principles of the Bill, is it reasonable to expect that this Council should act upon their recommendations? If the Bill in its present shape is proceeded with, all the questions which engaged the attention of the Select Committee will necessarily be re-opened in this Council, and every hon'ble member will have to form his independent opinion upon them. But here an initial difficulty presents itself. There is absolutely no reliable information upon which you can proceed. The Select Committee had no evidence before them. They acted upon official opinions, which were generally conflicting and often misleading. My hon'ble friend Mr. Hunter has well described in his dissent the difficulty in which the Select Committee was placed. 'The Select Committee,' he writes, 'has been asked to deal with the entire relation of landlord and tenant in Bengal without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land right in Bengal, for in Bengal, almost alone among the provinces of India, there is no central department of statistics * * * which might in some measure have compensated for the evidence of witnesses heard in the districts. * * * The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.' Is this Bill, then, my Lord, ripe for discussion? Are we to legislate in uncertainty? Are we to pass a measure which will revolutionize and disorganize the whole rural economy of the country, without having any reliable data before us? From the very first the zamindars have

demand an enquiry. They deny the facts and the assumptions upon which the Government of Bengal has proceeded. I will give one or two illustrations. The justification of the occupancy clauses in the Bill was based upon the fact that the zamindars of Behar were in the habit of shifting their raiyats to prevent the accrual of occupancy-rights. This fact, in their memorial to the Secretary of State, the zamindars of Behar emphatically denied. From my own experience I can affirm this denial. I can state as a fact that such a custom is not prevalent in Behar, and that I have never even heard of its existence, and yet the whole of the legislation with regard to those occupancy-rights has proceeded on an assumption which is absolutely baseless. Another charge made against the zamindars of Behar was that they rack-rented their raiyats; that rents were so excessive that the raiyats were left without a reasonable margin for subsistence. In their memorial to the Secretary of State the zamindars of Behar conclusively, as I think, showed that the charge was baseless, but the restrictions on enhancement have been mainly introduced into the Bill on the assumption that the charge is true. Is this fair upon the zamindars? Have they not a right to ask that their rights shall not be taken away on mere assumptions? Have they not a right to demand that the charges brought against them shall be sifted and examined before the legislature is invoked against them? But the Bill itself contains the best commentary on this charge. These raiyats, who are supposed to be so ground down and oppressed, are allowed to demand from their under-raiyats 50 per cent. more than they themselves pay. You are asked to restrict the demand of the zamindar upon the raiyat, and at the same time to allow the same raiyat to demand for the same land 50 per cent. more than he pays himself. Can any inconsistency be greater? I have merely given these illustrations by way of example to show that we are legislating in the dark. The foundations of the Bill rest upon facts which are alleged and denied, and upon assumptions which are challenged as untrue. We have no ascertained facts before us upon which we can possibly proceed. There is assertion on the one side and denial on the other, and the truth has yet to be ascertained. If this is a correct description of the position in which we stand, is it possible to proceed with the Bill? How are we to decide between conflicting assertions? We may repeat in this Council the interminable discussions of the Select Committee, but in the absence of ascertained facts we shall not be able to arrive at any satisfactory conclusion. To me it seems amazing that we should be considering the matter at all. Among the many millions of people who will be affected by the Bill not a single voice has been raised in its favour. If it is passed, for whose benefit will it be passed? It surely cannot be wise to pass a Bill which will benefit no one and irritate every one. I look upon the Bill as disastrous in every point of view. It will be disastrous in a political point of view, because it will be regarded as a flagrant breach of the Permanent Settlement, and will therefore shake the confidence of the landed proprietors in the Government. It will be disastrous to the zamindars, because it will not only deprive them of their rights but will render zamindari management for the future absolutely impossible. It will be disastrous to the raiyats, because it will give rise to endless disputes and lead to interminable litigation. For these reasons I am strongly of opinion that the Bill should be withdrawn, and that any measure which may hereafter be proposed should be drawn up on the lines of the present law, instead of sweeping away existing landmarks and disorganizing the whole fabric of rural society. I shall, therefore, vote against the motion that the Bill be taken into consideration."

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

"Your Excellency can well believe that it is with great reluctance that I have taken any active share in this legislation. My own heavy professional

engagements and the active opposition of many of my personal friends to this measure all combined to make me desire to avoid it. Believing, however, as I did and do, that some legislation on the subject was, in consequence of the admitted imperfections of the Act of 1859, necessary for the welfare of the country, I did not feel myself at liberty to decline to give what assistance I could to the undertaking.

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

"In Behar, as a rule, the landlord is strong, the raiyat weak. In most parts of Bengal, notably in the Eastern Districts, the raiyat is stronger than the landlord. It was, however, decided by Government that the Bill was to be a general rent law, and not two special laws to meet the wants of the two provinces. We have done our best under these circumstances. But the result is unavoidable, that those whose eyes are mainly fixed on the poorest parts of Behar say we have not done enough for the raiyat, while those who mainly regard the condition of Eastern Bengal accuse us of having done too much for the raiyat and having done too little for the landlord. There have been very strong statements before us that in Behar, or portions of Behar, the raiyats are so rack-rented that they have absolutely no sufficient margin for subsistence; they are described as having an actual insufficiency of food. If things are as described by some of the officers of Government, and if this state of things can be remedied by legislation, it would justify legislation of a most drastic character for the special local areas where these evils prevail. If it be shown that these evils arise from rackrenting, and can be cured by stopping enhancement altogether, or even by reducing the rents, it should be done by special legislation.

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

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

"We have this much to agree with at any rate, that, on the universal customary law of India, there is a fixity of tenure, so long as a man pays his rent; and the book goes on to say that the real point in the zamindār's opinion is the question of how he is to enhance, and it goes on further to say that the will of the zamindār should be the sole arbitrator of the amount of enhancement, and it challenges us to show that at any time in Bengal since the time of the Permanent Settlement the ruling power has ever exercised the power of regulating the assessments upon the individual raiyats. No doubt, though by the institutes of Akbar, the relative proportions of the produce were settled between the cultivator and Government, yet, as Mr. Shore said, even when the Government professedly dealt with the raiyats, it was found impossible in practice to assess each individual cultivator, and so the distribution of the assessment was left in Bengal to the zamindārs. But this is very different from a right to demand what they pleased. I certainly agree with the Court of Directors that it was 'a general maxim under the Moghul Government that the immediate cultivator of the soil, paying his rent, should not be dispossessed. This necessarily supposes that there are some measures and limits by which the rent could be defined, and that it was not left to the arbitrary discretion of the zamindārs.' It is, I think, quite evident that there was a right of some sort in the cultivator which was not illusory. There was some kind of right as regards the quantity of rent. The fact that it was the zamindār and not the Sovereign that fixed the rent can be very easily accounted for. In a huge despotism like that of the Moghuls,—a central despotism,—powers to a very large extent were delegated to the Provincial Governments, which in turn delegated many of their powers to the great princes and the great zamindārs; and we all know that these great princes and zamindārs exercised the authority and the functions of Government, both civil and, to a certain extent, criminal as well; and therefore it came to pass that with regard to these matters of revenue over which there was no control by any Courts in those days, nor any written law, no redress could be had save possibly by petition to the Executive Government, which would, save in rare cases, receive little attention. So far as we know, no questions of rent were allowed to be discussed in the Courts, and the consequence was that the settlement of all questions *quoad* the raiyat was in the hands of the zamindārs not as owners of the land but as delegates of the Sovereign. It is admitted now that the zamindār had really proprietary and hereditary rights; but how could he assert those rights? Could he go to a Court of law and ask for a decree against the Sovereign Power? He had to take what he could get from the Sovereign Power; hence it was that with a despotic Sovereign Power all rights must necessarily be uncertain in their enjoyment. There was no tribunal to appeal to, and all proprietary rights were of a precarious nature. But we know that, however despotic a Government may be, rights of property must be recognised more or less. Subjects and rulers both recognise the existence of unwritten law and customs even under a despotism, and are generally guided by them, even though they often use their powers to trample on them. Therefore, I do not think there is anything in this objection, that the Sovereign did not directly fix the individual raiyat's assessment. If the Central Government was far away, the delegate was allowed to do what he liked. I think it comes to what Mr. Harrington says in his 'Analysis' that in the decay of the Moghul Power the ruling Power plundered the great zamindārs, who were in turn forced to plunder the raiyats. That is, I think, the real explanation of much of the confusion which has been thrown upon this subject. When in later and more peaceful times the matter came to be examined, then the fact became clear, which is stated in the Report of the Parliamentary Committee of 1832, that—

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

"And they go on to say:—

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

"If this be so, we really find the position to be as follows:—It being conceded now that there is such a thing as a customary law giving such occupancy-rights, it follows that everybody who before the Permanent Settlement had held or reclaimed land in his own village, without exception, acquired occupancy-rights. What was the effect of the Permanent Settlement? It was a contract between the Government and the zamíndárs in which the Government gave the zamíndárs certain rights, and the Government had declared, so far as the Government could declare, that the zamíndárs were the proprietors. But this cannot be said to make any alteration in the unwritten law, nor could it affect any persons who were not parties to the contract; and the case may be stated thus. The man who came in the next day after the making of that settlement, who claimed land or held land in his own village, was under the same old customary law as before, and by virtue of that law acquired a right of occupancy. The truth is that, at the time of the Permanent Settlement, Government settled their own disputes and quarrels with the zamíndárs. They were very numerous, and zamíndárs had just reason to complain, and did in fact make the complaint heard in Parliament. The final settlement of all these difficulties as to the respective rights of Government and zamíndárs was come to in the Permanent Settlement. The Government, finding that the matter of the rights of the raiyats was an obscure and complicated matter, which they could not go into on account of its intricacies, left it alone, because they thought it could probably be settled by agreement between the zamíndárs and their raiyats, much in the same way as they had settled the difficulties between themselves and the zamíndárs. But what was the position? The raiyats continued as they came in to cultivate their lands and to acquire the same rights under the same old customary law, which was never abrogated save so far as it might be affected by the express provisions of any of the Regulations. The only difference was that, whereas before they acquired their rights against the Government and zamíndár, after the Permanent Settlement they acquired the same rights against the zamíndár, as representing his own and the Government title, and that the Government had left only a perpetual charge on the land with the duty solemnly reserved to protect the raiyats, and to legislate when they thought it necessary for their protection.

"But the hoped for result did not come to pass. The raiyats and zamíndárs did not settle their respective rights amicably, and so it befell that, at the end of 60 years, the legislature found it necessary to lay down some rules in regard to the enhancement of the rates of rent which were demandable from the raiyat. Now one of the main arguments of this pamphlet is that the legislation of 1859 was a breach of the Permanent Settlement; and they make it out in this way. They say that before the Permanent Settlement they had the right to demand rent according to their own arbitrary discretion. Shorn as they have been of their civil and criminal jurisdiction, and no longer representing the ruler's power, they still contend that their will is the measure of enhancement, and that the effect of the reign of law which the British Government have introduced is that the Courts ought to register their arbitrary demands as decrees, and that the resistless might of the executive should be at their call to enforce their decrees and protect their persons. It is upon this view of their rights that the pamphlet really proceeds. It is upon that ground, they say, that we departed from the Permanent Settlement in that Act of 1859. I deny that altogether. I think it was clearly competent to the Government to legislate as it then did. But it is idle to go into a question like that, because, if they once admit that the Government had the power, in 1859, to make these rules to regulate the rent, and to define the occupancy-raiyat, they cannot deny that this Council has in 1884 the right to amend the definition and the rules. If they rest on the argument that the legislation of 1859 was improper, we can only say that that question is long ago concluded by authority, and that it is useless to discuss it save as a forensic exercise. As regards the position in 1859, it stood very much in this way. Nothing had been done for 60 years, and it was found that matters were not satisfactory. The legislature came to the conclusion to make rules. They first desired to define who had the right of occupancy, so as to enable the Courts to ascertain that fact. Then they pro-

ceeded to make what they considered to be fair and equitable rules to guide the Courts in decreeing enhancements of the rents of occupancy-raiyats, and they made an express reservation that the occupancy-right should not accrue in respect of any land as to which the raiyat had contracted expressly that he would give it up at a certain time. As regards those raiyats who had not a right of occupancy, it was decided that they must give up the land on reasonable notice; but that so long as they were allowed to remain, no more than a fair and equitable rent could be demanded from them.

"These were the main provisions, but complaints were soon heard. The zamíndárs complained that the grounds of enhancement were unworkable, and that they found moreover often insurmountable difficulties in obtaining in fact the enhancement to which they were in theory entitled; while those who had at heart the interests of the raiyat complained that the effect of the definition as construed by the Courts was to defeat the intention of the framers of the Act, and to shut out from the status of occupancy a large number of raiyats who were entitled to it. It was complained of on both sides. The raiyats, or those who spoke for them, complained that they had very great difficulty in proving the occupancy-right. They pointed out the immense difficulty of proving 12 years' continued cultivation of the same plot of land, in that there were no fences as in England. The raiyat might be holding five or six little plots in a large plain of rice-land divided into plots by temporary ridges of mud. The only documentary evidence, measurement-papers and zamíndári records of rents and holdings were all in the hands of the zamíndárs and liable to falsification by zamíndári servants. They also complained in respect of various portions of Behar that there was a practice of shifting them from one village to another. Now I understand my hon'ble friend the Maharájá to say he has ascertained that that is not done for the purpose of preventing the accrual of the occupancy-right. That may be so, but this much is certain, that for some reason or other the raiyats in many, if not most, parts of Behar were unable to avail themselves of the protection of the occupancy clauses even to the limited extent which their brethren in Bengal could and did. On the other hand, the zamíndár complained, and complained rightly, that he could not get the enhancement he was in theory entitled to. We all know the immense difference between what is the result in theory and fact. It was one thing to discover the motive power of steam and another to construct the locomotive engine. The data were left to the Courts to discover, and unless the Courts found the data it was impossible to work the rules at all; and in working these rules there were very many difficulties. I will not go into them in detail; they are familiar to all who are conversant with the subject. Now it is a very demoralising state of things when we dangle before a man's eyes his rights, and assure him they are his rights, and send him to our Courts to enforce them, and then provide the Courts with such rules that the odds are against his getting them. Perhaps the most workable of the rules was the 'prevailing rate' as interpreted by the Courts, but the vagueness of the expression 'places adjacent' rendered this uncertain. Besides, if the 'prevailing rates' were too low, he got no remedy under this head. It has been said that it was the outcry of the zamíndárs on this head, and on the score of difficulty in realising rents, that led to this legislation, and that we have forgotten this, and legislated in favour of the raiyat instead. But we have tried to grapple with both the evils above mentioned by altering the definition in favour of the raiyat and making the grounds of enhancement workable in favour of the zamíndár; and if we have failed to facilitate in any marked degree the realisation of rent, it is because all the summary remedies proposed failed to yield just and satisfactory results. Having failed ourselves to do any more than is here set forth, we applied to the Judges, and the Council have seen their answer.

"As to the charge of having legislated for the raiyat without sufficient reason, you will have seen what has been said about the imperfection of the Act of 1859, from its passing to the present day, and attention had been directed afresh to this matter by the recent famines, and it was felt to be unjust to redress the complaints of the one side without taking into consideration the just demands of the other side. Besides, it became apparent that our best

method of carrying out the often declared policy of the Government of protecting the cultivating classes, who form the bulk of the population, lay in extending the definition of the occupancy-right in such a way and to such an extent as to secure the fruition of that right to the great mass of the raiyats, who in my judgment ought to possess and enjoy it. Believing that with an advancing education nothing but trouble can befall us if our laws do not recognise what the agricultural population firmly believe to be their old and just right, that is, the right of occupancy, I have not hesitated to accept such amendment of law as seemed necessary to that end. I will endeavour to describe briefly what we have done on this essential point. The whole revenue map of Bengal, speaking roughly, is divided into small village areas of different sizes and shapes called mauzās. Now, a resident raiyat had by the old custom a right of occupancy in the land in his own village, but in no other land. New villages sprang up, and even within the same village area arose detached clusters of homesteads, subsidiary villages or tolas came into existence, many of them near the boundary of the next village; and as the cohesion of the old village communities with their old organisation decayed, it became more common for the inhabitant of one village to become a permanent cultivator, though not a resident, of an adjoining village. It was thought right in 1859 to make permanence of cultivation and not residence the ground of the occupancy-right. I think this was only such a modification of the old law as might fairly be made to suit the altered conditions of the times, and so the rule laid down in 1859 was that whether a raiyat was a khudkhast raiyat or pykasht raiyat, yet having shown that he cultivated the same land for twelve years he should have a right of occupancy. The mistake was in providing that he should show that he had cultivated that particular piece of land for twelve years. The amendment that we have made is by providing that it should be enough that he is a permanent cultivator either in this or that village area, and that he should thereupon be considered to be an occupancy-raiyat of those village areas in which he is a permanent cultivator. Now this makes a great difference, as we get rid of the whole difficulty of proving that he cultivated a particular plot of land for twelve years. If he is a cultivating raiyat of one mauzá or village where he has his house and in two mauzās alongside, he should be held to be a settled raiyat of the whole three mauzās and have a right of occupancy in all of them.

"It must be abundantly known that a raiyat is not a man who goes about as a nomad, but is really attached to his own village; and so it follows in reason and common sense that he cannot cultivate except near his own village where his home is. If he takes up land he generally takes it up permanently. He may take it up for a temporary purpose, but ordinarily he takes it up either in his own mauzá or in the adjoining ones, and then no power can drive these men out of their own villages. The result is that this rule goes far to secure that the ordinary class of raiyats shall be entitled to the occupancy-right. We have made a further provision. Whereas the Act of 1859 said 'you shall be an occupancy-raiyat of every piece of land which you have cultivated for twelve years,' yet it has this exception, 'provided that the landlord does not prove a contract by which the raiyat took up the land on the condition of not being an occupancy-raiyat.' It is no doubt a strong thing to override a written contract, but it was thought that there was a tendency to insert this in every contract, and there is no doubt that it would be inserted to a very large extent; and therefore the Committee assented, though not without reluctance, to the insertion of a provision by which the raiyat is barred from contracting himself out of his occupancy-right. It was of very paramount importance to my mind that we should secure this right of occupancy to the raiyats, and not leave room for any device by which it might be defeated, bearing in mind that with illiterate and poor persons anxious to get land a provision of the kind might easily be slipped into a document. It was also apparent that both the zamíndárs and under-tenure-holders here are not people who desire the possession of land for cultivation, but they are simply rent-receivers. The only thing they desire is that the land shall be cultivated by the raiyats, and that they will pay as much rent as possible, and as regards the bulk of the zamíndárs of

Bengal, there is not much hardship, because you are merely attaching a customary incident to the holding, and the only result is that the landlord is bound to enhance according to certain rules and not arbitrarily. Such a man cannot very much complain if we provide that the land shall be held under such circumstances that the right to enhance shall not be arbitrary but according to fixed rules. But there is another class of proprietors in respect of whom there really appears to be considerable hardship. These are persons who acquired land for the purpose of cultivating, at an expense beyond the power of the raiyat, certain valuable crops, such as tea and indigo. They have great ground to complain of these restrictions, namely, that it prevents them letting out temporarily to residents of the village any lands which they do not for that year wish to cultivate themselves. They say, very rightly, 'we want to let out the lands, which we wish to be cultivated for a year or two.' Take an ordinary case. The indigo plant derives its nourishment very far down in the ground, and it is a very exhausting crop. Rice, on the other hand, grows right on the top of the land, and does not exhaust the land except near the surface. An indigo-planter has in his hands a large tract of land, say, of 2,000 bighás, on which he grew indigo last year. The raiyats, on the other hand, have another tract of land in their possession, and they come under the new Bill and say, 'let us have the land, which will give us an abundant crop of rice, and do you take our land for indigo for this year. We will pay you so much for your land, and we will give you back your land next year.' Under our legislation the zamíndár is obliged to say 'I must let the land to a person from another village, because you will acquire occupancy-rights in this land; you are not competent to contract, and therefore, though a stranger offers me only half the rent, I must either let it to him or keep the land fallow or try and grow another crop of indigo, because the legislature has determined that you shall not contract yourself out of the right of occupancy. I should have to trust to your honesty, because the law will not recognise a contract entered into by you.' There is no doubt whatever of the very considerable hardship of this provision, and the only thing which will justify the doing of it is that the class it will affect is small. It is not very clear how landlords can protect themselves against this provision. Possibly they may do so by letting the land to a stranger or by getting the raiyats to exchange the lands which they cultivate, under some form of contract not amounting to a tenancy. But this, even if possible, would not meet all cases. I still hope that my hon'ble friend Mr. Ilbert may see his way to drafting some clauses which will give relief in these cases, while providing against abuse.

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

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

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

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

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

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

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

"I hope I have satisfactorily shown that we have done a great deal for these occupancy-raiyats, and that we have strong reason for doing it. I have next to consider what we have done for the zamindárs, because the allegation is that, while we have done a little for the raiyat, we have done nothing for the zamindár. First of all, we have provided that the rise of prices shall be a ground of enhancement. It appears to me that that is in effect to fix the present rent in the staple grain of the country, so that the zamindárs shall get the benefit of a rise in the value of the grain, with this proviso, that they shall not get the whole of the rise but only two-thirds, one-third being reserved to cover the increased cost of production, and that the rise should be a rise in the average price of over a period of ten years. It must be evident that this will be very beneficial to the zamindár. First, we know that the value of money, as compared with the value of grain, has been falling; that 12 annas per maund was the price of rice at the time of the Permanent Settlement, and we see how enormously more silver it now takes to purchase a maund of rice. The result of this amendment is to establish a sort of self-acting scale by which the Courts, by performing a simple sum in arithmetic by reference to the Government price-list, would regulate the enhancement, and the zamindár would be enormously benefited, and saved much of the present harassing and uncertain litigation. We know that in a great part of the country the rise in the price of cereals has been very great, but the provision in the Bill merely fixes the rent of the zamindár, so far as the ground goes, at so many maunds of grain. At the present time no permanent fall of prices need be expected, as prices are steadily rising over decennial periods, though they are falling in certain years which only affect the average. No doubt the zamindár may say, 'Why do you call this a ground of enhancement at all? It is merely adjusting the rent to meet the depreciation of money as compared with grain.' But it is something which he had not before, and which will give him steady enhancement, and, this being so, no word-splitting will alter the reality of this ground of enhancement, and most zamindárs who wish to get on without harassing litigation will hail this as a substantial relief from the present position as regards the power of enhancing occupancy-raiyats. On the other hand, it has been said that this is a very sharp weapon to place in the hands of the zamindárs, and that this enhancement ought to be treated as a great boon, and that, this boon being granted, the prevailing rate ought to be struck out. But this is simple justice to the zamindár if you accept the Secretary of State's clear enunciation that the rents at present existing are to be considered fair, and not to be reduced except under special cases. The real meaning of the complaint is that it is believed that certain parts of Behar are rackrented already, and that any enhancement we legalise is an unmixed evil.

"If the districts of Behar are so rackrented, nothing you can do in the way of laying down general principles will help it. You must have special legislation to meet such cases. I therefore say that what we have done in respect of enhancement on the ground of rise in prices, while it is but justice to the zamindár, greatly better his position, and is a substantial amendment in his favour. Then we come to the question of the prevailing rate. It has been said that that provision should be struck out. I wish to point out that enhancement on the ground of the prevailing rate has existed in one form or another from the time of the Permanent Settlement. This ground of the prevailing rate is a ground on which enhancement was allowed, and it was put in the Act of 1859, and it has been worked ever since. We have been strongly pressed by the Government of Bengal to drop the 'prevailing rate' as a ground of enhancement. And I observe that His Honour, in his official dissent, assumes, on the strength of the opinion given by various persons, that this ground is never worked except by fictitious rates. But though there are false cases started under every law that we have made, and fictitious evidence manufactured to meet the requirements of the law, yet, so far as I can learn, the majority of the cases on the prevailing rate contain no more perjury or fabrication than seems to be incidental to the bulk of litigation in this country. At any rate, the appeal pending in the High Court, in which the Government claim on the

ground of 'prevailing rate,' enhancements from 100 to 400 per cent., has a strong bearing on this and the next point.

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

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

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

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

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

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

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

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

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR
GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS UNDER THE PROVISIONS OF
THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Monday, the 2nd March, 1885.

PRESENT:

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

BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble SIR STEUART BAYLEY'S Motion that the Reports of Select Committee on the Bill be taken into consideration was resumed this day.

The Hon'ble MR. GOODRICH said:—"It is right that I should, however briefly, express my opinion on the two questions to which each member of the Council must presently reply in the affirmative or negative.

"In the first place, the necessity of immediate regulation by law of the relations between landlord and tenant seems proved. In the second place, the Bill in question will limit the landlord's rights no further than the public interest demands.

"My assent to the second proposition is, like the adhesion to the report of most of the members of the Select Committee, given subject to some reservations which I will briefly indicate.

"In the first place, the public interests will suffer if an improving landlord be not permitted to bar for a term of 30 years his tenants on land which he has reclaimed from beginning to acquire occupancy-rights therein. Mr. Hunter's amendment will meet this case, and will increase the chance of capital being applied to land.

"Under this Bill the enhancement of rent seems not permissible, on the ground that land let to a raiyat as *rural* land may have become *suburban* by the rise of a centre of commerce or industry, such as a new railway-junction, port, coal-mine or factory. Such cases will arise, and the landlord ought to be able to enhance on lands which, when let, were far from any market, but which have

acquired a fancy value as accommodation-land by proximity to a new centre of population.

"The partial denial of the tenant's competency to contract must affect interests in various ways, not all perhaps now foreseen; but a practical consequence of the denial of the right to agree to an enhancement of more than two annas, excepting by suit, will be the infliction of the costs of a great mass of litigation upon the raiyats. I speak as one who has been Settlement-officer or Collector for the last 14 years, and can assure the Council that if the condition of the estate of zamindárs resembles that of Government estates and of zamindari estates in the Northern Districts of Madras, enquiry, such as Government, when landlord, everywhere asserts its right to conduct, will bring to light instances of lands fraudulently under-rated in almost every village.

"These questions will no doubt be fully discussed when the amendments to section 30 of the Bill are under consideration.

"I do not see any complaint from landlords on the score of the want of provisions empowering them to expropriate on terms assessed by a panchayat occupancy-raiyats holding lands which the landlord needs for the execution of improvements, or for the erection of buildings or extension of premises which may be needed for the industrial development of his estate, or for necessary use in the working of mines or quarries. I think a prudent landlord would desire to possess this power. The State where it is landlord enjoys it, and it is for the public interest that it should be given to the landlord under due safeguard. Whether the landlord should be allowed to do as the State is doing, and take up land needed for fuel and timber reserves, paying of course compensation to evicted tenants, is a somewhat larger question; if it has been raised in the course of the Committee's enquiry, I have missed it.

"Permit me, my Lord, to add that the value of the patient and well-directed labours of the Committee have been fully recognized in *Southern India*."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"After the very gratifying testimony which the hon'ble member in charge of the Bill has borne to the value of my humble labours in the Select Committee, it would be ungracious in me to view with indifference the impatience expressed by the hon'ble member in the concluding part of his speech with any proposal for a postponement of the immediate passing of the Bill. But I should be lacking in the duty which I owe as a responsible member of Your Lordship's Legislative Council, and the duty which I owe to my countrymen, if I hesitated to beg Your Excellency and this hon'ble Council to pause before taking up the amended Bill for consideration for the purpose of passing it. Reserving to myself therefore the right of making a substantive motion on the subject, if necessary, I submit in the interests of all concerned that the amended Tenancy Bill should not be taken up for consideration by this hon'ble Council on the present motion of the hon'ble member in charge of the Bill. It is necessary to allow sufficient time to hon'ble members for studying the Bill, and the voluminous literature on the subject, before the Council might be expected to give to a discussion of its different provisions that intelligent consideration which its importance deserves, and also sufficient time to the public and to the parties interested for submitting their views and criticisms on the measure. The Bill has undergone considerable modifications since the Preliminary Report of the Select Committee was submitted last year; so many as 45 sections have been expunged, 18 new sections have been added, 21 sections have been thoroughly re-cast, and large modifications, both verbal and material, have been made in a number of other sections. The changes made in the Bill affect questions of paramount importance, and it cannot be expected that hon'ble members have been able in barely a fortnight's time to master the details of the revised Bill, and to judge of the justice and expediency of the various additions, omissions and modifications, considered by themselves and with reference to their bearings on the general scheme of legislation. This fact must have forcibly

pressed itself upon Your Lordship's attention at the last sitting of the Council, when an hon'ble member, himself an eminent lawyer and the ornament of his profession, entertained serious doubts as to the correct meaning of the provision about enhancements of rent by registered contract, and put upon it a meaning contrary to that given to it by the hon'ble member in charge of the Bill. The time usually given to the gestation and maturation of important legislative measures is never thrown away. Considering that a much less important measure, the Transfer of Property Act, was before this hon'ble Council for full five years before it was passed in 1882, that there are even now three Bills, one to amend the law relating to Court-fees, the other to amend the law relating to Civil Courts, and the third to declare the extent of testamentary powers of Hindus and Buddhists, which have been before the Council since 1881, I feel confident that hon'ble members will not grudge the time required to bring to a satisfactory termination a measure which immeasurably exceeds in importance any of these other measures, and which will, for weal or for woe, affect the destinies of more than 50 millions of the people of these provinces. The necessity of giving hon'ble members and the public further time for the consideration of the revised Bill is the greater as it proceeds on lines very different to those on which the Bill was modified and presented to the public last year; and nothing shows this more clearly than the Report of the Select Committee and the Dissents recorded by a large majority of the hon'ble members who sat on that Committee. Exception has been taken to the revised Bill on the ground that the rights it confers on non-occupancy-raiyats would practically convert them into occupancy-raiyats, that the restrictions it imposes on enhancement of rent would virtually make enhancement of rent more visionary than real, and that the power it gives the Local Government to order wholesale reductions of rent on grounds other than those mentioned in the Bill was opposed to the assurance given by Government when the Bill was introduced in Council that the *status quo* was not to be disturbed; while, on the other hand, it has been alleged that the Select Committee have omitted or materially modified several provisions which formed the keystone of the original scheme, and that the present outcome is scarcely a settlement of the many important questions relating to the law of landlord and tenant. In the face of such radical alterations in the Bill, it is due to those whose interests would be so greatly affected by the measure that they should be allowed an opportunity of examining the Bill in its present form, and of submitting to your Excellency in Council their views regarding it. It is for the observance of no technical form of procedure that I presume to make this proposal. The recommendation made by the Select Committee, that the revised Bill should not be re-published—a recommendation, by the way, which is wholly incompatible with the Report itself—amounts to a virtual denial to the people of a privilege which they have enjoyed since 1862—the privilege, namely, of being allowed an opportunity of submitting to Government their views and wishes regarding a legislative measure which vitally affects their interests. The question engaged the attention of Your Lordship's illustrious predecessor, and His Lordship, in communicating his views to the Government of Bengal through the Secretary in the Legislative Department, observed: 'He (the Governor General) is, on the contrary, fully sensible that it is the duty of the Government to give the largest practicable amount of publicity to legislative proceedings, and to afford the public every opportunity of examining them and expressing an opinion upon them, and he is satisfied that more can be done in this respect than is done at present.' But only a very limited publicity will have been given to it if the revised Bill be not translated in the different vernacular languages and published in the local Gazettes. Although the present measure is unquestionably the most important scheme of legislation that has come before this hon'ble Council since its establishment, a vast majority of the landholders and the whole body of raiyats will have no opportunity given them of examining the provisions of the revised Bill and offering their opinions upon them. In the face of the provisions contained in Bill No. II, the changes made in the sections regarding tenures and registration of transfers of tenures, the new limitations imposed upon enhancement of rent in Court and out of Court, the additional protection given to subletting, the power given to the Local Government to order a reduction of existing rents in certain

cases on grounds other than those recognised by law, the new section regarding contracts and a number of other provisions would come as a surprise upon most landholders if the Bill be not re-published; while the raiyats would discover with disappointment that the long-promised provisions for attaching to land a legal status independent of the length of possession of the holder, for a free sale and mortgage of occupancy-holdings and for village tables-of-rates defining the maximum limits beyond which there could be no enhancement of rent, find no place therein. Your Lordship is well aware that the progress of the Bill is watched with the greatest anxiety and interest by all classes connected with the land in these provinces. Memorials adopted in crowded meetings of raiyats have poured in from different parts of the country, expressing their greatest consternation at the provisions for survey and record-of-rights and other sections of the Bill. They have even made bold to submit that, although actuated by the best intentions, the legislature, in its ignorance of their actual condition and relations with their landlords, will cause their ruin by the measure which it purposes to give them. Petitions have likewise poured in from landholders assembled at meetings in different parts of these provinces, submitting that there is no necessity whatever for substantive changes in the law on the lines on which the Bill has been drafted, that the Bill makes inroads upon vested rights of property guaranteed by law, and respected by preceding Administrations for nearly a century, that most of them have come to the possession of estates by purchase for large and valuable considerations, and that the proposed measure would, therefore, impose upon them, to use the words of John Stuart Mill, 'a penalty for having worked harder and saved more than their neighbours.' The landholders have repeatedly implored Your Lordship and Your Lordship's illustrious predecessor, with a persistency which has its apology only in the strength and sincerity of their convictions, to satisfy yourselves by the strictest enquiry that they have used with the greatest moderation their powers of eviction and settlement of rent, and that the condition of the raiyats in these provinces is one of growing prosperity. They have gone farther. At a meeting held at the Town Hall on the 29th of December, 1883, perhaps the largest, certainly the most influential, ever held in this city, they unanimously carried a resolution which I shall read to Your Lordship: 'That if the deprivation of the landholders of their just rights, and the consequent loss of their position, conferred by the Permanent Settlement, and consecrated by a century of British rule, be deemed essential to the welfare of the tenantry, the Government be solicited to consider the justice of allowing the zamindars to surrender their estates on receiving such compensation in money as will, when invested in Government securities, produce a permanent return equal to their present income.' In compliance with that resolution they submitted a memorial to the Government of India. Could anything indicate more strongly their sense of the injustice involved in the measure and their feelings towards it? Your Lordship will be pleased to see that the landholders of Bengal and Behar, numbering among them those whose manorial possessions date from days long anterior to the date of the Muhammadan conquest, have come forward in a body with a memorial declaring their readiness to forego the allurements of their position and social consideration, and to forego all hopes of future profit, and praying the Government of India to be allowed to surrender their estates in return for such security in money which would bring them their present income. It is not, however, the parties interested in the measure who alone consider the proposed changes in the present land law wholly unnecessary and altogether unjust to the country. The hon'ble the Chief Justice of Bengal has, with the authority due to his eminent position, declared that he sees no 'such necessity as justifies the Government of Bengal in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the new Rent Bill.' And, again:—'It seems to me inconsistent with the good faith of the British nation, which the Native community have hitherto had reason to respect, to deprive the zamindars of the rights and position which they have acquired under the Permanent Settlement.' No less defined is the opinion of the hon'ble Justice Field, who by his masterly Digest of the Rent Law, the prominent part he took in the labours of the Rent Commission, and the pre-Raphaelite minuteness with which he has delineated the land systems of different countries

in his admirable work, has established a claim to speak with the highest authority on the subject. He says:—'I think we ought not to interfere with existing rights which have been the creation of our own administration operating upon the natural progress of the country. I think that no case has been made out for disturbing the landmarks of property. It must be borne in mind, as I have more than once pointed out, that a large proportion of the present proprietors are *bona fide* purchasers for valuable consideration, men who have paid their money for property sold at revenue sales, and in execution of the decrees of the Civil Courts, upon the faith of the existing state of things and the rights created by our laws and by our own action or inaction.' Other high officers of State have also denied the necessity of the measure now before this hon'ble Council. When the very necessity of the measure is denied by trusted and responsible officers of Government, the desirability of re-publishing the Bill with a view of giving the public and the parties interested an opportunity of examining the material modifications made in it by the Select Committee becomes imperative. The only argument that has been advanced by the Government of Bengal and by the hon'ble Member in charge of the Bill in favour of hurrying it forward through the Council is one based on the desirability of setting at rest the unsettled condition of the public mind on this question; and of preventing the further growth of expectations in the minds of raiyats which are not destined to be realised. But where is the urgency of passing a measure which, to use His Honour the Lieutenant-Governor's own words contained in his dissent, 'inadequately meets the necessities of the case which called for legislation,' and which is scarcely 'a final settlement of the many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' The cause of this unsatisfactory termination of the labours of the Select Committee is not far to seek. Government have undertaken to make extensive amendments in the land laws of the country without having at their disposal facts and figures which alone could have shown whether they are necessary. I cannot more graphically describe the ignorance which prevails on the subject than in His Honour's own words. Speaking from his presidential chair at a meeting of the Bengal Council on the necessity of a *patwari* law, His Honour is reported to have said:—'The object of the Bill is to get at the facts connected with the agricultural economy of the country. For the last ninety years we have been endeavouring without any success to arrive at these facts. Everybody complains; those who have been discussing the Rent Bill for the last six or seven years complain; gentlemen who come to India to make enquiries about it complain; the zamindars themselves, and the raiyats, if they could speak, also admit that neither the Government nor the zamindar nor the raiyats have any positive knowledge of the facts which exist in regard to their relations to one another as regards their own property.' The argument based on what are called the necessities of the case falls, therefore, to the ground. Is then the present law so very defective as to call for immediate action on the part of this hon'ble Council, notwithstanding the numerous modifications made by the Select Committee? I shall answer the question by reading to Your Lordship a statement from the despatch of the Government of India to Her Majesty's Secretary of State: 'A great part of the evils we describe,' they said, 'is unquestionably due to defects in administration rather than to defects in the law.' I lay the greatest stress on this statement as one which conclusively shows that there is no necessity whatever for passing the amended Bill without giving it due publicity beforehand.

"I would beg Your Lordship to view the question in another light. The Bill, as amended by the Select Committee, differs widely from the scheme of legislation submitted to Her Majesty's Secretary of State for India by the Government of India, and from the scheme which received the sanction of His Lordship. The scheme of the Government of India was summarised in 13 proposals mentioned in paragraph 108 of their despatch, which, with Your Lordship's permission, I shall examine shortly *seriatim*. The first was—'To restore the great body of the raiyats of Bengal to the position which they held under the ancient land law and custom of the country.' But, far from giving the raiyats the benefits of the ancient land laws, the Bill contemplates the repeal of

the very sections of Regulation VIII of 1793 which define the relative rights of landholders and raiyats under the Permanent Settlement, and as regards customs no attempt whatever has been made to ascertain their nature and scope, or to formulate them into statutory provisions. The second proposal was—'To effect this restoration by declaring that the occupancy-right, carrying with it the privilege of a legal rent, shall attach to all raiyati land, and shall be enjoyed by all settled raiyats, nomad raiyats and under-raiyats being excluded.' The section of the Bill which contained this provision has been expunged, evidently in deference to the opinion of Her Majesty's Secretary of State. The third proposal was—'To accept the proposals of the Lieutenant-Governor for the re-establishment, rectification and enforcement of the pargana rates, subject to certain modifications, of which the chief relate to the framing of principles of assessment, to the securing the benefit of improvements to those who make them, to avoiding class restrictions in respect to the enhancement of rent, and to permitting applications in certain cases for a complete settlement of estates.' The Bill contains no provision whatever for the re-establishment of pargana rates, and the provisions permitting application for settlement of estates form part of the chapter on survey and record-of-rights. The 4th proposal was—'To empower the Local Government to maintain the Collector's tables of rates for periods extending from 10 to 30 years.' The provisions embodying this proposal have been expunged from the Bill. The 5th proposal was—'To declare that no contract shall debar a raiyat from acquiring a right of occupancy in raiyati land.' But, instead of restricting freedom of contract in one particular, the Bill provides for such restrictions in 13 different particulars. The 6th proposal was—'To render the occupancy-right transferable, not, indeed, by summary sale without decree, but by sale in execution of decree and by private sale.' This has been abandoned, and the matter left to custom as at present. The 7th proposal was—'Except as above, to impose no restriction on the mortgage of the right.' This also has been abandoned. The 8th proposal was—'To secure to occupancy and other raiyats due compensation for their improvements.' This I find is the first proposal to which due effect has been given in the Bill. The 9th proposal was—'To reserve to the Government the fullest power of intervention to prevent the growth of a pauperised, cottier class.' This refers to the evils which might be brought about by the transfer of raiyati holdings by sale or mortgage to landjobbers or moneylenders, and is therefore a mere corollary of the proposal regarding transfer of occupancy-holdings which has been abandoned. The 10th proposal was—'To discourage subletting by certain expedients, of which the most important is a limitation of the amount of rent recoverable from under-raiyats.' The provisions of the amended Bill, on the contrary, would encourage subletting and give great protection to sub-lessees. The 11th proposal was—'To provide for the more speedy realization of arrears of rent, when the rates are undisputed, by a modified method of distraint and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.' No summary procedure whatever for the speedy realization of rent has been given, and the institution of distraint has been virtually abolished. Instead of giving facilities for the recovery of rent, the Bill will immensely add to the difficulties of the landholders in this respect. It provides for meddling with the simplest transactions between the landlord and tenant, and makes a reference to the Courts and Revenue-officers obligatory for the ultimate regulation of every bargain relating to land, and whereas the present law provides for the aid of executive officers for only a single purpose, namely, measurement of land, there are more than 50 sections in the amended Bill which provide for executive interference on the part either of the Local Government or of their Revenue-officers. The inevitable effect of such provisions would be to annihilate the landholder's prestige in his estate, and thereby throw insuperable obstacles in the way of his recovering his rents. I shall read to Your Lordship in this connection the statements made before the Parliamentary Committee in 1882 by one who has denounced the wisdom of the Permanent Settlement in no measured terms—I mean James Mill. He says—'To draw from the raiyats the duties or contributions which they owe is well known to be a business of great detail and difficulty, requiring the strictest vigilance and most minute and persevering applications. Anything

which strikes at the credit of the zamindár, farmer or other functionary by which this duty is performed immediately increases the difficulty by encouraging the raiyat in the hope of defeating the demand by evasions, cunning, obstinacy or delay.' The 12th proposal was 'To authorise remissions or suspensions of rent where there has been a remission or suspension of land-revenue.' The Bill contains no such provision. The 13th and last proposal was—'To take up the question of introducing throughout Bengal the system of village records and field surveys, commencing with the Patna Division.' And this is the second out of 13 proposals which has been fully embodied in the amended Bill, although it was one of the difficulties attending the carrying out of which were clearly pointed out by Her Majesty's Secretary of State. The amended Bill, therefore, is in many important particulars at variance with the proposals which, with modifications in only one material point, received the sanction of Her Majesty's Secretary of State. Whether under such circumstances Your Lordship would consider it desirable to submit the amended Bill for the consideration of Her Majesty's Secretary of State for India is a question which it is for Your Lordship alone to decide, but I beg leave to submit that that question acquires additional importance from the fact that the landholders of Bengal and Behar took express exception to the correctness of the statements of fact and law contained in the despatch of the Government of India on which the sanction of Her Majesty's Secretary of State to the introduction of the Bill in Council was based. That despatch assumed that 'the right of Government to fix at its own discretion the amounts of the rents upon the lands of the zamindárs had never been denied or disputed,' whereas such a right is not only disputed, but it was distinctly disproved by the researches of Sir John Shore and disclaimed by the authors of the Permanent Settlement. The despatch declared that the rights of raiyats were not ascertained and defined at the time of the Permanent Settlement, whereas it is well known that those rights formed the subject of a searching enquiry for 20 years before the settlement was made, and that they were clearly defined in Regulation VIII of 1793. It gave extracts from the evidence of Holt Mackenzie before the Parliamentary Committee of 1832, showing the desirability of legislation on the subject of tenant-rights, but it ignored the important statement made by him that 'if done without their (zamindárs') consent, we must, I apprehend, interfere by a new law, and be prepared to give the zamindárs compensation or allow a reduction of revenue.' It declared that before 1859 the zamindárs had no right to enhance rents, on the grounds of rise in price of produce, and that the institution of distraint was an offshoot of the Regulations—statements which require no formal refutation. These and other statements formed the subject of a memorial, dated the 17th of November, 1883, by the landholders of Bengal and Behar to Her Majesty's Secretary of State; and His Lordship was pleased to observe, with reference thereto, that he 'can find nothing therein which would justify his assenting to its prayer that further legislative proceedings in connexion with the Bill should be stayed in order to enable him to re-consider the principles on which the Bill has been framed.' His Lordship adds that 'the most careful attention be given to the arguments of the memorialists when he receives the Bill as finally settled.' Your Lordship is well aware that as soon as a Bill has been passed by this hon'ble Council and has received the assent of Your Lordship, it ceases to be a Bill, and becomes, to use the language of the Indian Councils' Act, 'a Law or Regulation' notwithstanding the power of disallowance vested in Her Majesty's Secretary of State. The concluding portion, therefore, of His Lordship's remarks has raised a hope in the minds of the landholders that, before the Bill is taken up by this hon'ble Council for the purpose of passing, it would be sent to Her Majesty's Secretary of State for his consideration. Whatever foundation there might be for such a hope, I earnestly entreat Your Lordship and this Honourable Council to order a re-publication of the Bill before it is taken up for consideration, and that Your Lordship will not press forward, without further and due publicity, a measure which is at utter variance with the scheme which was sent up to Her Majesty's Secretary of State and with the instructions contained in the despatch of the Secretary of State, which the landholders look upon as a measure which in the absence of any necessity makes serious inroads upon vested rights of property, which the raiyats themselves regard with great consternation, and which landholders and raiyats

alike, and not a few of the responsible officers of State, regard as a measure possessing a much greater claim than any other measure that could be devised to the title of 'A Bill for the promotion of litigation in Bengal and Behar.'"

The Hon'ble RAO SAHER VISHVANATHA NARAYAN MANDLIK said:—
"My Lord, in this matter I propose to follow a moderate course, as I think it will be the best under the circumstances; for this I have my reasons, which I now propose to give. The Bill, together with the Select Committee's Report, as well as the dissents, have now been before us for two weeks, and a comparative study thereof, along with the Bill in its previous stages, has been a task of very great difficulty to me. The cause of this may be partly seen from the review that has been just submitted by the Hon'ble Sir Steuart Bayley. The hon'ble members who have followed him have had, with one exception, the advantage of being on the Select Committee for more than a year. If my remarks appear, therefore, somewhat cursory and disconnected, that circumstance arises from the necessities of the case. The mass of district papers, unindexed, has to be looked into each time from a differently placed standpoint. This is, however, not my only difficulty. Questions of principle have been introduced into the discussion in the Committee, and by different members of the Committee in their dissents; and they also arise in the papers circulated to the members of this Council and in the speeches of my hon'ble colleagues who have preceded me. In justice, therefore to myself, and to the Government of India, whom I am bound to help with such little light as I may be able to throw on the subject, and to their officers, who have worked hard to give their opinions as well as a variety of information about their respective districts, I must dwell for a few moments on the whole matter now before us.

"The legislature of India can only follow a safe and sound course. The question now before us directly affects 58 out of 217, or more than a fourth, of the revenue or judicial districts of British India, and indirectly about twice as many more. The Permanent Settlement is not in question now, and cannot be. I know, my Lord, I am here treading on delicate ground. But I have my views on the subject, and the Government of India has now finally approved of the principle. The Permanent Settlement is the sheet-anchor of the Government and the people, and we hope that when all the conditions are fulfilled (be it two, or be it three, conditions), it will be introduced in its own time throughout the empire as the best political and economical measure that can be devised. Neither party to this present contest refer to it, except as a means of getting rid of their own difficulties. I allude to it now, because it has been introduced into the discussions both here and outside, and because these discussions have caused unrest for which I see no sufficient cause and which ought not to be lightly indulged in.

"The brief history of the present Bill may be thus given. In 1859 the Occupancy Act was passed, recognising heritable but untransferable occupancy-right under certain circumstances. This was repealed in 1869 by a Bengal Council Act. Still the rent difficulty was not overcome. Zamindárs could not recover rents. This was admitted by the Government of Bengal and by the Government of India in 1877-78. How is this got over? This is what the Divisional Commissioners say. The Commissioner for the Presidency Division says the zamindárs had 'a good right to expect a very much more substantial relief' in regard to the recovery of rents. He holds that the Bill, if passed into law, is not likely to end in a satisfactory solution of the questions at issue. The Burdwan Commissioner is opposed in a manner more pronounced; so are those of Dacca and Chittagong; the latter would urge the non-extension of the measure to his district. The Commissioner of the Rajshahye Division is altogether opposed to the Bill, and thinks that while the raiyats of Bengal have been the stronger, and the Lieutenant-Governor in 1877 thought that a Bill for the proper recovery of rents was required, something else which was not then considered necessary has taken the place of the Rent Bill. He shows that rent-suits have increased by the grant of occupancy-rights, presumably to improve

dent people. This he shows by extracts from the report of the Deputy Commissioner of Darjeeling, formerly District Judge, &c., in the Sonthal Parganás.^a

"Again, the Board of Revenue consider that the rents are lower than what they were in the beginning of the last century. And this would rather indicate that we must look chiefly to a good rent-recovery law, abolition of illegal levies, and the partition of all partible properties for our help.

"In face of these facts, it is hard to say that the present Bill does provide additional facilities for the recovery of rents on which the payment of the *jamá* depends, and which was asked for and promised. After having studied the matter, I must say that to me the natural solution of rent difficulties appears to be the amendment of Act X of 1859 and not its repeal. We ought to have had complete statistics placed before us. I do not now advocate taking additional evidence. The reasons for this will be seen from my subsequent remarks. I know the Government of Bengal complain (letter dated 27th September, 1883) 'it is a misfortune that Bengal is so absolutely destitute of a record-of-rights.' And the hope is there expressed that 'when such record is established disputes will be impossible.' I regret I cannot join in the expression of the latter hope. Disputes do not depend on the mere character of public records. Their causes are deeper and varied, and I may say that the greater the complexity of legislation, the pressure of population on the means of subsistence, and, in some measure, the advance of modern civilisation itself, the larger will be the quantity of litigation. Historical experience completely supports me in this position. But my present complaint is of a more practical character, and relates to matters like eviction, distraint and others which we shall soon have to consider when going into detail. And the complaint is based upon the existence of the present law beginning from Regulation VIII of 1800 and coming up to Bengal Act VII of 1876. These laws were passed for securing some such statistics; and we ought to have *máuzawár* or village registers, and *parganawár* or district registers, prepared under them. They would have given a large quantity of information about all the lands in each district, their situations, dimensions, holders and other particulars. From these, valuable information about the state of the people could have been gathered. I extract a specimen from the papers handed up by the Commissioner of the Patna Division, which show that within the last 80 years in the Gya district each estate has been split up into six and even more portions, and the number of proprietors has increased from 18 to 24-fold.^b

^a Mr. Oldham estimates that about 80 per cent. of the civil suits in the Sonthal Parganás are instituted by money-lenders to recover advances made to raiyats, a large majority of whom have occupancy-rights, and the following figures for the year 1883 compare litigation in the three districts just mentioned:—

District.	Population.	Number of civil suits instituted.	Number of civil executions of decree instituted.
Sonthal Parganás	1,568,093	7,351	4,253
Dinagopore	1,514,346	5,188	2,518
Rajshahye	1,338,638	2,674	1,930

Further on, he observes—

"I have no figures showing the number of civil suits in the Sonthal Parganás before such provisions as those in the Bill were introduced, but Mr. Oldham's statement that they greatly increase litigation seems sufficient.

^b *Lundy, Messrs. Livsey, Newbery, Ruddock, Dalton and Tute*, and I would point to the following figures for 1883 as showing that litigation for the recovery of rent has not been decreased by the provisions of the Bill, though Mr. Oldham here again thinks that without transferability there would not be nearly so many rent-suits, as fewer money-lenders who quarrel with the zamindars would become occupancy-riyats:—

District.	Number of rent-suits instituted.	Number of rent executions instituted.
Sonthal Parganás	3,892	2,805
Dinagopore	3,902	1,620
Rajshahye	1,978	853"

^c Extract from enclosure of Commissioner's Report No. 484 B., dated 7th July, 1883, page 11 (note).

"In the 24 Parganás, which are now comprised in the district of Gya, the total number of estates in 1789 was 744, and the number of proprietors 1,160; in 1871 the number of estates was 4,411 and the number of registered proprietors 20,453. In 80 years, therefore, each estate has, on an average, been split up into six, and where there was formerly one proprietor, there are now 18 (Statistical Reporter, Volume XII, page 126). In 1790, there were 1,332 separate estates on the rent-roll of the Patna district, as then constituted, held by 1,280 registered proprietors. Including a net total of 777 new estates obtained by transfer from the Gya district, the number of estates on the rent-roll of the district amounted in 1870-71 to 8,075. The number of registered proprietors had increased to 37,900. Allowing for the increase in the size of the district by the addition of the Behar sub-division, the number of estates under the Patna collectorate had quadrupled since the original settlement in 1790; and where there was formerly one proprietor, there are now probably 20 (Statistical Reporter, Volume XI, page 187). In the district of Tirhoot the figures are more marked. In 1790 there were 1,321 estates held by 1,989 registered proprietors. In 1871 the number of estates was 11,500 and the number of registered proprietors 73,416 (Statistical Reporter, Volume XIII, page 168). So long ago as 1789 Mr. Shore remarked on the insignificant size of the Behar estates and the poverty of their owners. If subdivision has gone on thus rapidly with estates, it is hard to expect a different state of things in case of transferable occupancy-holdings."

"This is one example in regard to the case of the proprietors as the one I gave before is in regard to occupancy-tenants. As a very considerable number of these are said to exist in Bengal, such information would have cleared up many difficulties in regard to recovery of rent and other matters. None of the dissents, so far as I can see, supplies any help in this direction. All zamindars could supply statistics, and ought, I think, to have been called upon to do so.

"Turning, therefore, necessarily to the divisional reports, the state of matters is not quite reassuring. Some officers would rather work the present law more strictly and stop the illegal *abwabs*. Others think the new law not at all necessary, and have proposed a provision empowering the Local Government to introduce it into any locality at its discretion.

"As far as I have been able to gather, the Commissioners oppose the Bill, first, as unnecessary, and as going beyond the necessities of the case; and secondly, because it will not produce the results anticipated, but will injure vast interests without any compensating public good, and end in injurious litigation to the detriment of all parties. Some Collectors would have a moderate Bill. Such being the state of matters, I am sorry I am not able to follow the line taken up by those hon'ble colleagues who complain of the present Bill as not conceding all they claim for the tenants. The evidence of the District Officers is quite the other way, and I think it should not be set aside except on very strong grounds sufficient to override their weighty representations. His Honour the Lieutenant-Governor has a fourfold complaint against the Bill. The Hon'ble Mr. Reynolds thinks that, if anything, this is a law which cannot last long. The Hon'ble Mr. Amír Alí is also dissatisfied for the non-extension of occupancy-rights to classes who the district authorities think are not generally entitled to them; while the Hon'ble Mr. Gibbon thinks that complete transferability ought to have been enacted instead of its being left to Courts and custom. Again, I see a demand made in some quarters for what is called spirited legislation. To persons who ask for such legislation I again refer to the valuable reports of our district authorities. These are entirely opposed to such a course. Indeed, it seems to me that those who advocate such a course are hardly aware of the gravity of the occasion or the seriousness of results. Social and economic changes, to be stable, must be slow, and must come from within. Does the evidence before us warrant such a proceeding? I am bound to say no. I would rather that the energy wasted on such attempts at seeking spirited legislation were more usefully employed in training cultivators, say, over given areas, to be more hard-working, self-reliant, truthful, God-fearing men. Their example would be more efficacious than a cart-load of invectives against vested interest of any kind, and will certainly produce a moral revolution which the Government above all others would be the first to recognize.

"The Government of India, in the Irrigation papers published in October, 1871, lay down a well-known caution in regard to the evils produced by periodic settlements. The principles which underlie those observations (*vide* Minute of Lord Mayo and other papers) appear to be that frequent interference in the private affairs of the people must produce evil. Here, on the contrary, the call upon the Government seems to be not to desist, but to come and interfere on almost every conceivable occasion, either through the Revenue or the Judicial Department. Nothing is to be settled, it would seem, out of Court and by private agreement. I am sorry to see the unqualified assertion of such a principle. The Hon'ble Mr. Evans has already drawn attention to it, and I hope some substantial improvement may yet be made in this matter during the progress of the Bill.

"Again, the divisional authorities speak of considerable increase of establishments as one of the inevitable results of this legislation. Thus, in regard to Division Chittagong, the Commissioner says that litigation has increased since the last Act, and the tenants are evidently no better (see tables previously quoted). Evidently more complicated provisions will necessitate new establishments. In Rajshahye the new provision as to deposit of rents will require new establishments. In the Dacca Division, the demarcation of *khámár* lands (which is considered objectionable there and elsewhere), will require heavy establishments. Dacca, my Lord, is in East Bengal, of the character of whose people the

Hon'ble Mr. Evans has told us at the last meeting, and you may usefully consult the records.

"Taking yet another view of the case, our colleagues, the Hon'ble the Mahārāja of Durbhunga and the Hon'ble Peāri Mohan Mukerji, are both dissatisfied with the whole work, and I believe it is now clear that the measure is not suited to the circumstances of Behar. Will it benefit Bengal? I fear the evidence before me does not permit of my giving an unqualified answer in the affirmative. As I have said before, the Local Government has not supplied us with such statistics as the present laws enjoin the keeping of. Were it feasible and useful at this stage, I should have agreed to receive further evidence. But we are not now experimenting on inert matter which obeys certain natural laws, and with which you can repeat your experiments almost regardless of time. Such a method of experiment is not applicable to the subject before us. The state of the parties affected is, no doubt, undergoing some change; and yet it cannot be said that it has gone on so long as to have produced new combinations which the district officers have not already reported upon. And there is a certain subordinate official agency to which I would not now refer for further reports. I shall briefly explain what I mean by this observation. Thus a subordinate officer in Bengal submits a report which to me is quite a curiosity. He allows two days only to respectable gentlemen in his subdivision to submit their opinions. His own report is simply ludicrous. He has gone through the Bill, which, he says, provides necessary safeguards against the zamindārs; he ventures to remark that more than sufficient privileges have been granted to the tenants; he would rather have seen a simple speedy mode of recovery of arrears and protection of tenants from illegal exactions and harassing enhancements. When saying this he forgets that he has already considered the Bill sufficient in these respects. As if, however, thinking he had been doing too much, he again condemns the Bill as tending to create multiplicity of intermediate tenures detrimental to actual cultivators of the soil, and as likely to prove of doubtful expediency and productive of litigation. Then comes the final touch. He says:—'*The Bill is a very complete one, and I am unable to offer any suggestion.*' The fact seems to be that the writer has no confidence in himself; how can he expect that others should confide in him?

"I am unable, my Lord, to say how the multiplication of such evidence will be of any value, and there are some more specimens of it on both sides. In fact, some raiyati petitioners in Orissa have already picked up a kind of phraseology which is scarcely parliamentary. I would, therefore, not be a party to ask for further evidence on this occasion. We cannot artificially isolate the subjects of our inquiry; and there have been no violent social or economic changes which can have altered the social and economical institutions of Bengal or the character of its people since the last district reports were framed within one year. If there were any such changes, the Local Government would doubtless have sent up all the materials to this Council.

"Pursuing the same subject and working at it from another point of view, we must see what we have really to do. The legislation of 1859, as amended in 1869, the proceedings of the Commission of 1881, and the discussions that have been now going on for three years, are all before us. And it seems to me the point that is being lost sight of is this. Are we now going to construe for the first time the Regulations of 1793, or those Regulations along with all amendments up to this date as viewed by the conduct of all the parties concerned, namely, the Government, the landed proprietors and the tenants? A good deal has been said on both sides in regard to customs, but I take it, as a rule sanctioned by high authority, that a custom cannot be acknowledged as a basis of legislative action unless it has been consciously acted upon by the people as a rule of their conduct in the practices of every-day life. Unless it is so, I fail to see on what foundation it is to stand, and unless it has a foundation I should be chary of accepting it as a guide. Mr. Longfield, in his paper on 'The Revenue of Land in Ireland,' printed in the collection of essays published under the sanction of the Cobden Club, gives the following criterion for judging

of property in land, and this I think may be safely taken as a guide in this discussion. He says:—

'The rights of the present owners do not depend upon the truth of any theory respecting the origin of proprietary rights. It is a rule of natural justice that says that, if I encourage a stranger to buy from a wrongful owner property that is really mine, I cannot justly press my own claims against the purchaser. This is the case with land in every settled country. The present owners either themselves purchased the land or derived their rights under those who purchased it with the sanction of the community represented by the authority of the State. In many cases the State itself received part of the purchase-money from stamp-duties on the purchase-deeds.'

"Again, a high authority has laid down (Kent on American Law) that to complete the right to property the right to the thing and the possession of the thing must be united.

"What, then, are we now to do? I have tried to give a brief view of the Bill of 1883 taken by some of the leading officers who are in the same position as I am now, but who have the actual work of the administration on their hands, but I fear I have not done them justice for want of time. If we examine the Bill, we have to see what mischiefs it will suppress, and what remedies will be advanced by it. Viewed in this light, it seems to me that the *khudkāsht* raiyat should have been allowed to remain undisturbed. *Khudkāsht* is a well-known term, and, if necessary, its equivalent might have been simultaneously given, but neither the 'settled raiyat' nor the 'resident raiyat' supplies its place. *Khudkāsht* contains its own definition, and its attributes have a well-known history of their own.

"In respect to another subject I have a few words for this occasion. Though the present is not, strictly speaking, a revenue law, it will indirectly affect the revenue administration of the country, and it occurs to me that now that the subject has been exhausted threadbare, there ought to be no artificial restrictions on the quantity of zamindari or raiyatwari holdings. If nine-tenths of Bengal are now under cultivation, and the remaining tenth is waste, it cannot affect any tenant if the proprietors of that waste land were allowed to work it, or to sell it, or to contract with leasehold tenants so as to reduce it into cultivation. ~~It is a circumstance that has~~ *to remain uncultivated is a circumstance that has* ~~caused~~ *to their own loss.* That it has not been put on their rent-roll is, I conceive, because no rent has been derived by letting it, either by *batai* or cash rates. It therefore could not appear as cultivated land, either in their own or the Government registers, but why should there be a legislative prohibition to the proprietor making it his *khās* land, which it substantially is, and still more why its reclamation should be clogged with unnecessary restrictions is what I cannot see. When this and such like arguments are urged, one is referred by the Bengal Government to customs of former Governments for power to do so. On proper occasion, nobody advocates the non-exercise of superintending powers by our own Government within constitutional limits. But I am supported by high authority in protesting against an improper application of such examples. A constitutional and well-administered Government like our own can hardly set up the effete administration of Bengal in the 18th century as a model before us to copy. The provisions which are themselves cited in another part of the paper in connection with a similar example were repealed as being *obsolete* so long ago as 1876. The process of comparison is therefore, I must say with great deference, logically vicious.

"If there was any fair scheme applicable to both sides allowing such land to be converted into raiyatwari holdings on a graduated scale to be agreed to on both sides, I should have been prepared to take such improvement as a good start and some tangible good might have been attempted. This portion of the Bill is not favourably reported upon in the district papers before us.

"In regard to homestead lands, I think, unless such lands are connected with the raiyat's agricultural land of the village, mere outsiders should not be allowed to hold them. This is, I believe, the customary law, and as the native community is situated, it is, I think, a salutary provision. Neither the landlord nor the cultivating raiyat should be permitted to dissociate the one from the other. Neighbours' quarrels in matters of adjoining lands are the worst

in any country, but when to other difficulties social and religious ones are added, the cup overflows to the detriment of the whole village community. I trust, therefore, that this subject, along with others, will be duly considered. The papers referring to Behar on this subject are important and deserve careful consideration.

"Another subject on which I am bound to express my opinion in this place is the restriction on the freedom of contracts generally. Over a wide country, containing 68 millions of inhabitants, the Government of India has doubtless had before it cases of localities or of a class or classes from which this liberty may, on due cause being shown, be sometimes withdrawn; and when we remember that under the infancy of the land law (and in several parts of the country the law as it stands now), does not permit of transfer of occupancy-holdings by contract, I may accept the present measure as a tentative solution of the difficulty so far as the tenants are concerned. But, on the other hand, with regard to waste lands on which nobody has settled, I should prefer all contracts being left free as heretofore, subject to the equitable jurisdiction of Courts of law. This view is also supported by the evidence of the district authorities. It occurs to me that while one side to this controversy would deny anything which will affect their rent-roll, the other cannot make up their minds to distinguish what is well known throughout India as *sicāmitwa* or right of dominion and tenancy. I am bound to say here at once that I agree with neither. The Bengal Revenue-officers do not support such a contention. Why is the legislature to attempt to square the zamindār to fit into some new imaginary official circle?

"There are some other matters of which proper notice may be taken when they come up for discussion. While the Bill enacts several new provisions of law of questionable utility, and which will increase not only the work of district officers, but introduce a larger interference of State agency into the private affairs of the people than is either necessary or desirable, no positive provision, as it seems to me, has been made for relieving large classes both of tenants and landholders, who I think ought to be relieved. It appears clear from the papers before us that sub-letting is the standing evil to which a large amount of the sufferings of the Bengal raiyat may fairly be attributed. This may be seen particularly by referring to paragraphs 14 to 17 of Mr. Cotton's memorandum, prepared for the President of the Select Committee on the Tenancy Bill, which, according to His Honour the Lieutenant-Governor, merits every attention; Mr. Cotton says:—

'In one respect, however, the cultivators of the soil undeniably are placed at a disadvantage by the practice of sub-letting, for it is a peculiarity of the system, although these tenures and under-tenures often comprise defined tracts of land, a common custom is to sublet certain aliquot shares of the whole superior tenure, and in consequence the tenants in any particular village of an estate are often required to pay their rents to two, or more than two, and often to many different, landlords.'

"Although, as Mr. Cotton remarks, following the historian Hallam, that such a result is by no means unnatural, still that it is not a necessary result may I think be safely inferred from the papers before us. Thus the report of the Officiating Collector of Shahabad in regard to *guzashta* holdings is in this connection valuable as showing that in places like Bhojpur those who cultivate their own lands on these tenures are very well off. I know that it is not correct to generalise from limited data, because property both acts and is acted upon by those who hold it; but if it is intended, on proper occasions, to help the creation of small properties with distinct responsibilities and with provisions for actual sub-divisions amongst the sharers, I think opportunity may now be taken to enact some provisions which would be an improvement on the present state of things.

"As regards our present course I would have voted for temporary relief being given to places like Mymensingh and Dacca by passing special measures to meet their cases. There is enough of material before us to support such a course. But this I fear would now be impracticable. It is now nearly six or seven years that the subject has been before either the Government of Bengal or the Government of India, including the deliberations of this Council, and we

are given to understand that it will not conduce to the cause of good government if the matter be left in this state till the Council meets again here in December next. The Bengal Government as represented in this Council does not ask for delay in the minutes now before us, although those minutes do not accept the present Bill as a final settlement. The proprietary interest, as represented by the Hon'ble the Mahārājā of Durbhunga and Hon'ble Bábú Peárí Mohan, request re-publication, and if this were not a virtual postponement for a whole year I should have voted for that course. As it is, any extension of time which can conveniently be allowed to them may, I think, be granted; but if that cannot be, then I hope the Council will consider and discuss all that has to be said *pro* and *con*. for all the interests concerned are equal objects of conservation to the British Government. While I have given my reasons for the course I am going to adopt, I regret I am not disposed to concur in the remarks either here or outside in regard to the opposition of our zamindār colleagues. The case of the Mahārājā of Durbhunga is as good as proved. If it were not, I still think both he and the Hon'ble Bábú Peárí Mohan are bound to state all their objections. The district authorities show what they will suffer, and it is quite natural they should feel it; and if they do, I think we ought to be glad to hear them. They are representatives of a very large and important class. I do not think that it will be just to tax the present landed proprietors of Bengal with the shortcomings, if any, of their predecessors, because I think the progress of legislation as well as the papers now before us make it pretty clear that on the whole they have done their work well. But now comes another agency into greater prominence, and with the light which is thrown on their condition from both sides, it is clear that neither has arrived at its goal.

"What then are we to do? The Bengal Government calls for immediate action. This is supported by the hon'ble member in charge, who I feel sure will not rush into any extreme course. A few of the district papers move on the same lines. Though not inclined in favour of the Bill of 1883, they counsel legislation under some of the heads laid down in the Bill on which they favour us with their remarks. My duty therefore is clear; that is to make the most of what we have and not to postpone for another year.

"My Lord, I have already taken more time than I had proposed to myself. I am quite sensible of the imperfections which there may be in my work, but I can assure Your Lordship and my colleagues that I have devoted more hours to it than one is usually credited with doing in this climate. If there are any sides of the question on which light can be thrown, nobody would be more glad to learn than myself, but I have a right to say that I have done my best under the circumstances, and having made these remarks I beg to say that I shall vote with the hon'ble member in charge for the further consideration of the Bill in detail."

The Hon'ble MR. REYNOLDS said:—"I desire to support the motion that the Council should now proceed to take this Bill into consideration. I do not mean by this to express my approval of all the provisions of the Bill. The dissent which I have recorded from the Report of the Select Committee is sufficient to show that in some particulars of great importance the Bill seems to me to fall far short of being an adequate or a satisfactory measure. But, in my opinion, the faults of the Bill lie mainly on the side of defect. It fails to supply any sufficient check on the improper exercise of the extensive powers which it puts into the hands of the landlords. It must be supplemented by further legislation for the protection and security of the tenant, and I have little doubt that the experience of a few years will show the necessity for such legislation to be imperative. Till that protection is afforded, I can only regard the Bill as a well-intended, but incomplete, measure; a measure to be praised rather for what it aims at, than for what it effects; a measure marking, it may be, a stage upon the journey, but leaving the country still a long distance from the desired goal. Holding these views, I still think that I can consistently vote in favour of the motion before the Council. If the principles which the Bill as originally introduced was intended to establish had been repudiated, or its objects had been formally abandoned, I should look upon the question in a very different light. In that case, instead of

voting to take the Bill into consideration, I might have been more disposed to vote for dropping it altogether. But the difference between myself and the hon'ble member in charge of the Bill is not of this serious character. It is a difference of degree, not a difference of kind. I do not understand that the hon'ble member has, in any way, receded from the position which he took up in his speech on the 13th of March, 1883, when the Bill was referred to the Select Committee. He apparently believes that the Bill in its present form redeems the pledges which were given when it was introduced, or at least that it goes as far in that direction as is justified by the evidence laid before the Select Committee. In this belief I do not agree, but this need not prevent my consenting to discuss the details of the Bill as an instalment of the legislation necessary to a final settlement of the question. An affirmative vote on this motion seems to me to imply that it is desirable to legislate upon the subject, and that the provisions of the amended Bill do not go beyond the limits of the power of interference which the Government reserved to itself at the settlement of 1793; and further, that the general lines upon which the Bill is drawn, and the objects at which it aims, are just and reasonable, and in accordance with the wants of the country. It seems to me that the Bill, insufficient as I consider it to be, does satisfy these conditions, and I am, therefore, prepared to assent to its being taken into consideration by the Council.

"I willingly and thankfully acknowledge that the Bill contains many valuable improvements upon the present law. It lays down principles to guide the Courts in determining whether a tenant is a tenure-holder or a raiyat: it provides a simple procedure for the registration of the transfer of tenures: it does something towards strengthening the position of the occupancy-raiyat: it simplifies and facilitates suits for the enhancement of rent: it establishes an admirable system for the commutation of rents payable in kind: it prescribes excellent rules for instalments, receipts and interest on arrears: it encourages improvements: and it protects the interests, both of the parties and the general public, in cases of disputes between co-sharers. The chapter on the preparation of a record-of-rights contains provisions which will be equally useful to landlords and to tenants. The sections on the record of private lands will put a stop to that illegal misappropriation of village lands as khāmār which has been too often practised in Behar. The rules for the protection of sub-tenants when the interest of the superior holder is relinquished or transferred, the restrictions upon such contracts as are opposed to the objects of the law, the power given to apply for a judicial determination of the incidents of a tenancy—all these are, in my opinion, points in which the Bill applies useful and equitable remedies to evils for which the existing law does not adequately provide.

"It is therefore the more to be regretted that a measure which contains so much that is good should be marred by defects which not merely detract from its usefulness, but which may result in aggravating the mischief which the Bill is intended to counteract, and in turning what should be the raiyat's protecting shield into an instrument of exaction and oppression. The opportunity has again been afforded us which was neglected in 1793 and misused in 1859, the opportunity of placing the relations of landlord and tenant on a secure and permanent basis; of defining the rights and obligations of each; of ensuring, in accordance with immemorial usage, fixity of tenure at fair rents to all cultivators of the village lands; and of facilitating the landlord's recovery of his dues so long as he restricts his demands upon the tenant within equitable limits. It is to be feared that, once more, the opportunity will be suffered to pass by. This Bill, by confining the right of occupancy to the village in which the tenant has held land for 12 continuous years, fails to give the occupancy-raiyat that fixity of tenure to which he is justly entitled. The sections relating to the enhancement of an occupancy-raiyat's rent give the landlords a sure and speedy means of enhancing rents, without providing any sufficient check on the levy of further enhancements in those areas in which rents are already as high as the land can properly bear.

"If the protection given to the occupancy-raiyat is thus insufficient, the defects of the Bill, as regards the non-occupancy-raiyat, are still more conspicuous, and are likely to lead to results still more deplorable. The non-occu-

pancy-raiyat is entitled to full consideration at our hands, for he is really the offspring of our own legislation. We have been told time after time, by the landlords and their advocates, that the occupancy-raiyat is the creature of Act X of 1859. Never was a statement more inaccurate, or indeed more directly opposed to the fact. The occupancy-raiyat dates from a time whereof the memory of man runneth not to the contrary. But never till 1859 was it the law in Bengal, that a resident raiyat cultivating village lands to which he had been duly admitted, which he had held for ten or eleven years, and for which he was willing to pay the established rent, could be ejected from his holding at the pleasure of his landlord by a mere notice to quit. It is the non-occupancy-raiyat who is really the creature of Act X of 1859.

"The Bill not only does practically nothing for this class of tenants, but in some respects it puts them in a worse position than they occupy now. It was left to the Courts to deduce from Act X of 1859 the doctrine of the landlord's power to eject, and the deduction seems to have been made for the first time in 1874, but it is now proposed to embody in the Statute-book a distinct recognition of this power. Under the present law, the zamindār can prevent the accrual of the right of occupancy by merely shifting the raiyat from one field to another: under the Bill, he will be tempted to evict him from the village altogether. A tenant so completely at the mercy of his landlord, must evidently submit to any demand of rent which the latter may think fit to make. Even if he is allowed to acquire a right of occupancy, he will only be permitted to do so on payment of an excessive rental: and, under the operation of the rule regarding the prevailing rate, this excessive rental will be used as a lever to raise the rents of all occupancy-raiyats in the village. The evil consequences of leaving the class of non-occupancy-raiyats unprotected were clearly foreseen and forcibly pointed out by the Government of India in its despatch of the 17th October, 1882, to the Secretary of State: and it is, therefore, a matter for surprise as well as for regret that the amended Bill leaves such raiyats practically without any protection either as to the amount of their rent or as to the security of their tenure of the land. The established principle referred to by the Court of Directors in 1793, as the maxim alike of the Moghul and of the British Governments, that 'the cultivator of the soil duly paying his rent should not be dispossessed of the land he occupies,' seems to have been lost sight of. In a previous passage of the same letter, the Court of Directors had plainly declared that the object of legislative interference by the Government between landlord and tenant should be 'to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions.' But this Bill allows the raiyat to be ejected at the mere caprice of his landlord and it gives him no adequate security against the most exorbitant demands of rent. The extension of the right of occupancy to the great mass of settled cultivators has been put forward, time after time, by successive authorities as one of the principal objects at which legislation on the rent-question should aim. The Famine Commission and the Government of Bengal have urged, in language as strong as it is possible to use, the great importance of this extension: the Rent Commission proposed to give a qualified right after only three years' occupation: the Government of India, in 1882, went even further than this, and recommended that the right of occupancy should be declared inherent in the status of every cultivator of raiyati land. The hon'ble member in charge of the Bill is still prepared, I imagine, to maintain the principles laid down in that despatch to the Secretary of State. But I would ask him to consider what extension of the right of occupancy is to be looked for from a measure which leaves the landlords the fullest power to prevent its accrual over all lands in which it has not already been acquired, and over lands in which it now exists, but which may hereafter revert to the landlords by purchase, by death without heirs, or by abandonment by the occupancy-tenant. I would ask him to ponder the serious warning with which the 8th paragraph of that despatch concludes, that 'the old series of litigation, enhancement, and ejection will recommence; and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.' I would ask him to reflect that out of 67,578 occupancy-holdings

transferred by private sale during the past year, no less than 13,500, or about 25 per cent., were purchased by zamindars or traders: and then to say whether the warning conveyed in that paragraph is not likely to be more than justified by the working of this Bill.

"These, then, are the faults I find in the Bill: first, that though it puts the occupancy-raiyat in a stronger position than he now holds, it does not give him complete security of tenure: secondly, that it greatly increases the facilities for the enhancement of his rent, without laying down any ultimate limit beyond which enhancement is in no case to go: and thirdly, that the protection it gives the non-occupancy-raiyat is altogether inadequate. The hon'ble member in charge of the Bill, to whom I listened with the greatest admiration, and whose speech was equally distinguished by the lucidity of its statements and the fairness of its arguments, will not deny that in all these three particulars the Bill in its present form is a far weaker measure than the Bill which was referred to the Select Committee. He has contended, it is true, that the Bill is a much better measure than I have represented it to be. He noticed, in particular, the points of the settled raiyat, the prevailing rate, the gross-produce limit, and the position of the non-occupancy-raiyat; and on all these points I am willing to admit that he adduced reasons of considerable force in favour of those conclusions of the Select Committee which are embodied in the Bill. As the motion actually before us is merely the preliminary motion that the Bill should be taken into consideration, I do not desire to discuss these questions in detail on the present occasion. Each of them will come before the Council in connexion with amendments, of which notice has already been given. I will only say now that, whatever may be urged in support of the Select Committee's decision upon each of these points, what the Council has to look at is the effect of the Bill as a whole. There may have been unanswerable reasons for maintaining the prevailing rate, or for striking out the gross-produce limit, but the general result of the rejection of the proposals of the Bengal Government on these and other cognate matters has been, in my opinion, to leave the raiyat without adequate protection for his rights. And when the hon'ble member quotes me as an authority for the abandonment of the provisions for compensation for disturbance, I think it only fair to myself to point out that I objected to those provisions, because I thought compensation for disturbance an insufficient check. I thought it probable that the raiyat would not take his compensation and go, but would submit to the enhancement and remain. My objections are not disposed of by the removal of the check, without the substitution of anything more effective in its place. On the whole, I am not prepared to withdraw the opinion I have already expressed in my recorded dissent, that the Bill gives the landlords a power which is not sufficiently controlled or limited, and that the exercise of this power will naturally lead to results inconsistent with those rights of the tenants which the Bill was designed to maintain, and disastrous to the agricultural interests of the country.

"The nature of the further legislation, which will be necessary to supplement and complete this Bill, is a point upon which I do not propose to touch to-day. I shall have an opportunity of noticing it hereafter, when the motion for the passing of the Bill is submitted to the Council. At present, I desire only to make it clear that my assent to the proposal to take the Bill into consideration does not imply my acceptance of the Bill as containing any measure of completeness or finality. With this understanding, I am prepared to vote for the motion, and I would add that I see no advantage in the proposal that the discussion should be deferred, or the Bill re-published. The Bill, as published 12 months ago, is substantially the same measure as that which comes before the Council to-day. It has been subjected to the fullest criticism, and those who think it goes too far, equally with those who think it does not go far enough, are not in the least likely to modify their views by putting off the debate for a few weeks or months. Experience alone will show how the measure will work, and in what direction its amendment will be necessary. To the results of that experience I am content to appeal. No one, indeed, would rejoice more than myself if my apprehensions should prove to be unfounded. But it is my earnest conviction that this Bill will not prove a final or a satis-

factory measure; and, as the Select Committee have not consented to introduce the safeguards which I believe essential to its success, I think it better for the country that the question should not remain in its present state of debate and suspense, but that the measure which commends itself to the majority of the Council should come into early operation, and should be tried by the logic of facts and by the test of results."

The Hon'ble MR. HUNTER said:—"My Lord, I am one of the members of the Select Committee who have not been able to give an unqualified support to this measure. On the second reading of the Bill, two years ago, I felt it my duty to take exception to three of its main proposals. I objected, in the first place, to interfering by statute with the landlord's right to make his own bargain with a new tenant: in the second place, to the produce limit on rent: and in the third place, to the excessive compensation for disturbance. During the passage of the Bill through the Select Committee, these provisions have been expunged, new proposals which seemed to me equally objectionable have been rejected, and it is with much regret that I find myself still compelled to dissent from the report of a body, whose fairness I recognise, and one which has, in my opinion, fought a good fight against extreme proposals from both sides. My regret has been increased by hearing an hon'ble member make use of my dissent in support of a motion which raises the general issue as to the necessity of legislation, and which would postpone legislation for the present. I myself do not understand how any one who listened to the statements made in this Council on the 12th of March, 1883, on behalf of the Government of Bengal and on behalf of the Government of India, can think it either right or expedient that that general issue should now be raised. The Bill came before the Council with the assurances of three Lieutenant-Governors of Bengal that a legislative adjustment of the land question had become necessary for the tranquility and good government of these provinces. These assurances were supported by the opinion of the most experienced district officers and by a great body of information collected by a special Commission. The Government of India had, after further inquiry, given its deliberate assent to the necessity for legislation—an assent which carried with it the sanction of the Secretary of State. But if doubts still remained in the mind of any member as to the sufficiency of the grounds on which the necessity for legislation had been admitted, I think that the papers placed before us in the Select Committee must have completely removed those doubts. I will refer to only one such paper. Mr. Finucane shows that in a tract in which the rents were excessive, over one-fifth of the cultivators absconded into Nepal in the course of two years; and that nearly fifth of the arable land went out of cultivation. From another tract, in which the rents were still more excessive, one-third of the population absconded, and an almost similar proportion of the land became waste. Why did these British subjects, some 30,000 in number I am told, fly across our frontier to Native territory? Mr. Finucane's report supplies an answer. 'I noticed people,' he says—'by hundreds, sometimes digging in the field for roots which they gathered for the purpose of eating them. Every year people eke out the scanty meals that their means allow them to provide for themselves by digging for roots. The circumstance attracts no special attention. It is not necessarily a sign that the poorer classes are in distress. And yet I can vouch for the fact from personal experience that the bread or cake made of this root (*chackour*) is the most disgusting compound a man can put into his mouth: and medical officers have pronounced it to be most indigestible, utterly devoid of any nourishment, and provocative of the most irritating bowel complaints.' My Lord, this description, I am thankful to say, applies only to particular tracts. I do not wish to generalise from it: still less do I desire to infer from it that the Bill now before the Council provides the only or the best remedies for the agricultural distress which Mr. Finucane's report reveals. But I do say that even if we were to reject the repeated assurances by the Government responsible for the tranquility of the country, and if we were to question its assertion that legislation is now necessary for the preservation of peace, yet these and similar statements before the Council most clearly show that legislative interference is necessary in the

interests of humanity. Whatever may be my differences in points of detail in regard to the particular remedies proposed, and steady as my opposition has been to what I considered extreme proposals for curtailing the landlord's rights, I think that the native landholders in now raising the general issue as to the necessity for legislation, have adopted a course indefensible in itself, and calculated to do a moral injury to their cause.

"As regards their specific contention for the republication of the Bill, I would ask them what new points are there in the revised measure, which have not already been submitted during a full year to public discussion by the preliminary report of the Select Committee, or by the letter of the Government of Bengal six months ago? I have listened carefully to the speeches of the Hon'ble Peári Mohan Mukerji and the Maharájá of Durbhunga—in the expectation that some such points would be specified. I have heard that 13 out of the 196 sections did not appear in the Draft Bill. But I have not heard any really new point specified. The truth is that the work of the Select Committee during its second session has chiefly been to reject the extreme proposals, after those proposals had been duly submitted to public discussion by its preliminary Report; and not to insert new provisions of its own. Where a new provision has found entrance into the Bill, it has almost invariably been framed upon old lines. The result of the republication of the Bill, would now be, not to submit new points to public discussion, but to resubmit to public discussion the decisions of the Select Committee upon the old points which have during the past year been amply and publicly discussed.

"My Lord, I have thought it right to state at some length my objections to raising afresh the general issue as to the necessity for legislation, because I shall have to raise several particular issues in regard to the exact form of legislation now proposed. First of all, while I believe that some legislation has become necessary, I do not think that the Council has been placed in the best position to effectively legislate. For, as I have urged in my written dissent, the legislature is asked to deal with the entire relations of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. I agree with the hon'ble member in charge of the Bill that the process of hearing and cross-examining witnesses in the various districts might have led to agitation. But the absence of cross-examined evidence has, in my opinion, intensified and prolonged the present far more serious agitation. In a country where the expression of opinion is unrestrained, and where each of the great interests is powerfully represented in the Press, it is impossible to enter on a measure affecting the rights of large and influential classes without exciting opposition and agitation of a most determined character. The best way to encounter such an agitation is to meet it with facts, and the examination of witnesses is the ordinary and only practicable procedure for collecting a body of facts which can be relied on in a conflict of interests, such as is involved in this Bill. I agree with the Hon'ble Sir Stuart Bayley, however, that when the measure reached the Select Committee, the time had gone past for a peripatetic Commission to take evidence; and I also think that, with the agitation now at full flood, such a Commission would find it very difficult to arrive at the truth.

"If I believed it likely that a delay would enable the Government to collect really important information, or would add materially to the data now before the Council, I should vote for the postponement. But whence is such information to come? If one thing has been made clear by the labours of the Select Committee, it is the extremely meagre and uncertain character of rural statistics in these provinces. The Bengal Government is endeavouring by legislation in its own Council to provide machinery for increasing its knowledge, and for dealing with the administrative difficulties to what insufficient knowledge has given rise. But several years must elapse before the machinery can be brought into working order and produce practical results. Meanwhile we have exhausted all the sources of information which are at present available to the Bengal Government. It has been my business, during the past fifteen years, to acquaint myself with the statistics of each province of India, and to study the sources from which they are derived. More than any other officer of Your Lordship's Government I have had to deplore the inadequacy of the information which we possess for

Bengal. I may, therefore, be permitted to say that all the classes of really ascertained facts known to me in regard to Bengal have been fairly used and are now exhausted. I hope that before many years elapse, those facts will have been supplemented by a mass of new information obtained under the Acts now passing through the Bengal Council. But I see no possibility of obtaining that new information within any period, say of six months, during which this Bill could be postponed. Statistics cannot be run up in a night, unless indeed they are to tumble down next morning. If the Bengal Government were to attempt, in the midst of the present agitation, to institute a statistical enquiry on a large scale throughout Bengal, it would merely be deceiving itself and misleading the public. We have not only exhausted all sources of information now available, but we have heard the views of every class and interest which claims to be affected by the measure. A further postponement would prolong the rural agitation in a most undesirable manner: but it would yield no compensating body of new facts.

"The Select Committee has with much patience threaded its way through the conflicting statements submitted to it. The result has in some cases been the rejection of what seemed to me useful proposals. For example, the sale of the occupancy-tenure, which had at one time the approval of the Select Committee, no longer finds a place in the Bill. It appeared expedient to legalise such sales, not on theoretical grounds, much less from an abstract love of any three letters of the alphabet, but simply because such sales had grown into an established custom in Bengal, and because it would save litigation and prevent extortion, if we gave to such transactions the express recognition of the law. But when the incidents to which the custom was subject came to be discussed, there was no evidence to guide the Committee. Some members maintained that the custom of sale was subject to a fee to the landlord for registering the transfer. Others contested this position; one member thought the fee should be as high as 25 per cent., another thought that there should be no fee at all. In the end the right of sale was dropped out of the Bill, chiefly because no agreement could be come to in respect to the conditions to which the sale should be subject. I regret this result, and I shall give my support to the Hon'ble Mr. Amír Alf's amendment for re-introducing the provision, if he sees his way to attach a substantial fee for the landlord to the exercise of the right by tenant. The position of the hon'ble gentleman and myself in this matter affords a good illustration of our position and that of several other dissenting members in regard to many provisions in the Bill. We dissent not because we disapprove of the measure as a whole, but because each of us wanted to get a little more of his own way in the Bill than he has been able to get. If any one infers from the number of dissents that a majority of the Select Committee is opposed to the Bill as a whole, he will be very completely undeceived when the votes on the motion at present before the Council are recorded.

"I regret, however, to have to call attention to what I conceive to be a fundamental source of weakness in the Bill, arising from its attempt to apply one set of minute provisions for the regulation of rent to two provinces in which the relations of landlord and tenant are so widely dissimilar as in Bengal and Behar. In Behar, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator. Throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the profound economic differences between agricultural relations in Bengal and in Behar find no recognition in the Bill. Throughout the two years' labour of the Select Committee we were perpetually struggling in the meshes of this fundamental error. In my opinion, the result has been to tie our hands in providing perfectly effective remedies for the tenant in Behar, and for the landlord in parts of Bengal. The Bill has accomplished something for both, but not enough for either.

"It is also, I think, defective in another important respect. The root of the agrarian difficulty in Bengal is over-population. 'I consider,' says Mr. Finucane, in describing the wretched condition of the Behar peasantry, 'that it is only the redundant population of Behar which has brought things to this pass,' and the minute sub-division of estates 'creating a number of proprie-

tors whose name is legion.' The Bill attempts to alleviate the evils arising to the peasantry from a too keen competition for the land by placing restrictions on the enhancement of rent. Such restrictions, when effective, are necessarily made by curtailing the rights of the landlords. But there are two other means of dealing with over-population, namely, the reclamation of waste lands, and the shifting of the people to unoccupied tracts. With regard to reclamation of waste lands, I shall, in submitting an amendment to the Council, shew that the Bill not only gives no new encouragement for such undertakings, but that it places the proprietor, who himself reclaims waste lands, in a worse position than before. With regard to assisted migrations or shifting of the people to unoccupied tracts, I acknowledge that it would be unreasonable to expect any specific provisions in the present Bill. But I hope that the Government may see its way to reconsider this aspect of the question. The waste land uncultivated but capable of cultivation in Bengal and the two provinces immediately adjoining on the east and west is equal to the whole land under crops in Great Britain and Ireland, and large areas of this waste land are to be found close on the outskirts of some of the most overcrowded tracts, especially Behar. The experiment which the Government has hitherto made to promote and assist the migration of the people to unoccupied or sparsely inhabited tracts have been few in number and inconclusive as to their results. But such enterprises have been conducted on a considerable scale by private enterprise in several parts of the country. I shall cite only two such undertakings. In Birdpur, in the Gorakhpur District, over 23,000 persons have been settled on 250 reclaimed villages, on a tract which forty years ago was swamped and heavy jungle; while the success of the new Sonthal colonies in Assam shows how much can be effected by State aid combined with private organisation. The Government has rendered migration possible by opening up railways, but experience shows that the mere possibility of transport does not suffice to make the people move on. This Bill, in attempting to mitigate the evils of over-population by placing restrictions on the enhancement of rents, tries to remedy what is really a national difficulty at the cost of a particular class. I admit that the legislature is justified in regulating the monopoly in land which over-crowding and over-competition for holdings create in favour of the landlords. The permanent remedy for over-population is not, however, to be found in artificial restrictions upon rent, but in adding to the cultivated area, by encouraging the reclamation of waste lands, and by assisting the people to migrate to unoccupied tracts.

"While, however, I believe that the Bill fails to do all that it might have accomplished, owing to the absence of properly-sifted evidence, and to the fundamental error of attempting to prescribe one set of regulations for two altogether dissimilar provinces, I acknowledge that it does much towards the solution of the questions with which it deals. In the first place, it makes the old law a reality—a reality for the tenants as regards the enforcement of their occupancy-rights within the entire village; a reality for the landlords as regards the enhancement of rent, when such an enhancement can be equitably claimed; and a reality for both landlord and tenant as regards the ascertainment of rent actually due. I am no unqualified admirer of the Bill; but if it had done nothing more than give reality to the uncertain and unworkable provisions of the old law, I should consider myself bound to give it, as a whole, my support. It has been able, however, to do much more than this. It has developed the occupancy-cultivator with all his old uncertainties as to the maintenance of his rights into the settled raiyat. It has given to the settled raiyat a clearly-defined area within which no man can defeat his right to hold his land as long as he pays a fair rent. It has placed a limit to the enhancement of his rent out of Court, and it has given him what amounts to a statutory lease for fifteen years if his rent is enhanced by a suit in Court. Of not less importance are the provisions which render null and void any contract which would prevent the growth of the right of occupancy, or interfere with the enjoyment of the incidents of that right. To the ordinary cultivator it has also secured advantages of great value. In the first place, it gives to every cultivator the presumption that he possesses the right of occupancy in his holding, until the contrary is shown. This presumption is in

strict accordance with the facts, if, as has been stated and not contested, that something like nine-tenths of the cultivators of Bengal are at present entitled to claim those rights. The importance of this presumption has been well shown by the hon'ble Mr. Evans in the present debate: and so far as the ordinary cultivator is concerned, the Bill would, in my opinion, have justified its existence, if it had done nothing more than create this presumption in his favour. It has also, however, provided safeguards against his sudden ejection from his holding, and against the unreasonable enhancement of his rent. Unless the ordinary cultivator himself consents to an enhancement, his rent can only be raised by a suit in which the Court shall determine what is a fair and equitable rent. The rent thus determined cannot be again enhanced for a term of five years; so that, while the Bill practically secures judicial leases for fifteen years to the occupancy-tenant, it also provides what amounts to a judicial lease for five years for the ordinary cultivator.

"My Lord, these are substantial changes in the existing law in favour of the cultivator. We may regret that these changes afford no general protection to the under-tenant, and no special remedy for the particular circumstances of Behar. But we have the satisfaction of knowing that every one of the changes in favour of the cultivator which the present Bill makes in the old law is justified by the facts, and that the Bill, as revised by the Select Committee, errs by defect rather than by excess. The Hon'ble Sir Stuart Bayley has very fully shown what the measure effects for the other great class affected by it, namely, the landholders. I acknowledge the increased facilities which the Bill provides for the realisation of rent by extending the system of registration, and by creating a new procedure for the record of rights and settlement of rents. But just as I regret that the Bill fails to make adequate provisions for the special needs of the cultivator in Behar, so I regret that it fails to give an adequate response to the demands of the landholders in Eastern Bengal. I do not think that the Bill can be accepted as a final settlement of the land difficulty in either province. I hope that amendments will be carried in this Council which will render the Bill more effective in the hands of both the landholders and the cultivator. But I accept the measure as an important and a valuable instalment towards the adjustment of land rights in Bengal, and I believe that, on the whole, it advances as far towards a final settlement of those rights as we are at present justified in going either by the condition of the country or by the ascertained facts."

The Hon'ble Mr. AMÍR ALÍ said:—"My Lord,—My views respecting this Bill are sufficiently indicated in the dissent which I have recorded, and were it not for a feeling that I am bound to lay before this Council at some length the reasons which induce me to support the present motion I should have abstained from trespassing on the time of this Council. If I prove too lengthy, my apology will be the proverbial long-windedness of the profession to which I belong.

"I had hoped that we had by this time passed out of the region of discussions concerning abstract principles and intangible theories. I had hoped that the question of the necessity for some legislation of this character had been sufficiently demonstrated by stern facts. The only subject which remained for determination at this stage was whether the Bill in its present form sufficiently covered the ground which it was intended to traverse—whether it fulfilled thoroughly the objects for which it was introduced? I do not propose to enter here into an examination of that somewhat abstruse question—given the necessity for legislation to regulate the relation of landlords and tenants in this country—whether the State has the power to do so or not; in other words, whether the State, by ensuring the zamíndárs against enhancement or variation of its own demands (and that in effect is the meaning of the Permanent Settlement), had abdicated in perpetuity its legislative functions to protect and safeguard the interests of another class—a much larger and more permanent class. If the contention of the landlords on this head is correct, the result necessarily follows that the Government of this country is an incomplete Government, that it has in fact established an *imperium in*

imperio, and that, so far as the raiyats are concerned, it has delegated all its powers to the ever-shifting body of zamíndárs.

"The zamíndári argument reduced thus into plain language sounds somewhat absurd, and one can hardly suppose that the zamíndárs, or rather their advocates, mean seriously all that they have urged against the power of legislation possessed by the State. Assuming, however, that the Permanent Settlement was a bar to the State ever interfering between the raiyats and the zamíndárs, the fact that in 1859 the legislature did interfere with the acquiescence or consent of the landlords of that time has, I would contend, removed the bar. It is unnecessary for me to dwell much longer on this branch of the question, for my hon'ble friend Mr. Evans has completely demolished that preposterous argument. However, one observation I would make. Whatever may have been the position of the zamíndár under the Moghuls, whether he was merely a rent-receiver of the territorial revenue of the State from the raiyats, as described by Mr. Harrington, or something more, the legislature, whilst settling the revenue payable to the State in perpetuity, expressly reserved to itself the right, which belonged to it as sovereign, of interposing its authority in making from time to time all such regulations as might be necessary to prevent the raiyats being improperly disturbed in their possession or loaded with unwarrantable exactions. That power, expressly reserved on that occasion, has been exercised repeatedly, and it is trifling to contend that because the State a hundred years ago settled in permanency the revenue payable by the zamíndárs, therefore, it abandoned all its duties and responsibilities towards millions of its subjects.

"The question of necessity is one which is certainly deserving of great consideration. With reference to this point I desire to say a few words. Since the year 1870, the necessity for a thorough revision of the land-law has been forcing itself upon the minds of all thoughtful observers. The tension of feeling which had sprung up about that time between the zamíndárs and raiyats had occasioned considerable administrative difficulties. The zamíndárs themselves had commenced to demand some change in the existing law, in order to give them facilities for the realization of their legitimate rents, while the raiyats complained of the arbitrary exercise of the powers of enhancement and eviction. These difficulties were accentuated on one side by the confusion of ideas relating to the subject of tenant-right, on the other by the extravagant claims put forward by the new landlords, who were most tenacious of their rights to enhance the rents of their raiyats. It will be remembered that Act X of 1859 had been passed with the object of providing some efficient safeguards against the exercise of arbitrary power on the part of the landlords. From 1799 to 1859, as His Honour the Lieutenant-Governor remarked in his speech on the introduction of the Bill in Council, 'feudalism on the one hand, serfdom on the other, were the principal characteristics of the land system of Bengal.' The legislature no doubt endeavoured to maintain intact 'the constitutional claims of the peasantry,' but 'practically,' His Honour said, 'they were submerged in the usurpations and encroachments of the zamíndárs.' Act X of 1859 undoubtedly effected some improvement in the position of the raiyats, but the rule for the acquisition of prescriptive occupancy-right by a twelve years' occupation of particular plots of land did more harm than good. And the rule of enhancement based on the productiveness of the soil eventually became a fruitful source of difficulty and trouble.

"In 1873, the Government for the first time awakened to the gravity of the situation. The famous Pubna riots broke out in that year, and since then there have been periodical collisions between raiyat and landlord in different parts of the province. In 1873, Sir George Campbell spoke thus about a definitive settlement of the land question:—

'If the settlement is to be effective, it must not only get the zamíndárs out of their present difficulties, it must bind them for the future. It must settle all questions of possession, measurement and rates, it must decide who is and who is not liable to enhancement, and it must have power to prescribe a term—a good long term—for which its adjustment is to be binding, and the zamíndárs are not to be allowed to disturb the rates and arrangements made. No doubt this will be a serious undertaking, but it would be an effectual and

beneficial settlement if fairly and thoroughly carried out. The Lieutenant-Governor would not advocate interference unless it is carried to this point.'

"In 1875, Sir Richard Temple, who had taken the place of Sir George Campbell, again brought forward the proposal regarding the amendment of the substantive law, and invited the opinion of the British Indian Association on the subject. In a letter dated 10th of March, 1876, the Honorary Secretary of that body pointed out the defective character of Act X of 1859 in essential particulars, and the necessity for a radical amendment. Before this, in June, 1875, the British Indian Association had already represented that the struggle between zamíndárs and raiyats, due to the indefiniteness of their relations and the readiness of the raiyats to combine in withholding rent, could only be ended by a general revision of the rent law. In March, 1876, whilst the Agrarian Disputes Act was pending before the Bengal Council, our lamented colleague, Rai Kristodás Pál, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a deadlock. It was in consequence of these repeated representations, and the urgency of the difficulties which had arisen both in Eastern Bengal and Behar, that Sir Richard Temple asked for leave to introduce a measure into the local Council; but before he could get a reply he was sent to Southern India to look after the relief measures. When Sir Ashley Eden assumed charge of the Lieutenant-Governorship of Bengal, he found affairs in this position. The zamíndárs, on one side, were calling out for facilities for the recovery and enhancement of rents; the raiyats, on the other hand, were asking for protection against illegitimate enhancement and eviction; whilst the officers of Government charged with executive administration were of opinion that some measure by which the existing tension of feeling could be removed should be taken in hand at once.

"It was in view of these signs and shadows of coming events that Sir Ashley Eden strongly urged upon the Government of India the advisability of settling the rent question definitely while the country was tranquil, while seasons were favourable and the people well off, and reason could make its voice easily heard, instead of allowing things to drift on until another famine or a second outbreak of the Pubna riots compelled the Government to take up the subject with all the haste and incompleteness that too frequently affect measures devised under circumstances of State trouble and emergency.

"This Bill, I mean the *original* Bill, was introduced with the object of definitely placing, so far as was possible, the relation of landlords and tenants on a satisfactory basis. The objects were distinctly defined in the speech of the hon'ble the Law Member—

"(1) To give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.

"In order to attain the first object, it was proposed to make the following changes in the existing system:—

- "(1) to extend the occupancy-right to all resident raiyats holding lands in a particular village or estate for more than twelve years;
- (2) to make occupancy-rights transferable;
- (3) to introduce a fixed maximum standard for the enhancement of rents.

"The disastrous and demoralising consequences resulting from the twelve years' rule of prescription are now recognised by all. It did away with the long-established distinction which had existed from the earliest times between the resident and non-resident raiyats, reducing them all to a dead level of uniformity; the raiyats claiming rights of occupancy being required under the existing law to prove that they have held for twelve years not merely in the village lands, but in everyone of the particular field or plots in respect of which the right was claimed. When it is borne in mind how frequently the twelve years' prescription is interrupted by a mere shifting of the fields, sometimes by eviction within the term, in other cases by the grant of terminable leases for short periods with the option of renewal, it will become apparent how difficult it is in

general for the raiyat to acquire a right of occupancy, or to prove it when it is questioned. Considering the testimony which has been borne from all sides of India to the prosperity of raiyats possessing occupancy-tehure, to their ability to withstand and make head against droughts and scarcities, to tide over in general more successfully such disasters as were caused by the cyclones and the great tidal wave in Deltaic Bengal, it is unjust to charge us with being doctrinaires and theorists in coming to the conclusion that a measure simplifying and facilitating the proof of occupancy-rights is essential to the well-being of the agricultural population of Bengal; in fact, in endeavouring to restore the occupancy-raiyats to their old position.

"The same fatality which overtook Act X of 1859 in Committee has befallen this measure. Owing to the same spirit of compromise which wrecked that Act, most of the alterations which have been effected in the present measure at its latest stage have been made, as admitted by the Hon'ble Mr. Evans, in favour of the zamíndárs, and some of the most important provisions for the security of the raiyat and the improvement of his condition have been abandoned, or so modified as to be of little advantage to him. We had expected that the measure now under discussion would give a legal validity and statutory sanction to the custom of transferability of occupancy-holdings; we had hoped that the law relating to the enhancement of rents would be so modified that, supplying to the landlord a more workable method of enhancement, it would protect the raiyats from incessant harassment and perennial destitution; we had hoped that there would be a practical check imposed on rackrenting that some substantial guarantee would be given against the ejection of non-occupancy-raiyats, simply with the object of preventing their obtaining that interest in the soil which would induce them to improve their husbandry and their condition in life.

"The amended Bill falls far short of the just expectations of those who, after all this agitation, would have liked to see a definitive settlement of the land question in Bengal.

"I shall have to say something with reference to each of these points when I move the amendments which stand in my name. I desire, however, to remark in passing that I cannot help regarding the abandonment of the transferability clauses as a serious misfortune. The custom of transferability had grown up in many districts of Bengal and Behar, and was gradually extending itself throughout the province. It had also been conclusively proved that those raiyats who had a permanent alienable interest in all their holdings were more prosperous than those who had no such interest, that their cultivation was better, and that they were more capable of making head against scarcities and famines. In the face of this evidence, to forego all the advantages gained after so much discussion, to leave the right of transferability to custom in the present tension of feeling between landlords and tenants, is to invite the zamíndár to contest the right every time the opportunity occurs. The result of all this will be, firstly, to place a large proportion of the purchase-money in the pockets of the zamíndárs, and, in the second place, materially to retard the extension and growth of the custom of transferability even where it has taken root. I am glad that my hon'ble friend, Dr. Hunter, is willing to give his valuable support to my proposal for the re-insertion of the transferability clauses, and I think I shall be able, when I bring forward my amendment, to meet his views regarding the amount of fee which ought to be paid by the raiyat. Probably my hon'ble friend will not object to exempt those *guzáshadárs* whose right is protected by long-established custom from the payment of any fee.

"The objection against a gross-produce limit proceeds mainly on theoretical and *a priori* grounds. It has been said that if such a limit is adopted, in every case of enhancement by contract, the registering officer will have to enter into a minute and difficult enquiry, and that the same points. In the first place, it presupposes an insuperable difficulty in making a fair rough average estimate of the yield of land and its value. Now, I venture to say there is no villager with any knowledge of cultivation who

has not a rough conception of the yield of produce and the value of the crop. In the second place, the argument against the gross-produce limit assumes that in the registered agreements to pay enhanced rents the parties do not or will not enter the quantities of land, its nature, capacity, &c. If the statement of these facts will not enable the registering officers to form some rough estimate of the produce limit, I am afraid the Local Government will have to improve its staff of registering officers.

"I may observe here that in the Punjab the land-revenue assessment is limited to the equivalent of one-sixth of the gross produce, and the system has been found to be extremely practicable. If it is practicable in the Punjab, why should it not be workable in Bengal?

"As regards the non-occupancy-raiyat, our contention that the protection which has been given to him by this Bill is utterly inadequate, is borne out by the frank avowal of the zamíndárs' representative that henceforth no non-occupancy-raiyat will be allowed to acquire the status of an occupancy-raiyat; such an avowal would hardly have been made if the guarantee given to the non-occupancy-raiyat against eviction had been adequate.

"If the extension of occupancy-rights among the raiyats be conducive to the general welfare of the community, then there can be little doubt that any loophole for perpetuating tenancies-at-will, for continuing the vicious system of shifting and eviction would be disastrous to the public weal. As population increases, as the demand for land becomes greater, the effort to exclude the possibility of acquiring occupancy-rights will be redoubled. At the same time I desire it to be distinctly understood, that I do not advocate the promiscuous extension of the occupancy-right to non-occupancy-raiyats. What I want to see is that the latter should be reasonably protected from perpetual harassment. This I submit has not been done efficiently by the Bill. At the same time I admit that the present measure is an improvement on the existing law. The acquisition of a right of occupancy by residence; the prohibition of contracts precluding the accrual of the right of occupancy; the restriction on enhancement out of Court; the validation of the raiyat's right to make improvements, constitute the most commendable features of the present Bill, and I accept it as the first instalment of the inevitable legislation which *must* follow sooner or later to settle the relations of the cultivating classes with their landlords more satisfactorily. My Lord, the hon'ble member in charge of the Bill has referred in kind terms to the services of the non-official members on the Committee. As far as I am concerned, it was a labour of love, for I cannot help taking a keen interest in this measure. The bulk of the peasantry in Eastern Bengal, numbering several millions of souls, belong to my faith, and naturally have a claim upon the Muhammadan member for the time being in Your Excellency's Council. In Eastern Bengal, the agrarian troubles are aggravated by religious differences and the fact that many of the zamíndárs are new-comers. The new landlords, generally speaking, have little or no sympathy with their peasantry, most of whom are Mussulmans. If the law gives them power, say, of enhancement or ejection, it is worked without compunction and without mercy. I say this advisedly. The causes and character of the Pubna outbreak must be familiar to this Council, though apparently they have been forgotten outside this Council Chamber. They illustrate most strikingly the general nature of rent-disputes in Bengal. I will take the liberty to quote here a passage with reference to the outbreak from the Government of India's despatch to the Secretary of State, dated 21st March, 1882:—

"The affair originated in the Isafshahi parganá, formerly owned by the Rájás of Nattore. In the decay of that ancient family a part of its possessions was purchased by new-comers, whose relations with their raiyats and with each other appear to have been unfriendly from the first. Collections were raised by decreasing the standard of measurement and by imposing illegal cesses which were afterwards more or less consolidated with the rent. The raiyats never gave any written or formal consent to the conversion of these voluntary abwábs or cesses into dues which could be realised according to law. In time the rent-rates of Isafshahi came greatly to exceed those of neighbouring tracts.

Two causes of the dispute were thus a high rate of collection compared with other parganás, and an uncertainty as to how far the amount claimed was due. A third cause was the violent and lawless character of some of the zamíndárs, and of the agents of others. There had been affrays in which men were killed by spear-wounds. Swordsmen had been sent to make collections, and cases of attack by clubmen and of kidnapping are mentioned in the report.

"It has been stated in this Council that the reasons for interfering in Behar with the status of occupancy-raiyats are non-existent; that the practice of shifting is not resorted to there for the purpose of avoiding the accrual of the right. This statement may be true in the case of considerate zamíndárs like the Hon'ble the Maharájá of Durbhunga, who, whilst tenacious of their ancient rights, respect and value the constitutional rights of the peasantry. But by way of answer to his criticism on that portion of the Bill which aims at giving a certain degree of security to the occupancy-raiyat and towards facilitating the proof of his right, I would recall to his mind what the zamíndárs of Shahabad, at a meeting held on the 31st October 1880, at Arrah, said on the subject:—

'At present landowners prevent the growth of occupancy-rights by granting leases for five years only, or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for 12 years. In practice the last expedient is found sufficient, as the Courts find claims to occupancy-right not proved unless the raiyat can show that he held the same land for 12 years, by proving that he paid the same rent. Under the proposed law zamíndárs would not suffer raiyats to remain for three years.'

"The Hon'ble Mr. Evans has urged that, if the circumstances of Behar were so exceptional as they were represented to be by the officers of Government who had reported on the subject, there ought to have been two Bills, one for Behar, another for Bengal. I admit that, if we had adopted this course, we would have been better able to deal with details; but on that principle there ought not to be two Bills, but four Bills—one for Eastern Bengal, another for Central Bengal, a third for Northern Bengal, and a fourth for Behar; for the conditions of rural economy in each of these tracts are dissimilar to each other. I doubt, however, whether the public or the people would have thanked the legislature for such a course. Besides, the evils which the legislature desires to remedy, the circumstances which it desires to direct and control are not after all very different in either of these parts. The landlord everywhere desires to recover his rent easily; the raiyat everywhere wants to be allowed to live in peace; and the legislature has before this dealt with the province as a whole. The limit of two annas on enhancement by private contract has been strongly objected to. It is said that such a restriction is not only opposed to all the principles of freedom of contract, but that it will prove practically mischievous, as it will always drive the parties into Court for obtaining a higher enhancement. My Lord, how far the rules of political economy are applicable to a country where the mass of the people live from hand to mouth is a question which was answered effectually, though at the cost of a million of lives, during the Orissa famine. The Bengal Government on the occasion attempted to deal with the calamity which had overtaken the country in strict accordance with the rules of political economy, but the results completely falsified the expectations entertained at the time from the application of the economic nostrum. 'When political economy speaks of freedom of contract,' were the memorable words of Sir Evelyn Baring used in this very hall, 'it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth.' Can any one who is acquainted with the condition of the millions of raiyats, whose holdings do not average more than two or three acres, and who pay a rent of less than five rupees a year; can any one who knows the circumstances under which this vast mass of pauperised cottiers, living always on the verge of starvation, till the soil, say that these men can exercise a free and intelligent choice in their contracts?

"My Lord, I am afraid I am encroaching too much on the indulgence of the Council. But I cannot help being somewhat long, in spite of the charge of prolixity that may be brought against me. Political economy is thrust down one's throat at every turn of the question; indeed, so often, that I am tempted to quote a passage from the master of political economists, which I hope will be taken to heart by the warmest upholders of zamíndári rights.

'Rent,' says Mill, 'paid by a capitalist who farms for profit and not for bread may safely be abandoned to competition; rent paid by labourers cannot, unless the labourers were in a state of civilisation and improvement, which labourers have nowhere yet reached and cannot easily reach under such a tenure. Peasant rents ought never to be arbitrary,—never at the discretion of the landlord; either by custom or law it is imperatively necessary that they should be fixed, and, where no mutually advantageous custom has established itself, reason and experience recommend that they should be fixed by authority.'

"My own view is that it is not only necessary to impose a limit upon private contracts, but that, in order to be efficacious, a similar limit should be introduced upon enhancements in Court; otherwise I believe the wholesome provision will become practically valueless.

"The remarks of the Hon'ble Bábú Peári Mohan Mukerji, that there is practically no non-judicial power of distraint given by the Bill for the realisation of rents, are perfectly true. Undoubtedly in the despatch to which both the hon'ble member and I myself have referred it was proposed 'to provide for the more speedy realisation of arrears of rents, when the rates are undisputed, by a modified method of distraint.' It must have escaped the notice of my hon'ble friend the importance to be attached to the expression 'when the rates are undisputed.' Is there any case in which the rates are not disputed? Probably, in some districts, or rather estates, bordering on Nepal and other frontier tracts, which give the raiyats a facility to disappear after raising their crops, a modified power of distraint might prove useful; but when the Committee came to consider the abuses to which this power is open and the oppressions practised under its guise, it was thought advisable not to leave to the zamíndár the power of distraint at his own free will and according to his own method. The provisions of Chapter XII are, I think, in accord with the Government of India's proposal in the despatch referred to.

"It has been contended that we have no cross-examined evidence furnishing, as it were, the groundwork over which the legislative structure has been built. A great deal of money has already been spent in various quarters in the course of these discussions, and probably, if the Select Committee had decided to hear cross-examined evidence, a little more would have been put into the pockets of lawyers. But whether evidence so collected would have been one iota more valuable than the testimony of competent officers and thoughtful observers is a question which I cannot answer. I have pointed out the features in the Bill which stand out as marked improvements over the existing law. I have also pointed out the features where it falls short—miserably short—of the just requirements of the present situation. I trust that, before the final vote is taken, the objectionable features in the Bill will be removed, the most important of them—the most dangerous—being the ground of enhancement based on increase in the prices of food-crops.

"This ground of enhancement, besides being open to various economical objections, furnishes the landlords with a most formidable and trenchant weapon for enhancement of rents, the use of which in many parts of Bengal and throughout Behar must prove ruinous at no distant date to those raiyats whose rents are already high enough. In defence of this proposal it has been put forward that enhancement on the ground of increase in prices does not take more of the crop from the raiyat; in other words, that it is the value of the crop expressed in larger terms owing to the diminished value of silver. This is undoubtedly a very specious argument, but in spite of its speciousness I maintain that it is extremely unfair to the raiyats. On examining the argument even on the basis of political economy, it is seen that it leaves out of consideration an increase in the necessities of a raiyat, and a larger expenditure on account of what he has to buy. Furthermore, it is clear that the allowance for cost of production may often prove totally insufficient. For these and other reasons, which I shall mention more particularly when I move my specific amendments, it seems to me that the effects of this ground of enhancement have hardly yet been realised to their fullest extent.

"As the question stands at present, I accept the Bill as a step in the right direction, and in looking at it in that light, and approving entirely of the

principles which it embodies, I vote for the motion that the consideration of the Bill should be proceeded with without delay.

"With reference to the motion for the re-publication of the Bill, I desire to mention that, had I believed any possible object would be gained by such a course, that the zamíndárs or raiyats would become by delay more willing to make concessions to each other, I might have been inclined to vote for the postponement of the consideration of the Bill until next session. As it is, I believe a postponement will keep the country in a state of feverish excitement, intensify still further the bitter feelings existing between the two classes, and prove of no avail to anybody."

The Hon'ble MR. GIBBON said:—"My Lord, with reference to the amendment proposed by the Hon'ble Peári Mohan Mukerji, that the Bill be re-published, and that the consideration of the measure be deferred for at least three months, I must, I am sorry to say, oppose the amendment. The state of the country is such, the agitation for and against the measure is becoming so widespread, I am convinced that it leaves only two courses open to Your Excellency's Government—either to proceed with the measure, or to abandon it for ever; any third course will be fraught with danger to the public peace, as well as ruinous to the interests of both landlords and tenants. For six years the provisions of the Bill have been in some shape or another subjected to public criticism; every alternative proposal, every impossible crotchet, has been discussed and threshed out; and, although the Bill may contain a few sections that were not contained in the draft Bill submitted to the Committee, it contains no provisions that have not already been subjected to public criticism.

"I am sure no arguments could be adduced for or against any of its provisions that are not contained in the mass of correspondence already submitted.

"Believing such to be the case, I cannot realize what good purpose is to be served by the delay asked for. On the contrary, in the interests of the landlords more so than in the interests of the tenants, delay is to be deplored. We have nothing to gain by the delay, much to lose. Judging from what I see and hear around me and in my work, I believe further delay, more indecision, means ruin.

"The fears of the zamíndárs have been excited fully as much by the many crude proposals from time to time submitted as from anything contained in the Bill. Their fears of the measure, their public utterances, are having their effect on the minds of their tenants, and we must not be surprised if their tenants measure their own gains by the estimate placed by the zamíndárs on their own losses.

"The raiyats believe that the Bill will give them fixity of tenure without any reference to the means by which they may acquire possession of the land; a right to sub-divide and transfer their holdings piecemeal; freedom from enhancement; freedom from payment of rents; a general right to appropriate other peoples' property. We now require something definite, something final, to recall us to our senses. If the proposal of the hon'ble member is carried, we may expect to see the tenants acting up to the tenor of their convictions, defying all law, following the bent of their inclination.

"The Courts are at present blocked with litigants, but unless something is decided upon quickly the work the Government officials are now required to do will be child's play in comparison with the work that would be cast upon them.

"If the Bill is not proceeded with or abandoned, Your Excellency's Government must be prepared to substitute one of a very summary nature. Your Excellency's Government must be prepared to manage half the zamíndárs of the country, for I am quite sure that if the present agitation is allowed to proceed unchecked we will not be able to manage them for ourselves.

"The only means of checking this agitation is to let us know at once the best and worst we have to expect under the Bill.

"If I understood the Hon'ble Maharájá Bahádúr correctly, he would even at this stage of our proceedings delay the progress of the measure until a Commission of Enquiry has been held. A Commission issued now with the declared intention of basing legislation on its report would have a most demoralizing effect on the country; it would divide the country into two hostile camps, bespattering each other with mud; few among us would see the end of it; all would regret the result.

"My Lord, with reference to the subject-matter of the Bill, so much has been said on almost every one of its provisions that little is left for me to say. For me to attempt to improve on the many admirable arguments adduced in support of the views I hold I conceive to be an impossible task—also a needless one to attempt to refute, in one set speech, the many arguments with which I differ—a waste of time—with so many amendments on the notice-paper,—an amendment, sometimes two or three, on every important section in the Bill. I may hope that ample opportunity will be afforded us of discussing our respective differences to some better purpose hereafter.

"With reference to the much-disputed point as to whether the Bill in any manner infringes the terms of the Permanent Settlement, or whether the Government, in now legislating as it is about to do, only acts up to the powers it reserved to itself in the Regulations, I have no wish to enter at any length. I would only say that, in my opinion, with the exception of section 18, which does to all intents and purposes transfer the proprietary right in the soil from one class of persons to another, the Select Committee, and through it the Government, have carefully kept within its powers. The Bill, with the exception of this one section, does nothing to interfere with the proprietary right in the land, but it does overmuch to regulate the landlord's dealings with his tenants.

"I will now try to confine the few remarks I wish to make to those portions of the Bill which are to regulate our business transactions, which instruct us in the manner we are to conduct ourselves towards our tenants, and the difficulties we shall have to contend against in following its instructions—points which it appears to me have been lightly passed over or not gauged at their true significance. The Bill as it stands will do all the hon'ble member in charge of it has declared it will do to secure to the tenant the uninterrupted enjoyment of his legitimate rights; it has made the position of the raiyat, both occupancy and non-occupancy, impregnable; and in one most important respect it will effect more for them than the hon'ble member has taken credit for; by a small and as yet little noticed change made in the procedure free the country from wholesale enhancement under pressure.

"The alteration I refer to is the substitution of immediate suit for the present practice of issuing 'notices of enhancement through the Courts months previous to the introduction of the suit.' The practice of issuing notice of enhancement through the Courts has done more to facilitate wholesale enhancement of rents of estates than any other provisions of the present law. Notice of enhancement has necessitated present legislation and made this Bill possible. This change about to be made in the procedure will, I am sure, be beneficial; its effects will, I hope, be far-reaching; it will, I hope, make the restrictions placed on voluntary enhancement under section 29 unnecessary.

"That legislation is to a certain extent, as provided by the Bill, necessary, there can, I think, be no doubt; but whether in the early stages of the controversy the alteration of a few sections in the present law would not have proved sufficient may, I think, be allowed to be an open question. We will admit that you have gone too far to recede: you must proceed, and we, both landlords and tenants, are wise if we accept the inevitable with a good grace. But with reference to this Bill many hon'ble members, many persons who have taken part in this controversy, when they fail to meet the argument that it is not suited for Bengal, fall back upon the argument that it is required in Behar. Nothing is too bad to say of Behar; no restriction is too severe to be placed on our actions. If the measure is required for Behar and is not required for Bengal, we should withdraw that Province from the sphere of its operations. If the Council are of opinion that the Bill is required in Behar and not in

Bengal, we should drop it for Bengal and proceed with it only with reference to Behar. For my part I am happy in believing that we in Behar are no better, no worse, than our brethren in Bengal; that our tenants are not the down-trodden, poverty-stricken men they are often depicted; and I would fain hope that, when some among us set aside the spectacles through which we are looking, and judge with our own eyes, our tenants will be found in every way as well off and as independent a class as any in Bengal. For my part I am convinced that, if any portion of this Bill is unsuited for Bengal, it is equally unsuited for my province. That the rents of whole estates have been unduly enhanced I admit, but that my province is rackrented as a province I deny. I deny also that there is any necessity for the severe restrictions to be placed on voluntary adjustment of rents under section 29, and in placing such restrictions on it we are acting contrary to the declared principles of the Bill.

"Although I am strongly opposed to indiscriminate enhancement of rents, I am equally opposed to severe restrictions being placed on the landlord's right to enhance where enhancement is fairly due. I am still more opposed to unnecessary obstacles being placed in the way of a mutual adjustment of rents, or, for that matter, in the way of voluntary enhancement out of Court.

"All such unnecessary restrictions only hamper the good men among us; they will be evaded by the worldly-wise.

"My Lord, three more gaps must be filled up before the restriction in this section will be effectual, and to stop these gaps some of the best portions of the Bill must be revised.

"With reference to section 29, the Hon'ble Mr. Evans has shown the Council more clearly than I am able to do the difference between adjustment of rents and enhancement of rents. He has quoted the Malynuggur case as a case in point. If I understood him correctly, he submitted it in support of the planters' contention 'that an adjustment of rents should be allowed when one party to the agreement declines to continue to fulfil the conditions under which the tenancy was previously held.'

"If I understand the case correctly, it was hardly a case to the point; it was a case in which it suited one party to the agreement to set aside the conditions under which the tenancy was held, and the party who found it convenient to set aside the conditions of the tenancy claimed an enhancement of rents on the ground that he had cancelled a condition of the tenancy which he no longer found it convenient his tenants should fulfil.

"As to the rights of the different parties under the present law I have no concern. I would only point out that this case in no way represents our claim: our claim is represented better under section 51, which says:

'If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.'

"The practical effect of this will be that the Courts will find the conditions of a tenancy are equally binding on both parties, and that the person who sets aside the conditions without consent shall make good the other's loss by a re-adjustment. All we claim is that the party who finds it convenient to set aside the conditions of a tenancy shall not be placed in a position to retain all the advantages minus any onerous or compensating conditions.

"Section 29 will have the mischievous effect attributed to it by the Hon'ble Mr. Evans; its effects could only be redeemed by the Government declaring that all suits for enhancement may be brought free of cost. This I deem to be impossible. Many urgent representations have been made in Committee and out of it to cheapen costs of suits.

"It has been recommended to reduce court-fees and to expedite the hearing of suits—both very necessary. At present we are put to great expense and needless loss of time by the delays in the hearing of our suits; our witnesses are obliged to travel long distances only to be sent back. The lessening of court-fees is not sufficient; it is necessary to reduce process-fees also.

"I do not know how many of the hon'ble members here present are aware that if I procure a decree against a tenant for arrears of rent, if his holding consists of ten pieces of land, he must pay an attachment fee of Rs. 2 for each piece and also a further fee of Rs. 2 on each piece as a fee on sale. Such fees are exorbitant, and they fall on the judgment-debtor. Unless such are remedied, the provision of the Bill which substitutes sale of holding for ejectment after decree will be cruel.

"For all sums under Rs. 100 the judgment-debtor has to refund 65 per cent. of the principal as costs of the plaintiff; he has to stand all his own costs plus sale-fees if the holding is sold.

"The changes the Bill will necessitate in our modes of transacting business are very great. Receipts must be kept in counterfoil, with severe penalties attached for neglect to deliver; agreements must be registered; all accounts must be kept in bound books; a suit for pattá and kabúliyat has been set aside and an application for a declaration of conditions under section 158 substituted; the landlord must no longer neglect to deliver a receipt; and other changes too numerous to mention have been made—all improvements in a way; but the penalties for omission and commission are so severe, so many opportunities will be afforded for worrying the landlords, that the Bill if hastily or harshly administered may be turned into an engine of oppression. It must be remembered that to carry out the instructions of the Bill in their entirety the habits of a lifetime must be discarded. In attempting to follow your rules we shall require all your sympathy—much forbearance. Throughout the discussion much stress has been laid upon the necessity of compelling the landlords to keep their accounts in bound books, much discredit has been cast upon their mode of keeping accounts, but no one has thought it necessary to enquire if it has even been made possible to do otherwise than as we now do. When we keep our accounts in bound books they are called for in evidence not only in our own cases but in the interests of others; our servants have to take them to Court half a dozen times before their evidence is taken; our books are detained in or out of Court for days together; some of my books are detained for months; we are at the mercy of our opponents and of the Courts.

"I will leave the Hon'ble Council to judge of what use such books are to us when returned.

"The remedy we must leave to others to provide. All I can say is that, as the accuracy of the landlords' accounts will depend upon the punctuality with which they are written, it becomes a matter of the first importance that the present state of affairs be not allowed to continue; if it does, our second state will be worst than our first; the landlord will be compelled to keep two sets of books, one for himself and one for the Courts.

"Under the Bill a registered document is in many instances absolutely necessary; in all instances it will carry greater value than an unregistered one. The Hon'ble Mr. Evans has quoted the authority of the Board of Revenue to prove how difficult it is to induce tenants to register. I myself am a strong advocate of registration; registration should be encouraged in every way possible, but it remains for the Government to make registration possible. The Select Committee has called the attention of the Government to the necessity of expediting and cheapening registration: at present registration is in some cases almost prohibitory, in some cases quite so; at present every tenant must waste at least 48 hours of his time besides having to travel long distances; documents are impounded or returned for the most trivial errors; and if such is the case when registration is the exception and not the rule, what will it be when registration is made compulsory? Under the Bill there is no enhancement of the rents of a bhaoli tenure, and rightly so; the initial rent will be the rent for all time to come; but under the law a bhaoli agreement cannot be registered; should a dispute arise as to the rate of the tenant's rents, he must prove his right to hold under section 51 or pay at the rate others are paying. Another change is about to be made in the procedure, and I hope it will prove itself to be a beneficial one, but again all will depend upon the cost of the application,

"An application under section 158 to declare the terms and nature of a tenancy is to be substituted for the time-honoured but cumbersome practice of a suit for the interchange of documents. There is nothing in the Bill to prohibit their interchange; on the contrary, they are made necessary at every step, but they cannot be sued for. The change is a good one and practical, but it will take us some time to understand. If the cost is not made prohibitory, it should benefit both parties: as it is to be a simpler mode of proceeding I hope it will be a cheaper one. Under the Record-of-rights and Settlement chapter much good will, I hope, be effected; vast and exceptional powers are given to the Government under it; but those powers, as they are intended to meet exceptional cases, we may, I think, trust the Government to exercise them only in cases of grave necessity. I believe this chapter, as it stood in the draft Bill, created more uneasiness, greater consternation, among the landlords than any other portion of the Bill. I hope when they fully realize the great changes that have been made in this chapter by the Select Committee they will be re-assured.

"Much as the Bill will do for the position of the raiyat in respect to the position he will stand in to his landlord, it does nothing for him with respect to his credit with his banker. It omits transferability from among the incidents attached to an occupancy-holding; on this point it leaves the law as it stands.

"I regret that the Government does not see its way to legalizing and controlling transfers of holdings. I do not now intend to re-open the question. I believe it would be a hopeless task to attempt to carry such an amendment to the Bill against the solid vote of the Government. I believe the measure will soon force itself on the attention of the Government, when they will have to review their present decision. By forcing on a discussion now I should weaken my case. I am strongly of opinion that legalized transferability of the whole holding is the only valid restriction that can be effectually put on the subdivision of holdings which is now going on all over the country, which the landlords are in some instances encouraging, in others are powerless to prevent.

"There is only one other subject that I would wish to refer to. I will then cease from monopolizing the time of this Hon'ble Council. I refer to the matter of contracts. A great outcry has been raised against the Government for prohibiting a tenant from contracting himself out of certain rights attached to a tenancy. Although it is to my interest as a trader to support free contract, in this matter I have voted with the majority of the Select Committee.

"Under the Contract Law a contract to be valid must be made with the free consent of parties, for a lawful consideration and for a lawful object.

"As well as I am able to remember, their representatives in or out of Council have never claimed a right to make a contract with their tenants for lawful consideration; all they have ever claimed is a right to induce their tenants to sign away acquired rights under the shadow of a renewal of leases, or to debar them from acquiring prescriptive rights in the future. With reference to the other important and equally weighty matters contained in the Bill, such as prevailing rates, under-raiyats, non-occupancy-raiyats, settled raiyats, presumptions, proprietors' zirát land, merger, &c., and with reference to the gross-produce limit which has been omitted from among its provisions, I will reserve what I have to say until the specific amendments come under the discussion of Your Excellency's Council.

"Before I cease, I would refer to a remark which fell from the Hon'ble Mr. Goodrich, that no provision has been made for the acquisition of land for charitable purposes. I think, if, the Bill is seen to, it will be found that section 84 provides for this; but I am sorry the majority of the Committee did not see their way to adopting my suggestion to include the acquisition of land for irrigation-purposes in the section. If it is possible to acquire land for the one purpose, it is possible to acquire it for the other."

His Honour THE LIEUTENANT-GOVERNOR said:—"My Lord, I do not think I should have attempted to say anything at the present stage of the discussion had it not been that I have been referred to by very many speakers who have

preceded me. We have had very appropriately an exhaustive statement from the hon'ble member in charge of the Bill, who has given us a full history of the proceedings since this Bill was last before the Council. We have had speeches also from most of the members of the Council—certainly from all on the Select Committee—dealing at length with the details and principles of the measure; and in these speeches we have had laid bare, at least I trust so, the thoughts and intents of the heart of each speaker as to the main issues with which we shall have to deal in the further consideration of the Bill. I think I shall best consult the wishes of my hon'ble colleagues in Council, and certainly my own convenience, if I limit what remarks I have to make upon the present occasion to the practical issues which have been raised by the speech of the Hon'ble the Maharájá of Durbhunga, and by the speech of my hon'ble friend to the left who ably represents the British Indian Association and the zamíndárs of Bengal. All or most of the other points to which allusion has been made in the course of this debate will arise on a consideration of the various amendments which are upon the notice paper; and for myself I would prefer to deal with these in detail as they arise rather than by the running commentary of a general statement.

"Now the definite questions which are immediately before the Council are contained in the addresses of the Hon'ble the Maharájá of Durbhunga and the Hon'ble Bábu Peári Mohan Mukerji. The Maharájá says the Bill should be abandoned because it is a bad one; and the latter contends that the Bill has been imperfectly and insufficiently considered, and that therefore it should be postponed for re-publication. Anticipating the formal notice which stands in his name on the paper, he wishes that the postponement should be for three months, but we are all aware that that practically means a postponement for nine months or one year.

"The Maharájá condemns the Bill, because, to use his own words, it was 'discredited and disowned by the Select Committee' on account of their want of unanimity as shown by the many dissents; and secondly, that the zamíndárs and raiyats are not agreed in regard to it; and lastly, that it is, of course, a gross breach of the solemn promises made by the Government in the Permanent Settlement. Now I do not think that the absence of union in the views of the Select Committee need distress the Maharájá so much as it appears to do. We are dealing here with a very large measure; indeed, we may say that no larger measure has been under the consideration of the Government since the days of the Permanent Settlement. It is a measure also involving very deep and abstruse questions—questions which go back to a period even before the time of the Permanent Settlement; and it is complicated with innumerable details in all the relations between the landlord and tenant. It seems to me, having regard to the character of the legislation contemplated, impossible to have expected that union and unanimity in the opinions of the Committee which the Maharájá so strongly desires. For, if we look at the composition of that Committee, we see at once what a variety of different local experience and interests they represent. You have the representatives of landlords of both sections of this great province of Bengal, of the landlords who have and own property both in Bengal Proper and in Behar, the circumstances and conditions of which vary in many important particulars. Then you have the hon'ble member from the North-Western Provinces, who brings to the consideration of the problem a very practical knowledge of the land system which exists in those provinces. We have also traditions of the Board of Revenue influentially represented by the Hon'ble Mr. Reynolds; the statistical research and information which have affected so many of our decisions in the person of Dr. Hunter; and the special usages and customs in which the Muhammadan community are interested; and lastly, not least, the influential opinion and support which my hon'ble friend Mr. Gibbon has brought to bear upon the whole subject, speaking in the interests of European planters, and as himself the manager of extensive landed properties.

"Having regard, then, to the constitution of the Committee, and to the well-known and admitted fact that there are wide differences in the circumstances of different parts of the province, the demands for a complete unanimity in the Report seem to me unreasonable.

"Then, as to the dissents themselves, I think an examination of them will tend to show that there is no such force in the expression of their differences as is sought to be attributed to them. I will take my own first, though I do not put it forward from any idea of its special importance, nor from any sense of its claim to priority having regard to my position as the head of this Administration. But it will perhaps best illustrate what I mean. The nature of my objection is that there are certain matters, such as the abolition of the 'prevailing rate' as a ground of enhancement, the adoption of a gross-produce limit of rent, and some plan for the better security of the non-occupancy-raiyat, which, if included in the Bill, would have greatly improved it. The majority of the Select Committee thought otherwise; but this is no reason why I should reject the Bill as it is submitted to the Council. I think there is a great deal in the Bill as it comes before us which is in advance of the legislation of 1859. There have been considerable improvements in many respects which I gladly accept. If I cannot have my own way in everything, still I am not going to reject what the Bill contains because I cannot have my own way altogether. I take it that this is very much the view of Mr. Reynolds, who regards the Bill as an instalment of a more complete measure. So, if regard is had to the dissents of the Hon'ble Members Mr. Hunter and Mr. Amír Alí and Mr. Gibbon, though they severally raise points of considerable importance, I think you will find that they are more or less upon matters of detail, which will be fully dealt with under the amendments to be considered in Council; but whether they were rejected or accepted, they are not of that vital character which would justify us now in endorsing the Maharájá's recommendation to abandon the Bill. Of course, I am aware from the dissents of the two hon'ble Native members that they go to a greater length than the others, and will concede to no compromise. They seem now to say 'We do not want a Bill of this kind at all; we live under the best possible of all Governments, and we have the best possible of all rent laws, and we do not want any modification of them. We very much prefer the existing state of things to any change which goes in the direction of this Bill.' This seems to me the attitude of the zamíndárs represented by the two hon'ble members at the present moment; but after ten years of labour devoted to the subject, and the general agreement to which the majority of the Select Committee have come in favour of the kind of legislation which the Bill contains, any idea of abandonment seems out of the question. I think it will be clear to any one who will take the pains to analyse the several dissents, that, with the exception of the zamíndári members who stand out, notwithstanding the numerous concessions which have been made to their views, for an absolute concession to all their claims, that, admitting a variety of opinion upon particular points (and they chiefly refer to points expunged from the Bill in deference to the views of the majority of the Committee, and the removal of which should rather conciliate the extreme section on the side of the zamíndárs), there is a general concurrence in favour of the Bill; that it is considered to be a great improvement upon the Bill which was presented to the Council last year; and that they are quite willing to accept it, though it does not contain all that they wanted.

"I would now allude to the argument of the Maharájá of Durbhunga that the zamíndárs and raiyats do not agree upon the matter. He says that the Bill neither satisfies the zamíndár nor the raiyat; and he implies rather than declares that an absolute Government and a packed Council were forcing an obnoxious piece of legislation upon all the landed classes in Bengal. Evidently what the Maharájá wishes us to infer is that the zamíndár and the raiyat are at one in the matter and want one and the same Bill. Nothing, however, can be more certain than the fact that the zamíndárs look upon the Bill from one extreme, and the raiyats from the opposite extreme; and there can be no doubt that, if the Government had to wait till the raiyat and the zamíndár were agreed in a common view upon the character of the legislation upon such a wide subject, we should have to wait for that prophetic period when the lion and the lamb shall lie down together, and the millennium shall have dawned in which it may be hoped that there will be no need for legislators nor land bills. Will not the Maharájá accept the fact that where the zamíndárs assert an extreme position on one side and the raiyats on the other to such an extent that I have, within the last few hours, received telegrams from

a large body of them urging me to sign no Bill which will not grant their full demands, the only right way is to accept as a settlement that which has been adopted upon the recommendations of the majority of the Select Committee? For my own part I am prepared to surrender my predilections in deference to the results of the Committee's deliberations and decisions, in respectful submission to the views of the Government of India, who, it seems to me, must by necessity be the final arbiter of the questions which arise in a matter involving such large issues, and especially in consideration of the position of the eminent statesman, His Excellency the present Viceroy, upon whom has devolved, within a few weeks of his assumption of the administration of this great Empire, the very difficult task of disposing of a question of such magnitude.

"I must now refer to the contention of the hon'ble member who has urged that the Bill has been insufficiently considered, and who in support of that contention has brought forward arguments which I think we have often heard before; and I have little doubt that, if we yielded to his wish for a postponement, we should have just as great difficulties a year hence in reconciling the interests and claims of differing sections as we have had in the past and as we have at the present moment. The truth is that the hon'ble member wants to impose upon us the labours of Sisyphus. We have no sooner rolled the heavy block to the top of the hill than we are asked to roll it down again; only in our case, unlike that of the unfortunate king upon whom this penalty was inflicted, each year adds to the weight of the burden and enhances the difficulty of the task. The request of the hon'ble member cannot be justified; certainly not on the ground of insufficient consideration. Upon this point I don't know that I can add anything to the force of the statements made by the hon'ble member in charge of the Bill, who has shown that this Bill has undergone longer and more thorough consideration than any measure of the kind which has ever been placed before the Council. If any one doubts this, I would refer him to the first thirty-five paragraphs of a despatch which the Government of India sent home on the 21st March, 1882, to the Secretary of State. Although that paper is now only three years old, it is an excellent summary of the history of the Bill. I have referred to a full history of the origin and progress of the measure. The fact is that very soon after the law of 1859 was passed it devolved on the administration of Sir William Muir, who was then Lieutenant-Governor of the North-Western Provinces, to recommend an amendment of it. It has since then been before four successive Lieutenant-Governors of these Provinces, and that represents a considerable period of time, perhaps not less than 15 years. Sir George Campbell especially took up the matter with the view of checking the illegal exactions going on in Orissa and the very serious complaints of oppression in Behar. Sir Richard Temple had to deal with grave agrarian riots in Central and Eastern Bengal; so serious were they that an Act of the legislature was passed to control and suppress them, and to prevent their recurrence in future. From that time excitement on the subject became so intensified that Sir Ashley Eden had to appoint two Commissions to consider the whole subject of the revision of the law of landlord and tenant. The Bill submitted by the United Rent Commission of both Bengal and Behar was subjected to further revision by the Hon'ble Mr. Reynolds in conference with different local authorities, and the Bengal Government under Sir Ashley Eden eventually submitted their proposals to the Government of India. I can speak with personal knowledge when I say that these proposals underwent a detailed and thorough criticism at the hands of His Excellency the late Viceroy in Council, whose final conclusions were forwarded to the Secretary of State in a historical despatch of March, 1882. Those who contend that this Bill has not had the same time and care bestowed upon it as the Penal Code and the Permanent Settlement Regulations are quite mistaken. It may be the case that the Penal Code was under consideration for many years before it was passed, but it should be remembered that after its first introduction it was left in abeyance for a long period, and moreover the codification of the criminal law was a new subject in this country; while as regards the Permanent Settlement, the period during which it was under

enquiry was, I believe, not nearly so long as the time which has been given to this Bill. It is clear from the records of the day that Lord Cornwallis intended at first to make a decennial settlement as an experimental measure on which a permanent settlement might be based; but so impatient was he to secure the enactment of the measure before his period of office expired, that he passed it before even the assent of the Court of Directors had been obtained to his proposals; so that what was intended in the first instance to be only a decennial settlement came into operation as a permanent settlement. I am, however, attacked by the hon'ble member (Bábú Peári Mohan Mukerji) as to what took place in my own Council with regard to a Bill for the appointment of kanungos and patwáris, in the course of the discussion upon which I expressed the opinion that great darkness prevailed with regard to all the relations of landlords and tenants; and he asks, with reference to this, how can I press forward a Bill of this character, while I plead the existence of such gross general ignorance upon all material facts bearing upon the subject? I need not enter here into a discussion of the merits of that Bill. It is acknowledged to be a measure subsidiary to this Bill. If the chapter in this Bill which relates to the survey and record of rights falls through, the Patwári Bill in the Bengal Council will not be proceeded with. But it must be obvious to every one that if a cadastral survey and preparation of a record of rights is to form a material part of the present legislation,—and I would sooner abandon many parts of the Bill than that,—there must be some recognised agency to record the changes which take place from time to time, or else the results of that survey and record will be thrown away in a few months. Now, when I complain of the darkness and ignorance which prevail as to the relations between landlords and tenants, I allude to those kinds of facts of which no one has given us a more direct and practical illustration than the hon'ble member himself. The members of the Select Committee will remember that when we were dealing with some questions as to providing a form of receipts for rent in connection with this Bill—a form which was to show the name of the tenant, the quantity of land he held, and possibly the boundaries of it, the rent he paid, and simple details of that nature—the hon'ble member opposed the proposal on the ground that no one zamindár in a hundred would be able to give such information. I say that if the zamindárs do not know the names of their tenants, and the land they hold, and what rent they pay, we are in grosser darkness than I could have conceived possible. Now a survey and record of rights would give authoritative information on all such points as these. But the possession or non-possession of that knowledge certainly does not affect the merits of a measure like this, whose primary object is to declare and establish the rights of tenants in their relations to the zamindár, and to try and secure to them greater fixity of tenure, and to afford them some protection against continuous and unlimited enhancements. The issue here which the hon'ble member raises, and which he has a perfect right to raise, is that the Government has no business to attempt any such thing; but the right or wrong of Government intervention depends altogether on the interpretation of the Regulations on which the Permanent Settlement was framed. We all know that there is a great deal of difference in opinion regarding that important settlement. The zamindárs contend that in dealing with this Bill as we are doing we are depriving them of those rights which were guaranteed to them by the British Government in the beginning of this century; and the argument is used that, as the claim of the zamindár to do just as he likes with his own is indefeasible, they will accept nothing else and nothing less. I never could admit the validity of such a plea. The contention is a very one-sided view of the Permanent Settlement, for I think that, if you examine Regulations I to VIII of 1793, you will find that there is nowhere throughout them anything more in the way of a promise than the single promise that the public demand on the land should be limited in perpetuity. The reasons for adopting that principle we know, because they are recorded in the Regulations. That promise, notwithstanding grievous provocations, has been kept for all these 90 years, and it will remain inviolate. But I assert most strongly that to urge that the whole Permanent Settlement was passed in the interests of the zamindárs is a very one-sided aspect of the case. For, apart from the very strong reservation which the Government recorded at

the time that it would, whenever it thought fit, legislate for the protection of the cultivator, we have express mention in those Regulations of the positive rights of the raiyats. It may be true, as the hon'ble and learned member (Mr. Evans) said the other day, that the settlement of rents between the raiyats and zamindárs was, in 1793, a matter to some extent of contract. But two things in this connection have to be borne in mind—that the competition in those days was for raiyats to clear and cultivate the land, and the zamindárs naturally had a motive for leniency; and secondly, there was, as found in the Regulations, the absolute barrier against undue exactions of the parganá rate which was known and respected in every district.

“I know that the zamindárs in dealing with interpretations regarding the Permanent Settlement are very unwilling that any reference should be made to contemporary history. They have openly said so in a public document. For my own part I do not see how we can avoid a reference to contemporary opinion when we have to interpret an important Act like the one under notice; and we are justified in looking to what eminent men of the time said on this point. There is valuable evidence on the subject scattered among the pages of contemporary writings, and I will read to the Council some extracts bearing upon the issue to which I have referred:—

“Sir Philip Francis, in a Minute written in 1776, considered that the rate of assessment per bighá should be fixed for ever upon the land, no matter who might be the occupant.

“Warren Hastings wrote in the same strain on 1st November 1776—“Many other points of enquiry will also be useful to secure to the raiyats the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions,”—the term “exactions” from raiyats signifying in that day the levy of more than the established parganá rate of rent.

“Sir John Shore, in the same spirit, was not content that the Permanent Settlement should be with the zamindár alone. He observed: “And at present we must give every possible security to the raiyats as well as, or not merely, to the zamindár. This is so essential a point that it ought not to be conceded to any plan.” The Court of Directors on 19th September, 1792, approving of these views, recognised it as an object of the Perpetual Settlement that it should secure to the great body of the raiyats the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, which we mean to give to the zamindárs themselves. Twenty-seven years later, the Court, on 15th January, 1819, deliberately re-affirmed:—“We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zamindár in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him.”

“Nothing, it seems to me, could be more conclusive of the privileges and position of the raiyats than these statements. They indicate at least the intentions of those in authority when the Permanent Settlement was made, and it was a misfortune for the country that they were not carried out at the time. The agitation which has been going on now for several years brings the case to a climax, and demands a final settlement on the lines of this Bill. I shall certainly support the motion that the Bill be taken into consideration, and shall oppose most strongly any motion for postponement. I am quite certain that we incur a risk in putting off the final settlement of this question; and I trust the zamindárs will understand that it is the settled policy of the Government that the right of the raiyat to hold his land is as clear and undisputable so long as he pays a fair and reasonable rent, as is the right of the zamindár to hold his estate so long as he pays his revenue.”

The Hon'ble MR. ILBERT said:—

“MY LORD,—I do not propose at this stage of the debate to discuss point by point the objections which have been brought against the particular provisions of this measure. But there are two criticisms of a general character about which I should like to make some remarks, and I shall have a few words to say on the question of urgency, which, though it is raised more directly by the motion which stands in the name of my hon'ble friend Bábú Peári Mohan Mukerji, has been discussed in connection with the motion now technically before the Council. Of the two criticisms to which I have referred, one is that the Bill has been so changed by the Select Committee as to have lost its fundamental characteristics, and the other is that the Bill

as now revised does not possess those qualities of completeness and finality which are essential to good legislation.

"I do not wish to minimize or underrate the importance of the changes which this measure has undergone, not merely since the date of its first preparation by the Rent Commission, but since the date of its introduction into this Council; but I do undertake to say that those changes are fully explained and justified by the circumstances under which the Bill was prepared and introduced, and by the nature of the subject-matter with which it deals, and that they do not in any way warrant the charge that the Bill in its present form involves a departure from the principles on which it was originally based, or that the Select Committee have lost sight of or abandoned the objects which the Government of India had in view.

"This Bill, as we all know, took its origin in a draft which was framed by the Bengal Rent Commission. Now, what was the nature and scope of the task which the Rent Commission undertook? It was a task of no ordinary magnitude. It was a task singularly arduous, ambitious and comprehensive. They undertook to frame a law of landlord and tenant which should be applicable to the whole of Bengal and Behar, with certain exceptions. They proposed to make important alterations in that law. They undertook, in so doing, not merely to amend the existing Acts and Regulations, but to repeal them and to re-enact them in a consolidated form with the necessary modifications. And last, but not least, they proposed to codify the whole of the judge-made law on the relations of landlord and tenant in the Lower Provinces. In short they undertook, at one and the same time, to amend, to consolidate and to codify. Now, in dealing with so difficult and delicate a subject as the law of landlord and tenant an ordinary legislator thinks himself fortunate if he achieves with some degree of success any one of these three objects: that he should be able to achieve them all is more than any mortal is entitled to expect. Accordingly, when the Government of India came to consider from the point of view of practical legislation the Bill submitted to them by the Bengal Government,—which was in fact the Rent Commission Bill with sundry modifications,—one of the first conclusions at which they arrived was that it would be desirable to drop so much of it as merely codified existing law, and to leave the measure one of amendment and consolidation. I will not trouble you at length with the reasons which led me among others to this conclusion—a conclusion about the soundness of which I have never had any doubt. They were reasons which did not involve the slightest disparagement of the admirable work which had been done by the learned author of the Digest of the Law of Landlord and Tenant in Bengal, and did not imply any scepticism as to the value of codification, or as to the importance of continuing the great work which has been commenced for India by the framers of our codifying Acts. Shortly stated, the reasons were these. Apart from any doubt which we might feel as to the expediency or possibility of attempting to present in a code the effect of judicial decisions on subordinate rules or propositions of law, it was clear that up to this time the process of codification had only been applied with success to those portions of the English common law which are suitable to the circumstances of India; the general principles of the English law of landlord and tenant had quite recently been codified by my learned predecessor Mr. Whitley Stokes in that chapter of the Transfer of Property Act which relates to leases; and the legislature on passing that measure into law had expressly declared that this chapter—the chapter relating to leases—is not suitable to the relations which exist between landlord and tenant in the Mufassal. Furthermore, we held that, even if the law with which we had to deal admitted of codification, it was of the first importance to simplify and reduce in bulk as much as possible the long and complicated measure which had been laid before us by the Government of Bengal. Accordingly, as I have said, the merely codifying portions of the Bill were dropped, and, as I hold, wisely dropped; but the mere fact that this measure once professed to be a Code has given it an appearance of completeness and finality which was always illusory, and which has had an unfortunate effect.

"Even in its reduced form the Bill was sufficiently long and complicated, and was in a shape—I am speaking merely of form and not of substance—was in

a shape which would have made an English Minister reluctant to submit it to Parliament. For it is a received maxim of English legislation that when you have important changes to make in the law—changes which are likely to encounter much opposition or to invite much discussion—you should not attempt to combine the two processes of amendment and consolidation, because by so doing you divert the attention of Parliament and the public from the real issues before them. You raise questions which have been already settled or are of minor importance, and you thus materially impede and embarrass the passage of the measure through the House.

"In this country, where the machinery of legislation works more easily and smoothly, it has always been held—whether it will continue to be so held if we have many more such notice-papers as that which has been laid on the table with reference to this Bill I cannot say, but at all events it has always been held—up to this time that the advantages to the public of consolidation outweigh what may be called the tactical disadvantages of presenting a too widely extended front for opposition and criticism; and accordingly we have, as a general rule, whenever we have had to make extensive changes in the law, applied the process of repeal and re-enactment. The Government of India did not think that they would be justified in the present instance in departing from this practice, but at the same time I am bound to confess that in the course of the discussion of this measure I have found abundant reason for appreciating the practical wisdom of the English rule. For there can be no doubt that the form in which this Bill has come before the public has tended to obscure the main issues which are raised by the present legislation, and has roused many of those ghosts of buried controversies which still hover and shriek round the Permanent Settlement Regulations and Act X of 1859. Let us endeavour to abstract our minds from those parts of the Bill which merely reproduce existing law, and those parts which embody miscellaneous amendments of minor importance, and consider what were the main defects in the existing law which the Rent Commission proposed to remedy, and what were the main remedies which they proposed to apply for the removal of these defects. The main defects were two, first, that the existing law gave, or appeared to give, to the raiyat rights which he could not prove; and secondly, that the law gave, or professed to give, to the zamindar remedies which he could not enforce. Whether, by reason of any deliberate policy of shifting tenants' holdings, or by reason of local customs of cultivation, or by reason of the absence of proper landmarks, but at all events in fact the raiyat was unable to prove that kind of twelve years' occupation which was necessary to give him occupancy-rights under Act X of 1859. And the zamindars found the process of recovering their rents through the Courts tedious, and the process of enhancement through the Courts unworkable. Want of adequate legal security for the raiyat, want of adequate legal facilities for the landlord—those were two substantial defects which were made the subject of repeated complaints before the Commission. And at the same time that the Rent Commission admitted that there were in the existing law these defects, which impaired its efficiency as a law and prevented it from achieving the objects which it was intended and expected to achieve, the Famine Commission, looking at the subject from a somewhat different point of view, came to much the same conclusion with respect to one of these defects, and pointed out that the absence of adequate legal security for the tenant had produced and was producing disastrous economical effects.

"These, then, were the practical problems which the Rent Commission—sitting, not as codifiers or as consolidators, but as amenders of the law—had to solve:—whether they could devise in the interest of the tenants more effectual checks against liability to capricious eviction and excessive rackrenting; whether they could devise in the interest of the landlords more effectual facilities for the ascertainment and recovery of their just dues. Reasonable security for the tenant, reasonable facilities for the landlord—these were the two things which they had to endeavour to provide. Suggestions for attaining these objects poured in upon them in great abundance, and from very different quarters. It was their duty to consider these suggestions; to sift

them carefully; to view them in the light of different interests and different experiences; to recommend them for adoption if they appeared to be reasonable and practicable; to reject them if they appeared to be unreasonable or impracticable. And that, Sir, is the history of this measure from its first inception to the present time. The process which has been continuously applied to it has been a careful sifting of numerous suggestions which have been put forward with the view of meeting certain specific evils. The Government of Bengal took up the suggestions of the Rent Commission, made them the subject of a very careful examination, and then transmitted them with modifications to the Government of India. The Government of India examined with equal care the suggestions laid before them by the Government of Bengal, and, with the approval of the Secretary of State, embodied in the Bill which was introduced into this Council such of them as appeared to afford a reasonable prospect of working with success. That in the course of this process the measure should have undergone considerable modification is no matter for surprise, but at the same time is no ground of blame to the Rent Commission, no cause for imputation against the Government of India or the Select Committee of this Council. The Rent Commission would have been much to blame if, in the exercise of the duties imposed upon them, they had rejected any suggestion which appeared on the face of it to be reasonable: the Government of India would have been equally to blame if they had not incorporated in their original Bill such of the proposals laid before them, as, with the information then at their disposal, seemed to offer a fair prospect of meeting the requirements of the case; the Select Committee would have been still more to blame if they had obstinately stuck to these proposals, or had adopted any alternative suggestions which might be subsequently made by the Bengal Government, after further inquiry and examination had thrown grave doubts on their fairness or feasibility.

"There is another circumstance which has not a little obscured the real nature of the changes which have from time to time been made. In the course of the discussions which take place on a measure of this nature, ranging as it does over a considerable ground, and affecting a great variety and number of interests, it always happens that some particular proposal assumes a factitious importance, and comes to be described, in varying metaphors, as the keystone or core or kernel of the Bill. I always distrust these phrases. They usually mean that some particular feature of a measure has happened to strike the imagination of some particular writer or set of writers, to coincide specially with his or their sympathies or prepossessions, or to assume exceptional prominence from some one point of view, and when it disappears or assumes a less prominent position a cry is raised that the measure is irretrievably ruined, and that it is no longer of any value.

"There have been a good many keystones and cores and kernels of the Rent Bill. There was a time, in the earlier discussions of this measure, when the proposal most in vogue was a proposal which not unnaturally found favour in zamindari quarters, a proposal to devise some kind of summary procedure for the recovery of rents. This was to be the be-all and end-all of legislation on the subject of landlord and tenant. 'Give us back our Huftum and our PUNCHUM,' said the zamindars, 'and all will be well. Or, at all events, if you cannot do that, put the raiyat who is sued for rent in the same position as if he had signed a bill of exchange, that is to say, had agreed in writing to pay a specified sum of money to a specified person at a specified time.' This was a form of 'facility' which was much discussed by the Rent Commission, and the conclusion to which they came about it was substantially the same as that which was subsequently arrived at by the Government of India. I spoke at such length on this topic in obtaining leave to introduce the Bill that I may be pardoned for not dwelling on it at any length on the present occasion. The conclusions to which we came were in short these; not that the difficulties complained of by the landlords were non-existent, but that the remedies suggested were superficial; that where the rights involved are obscure and uncertain, and the facts difficult to ascertain, no mere tinkering of procedure would provide a method of judicial de-

termination which should be at once speedy and just. But, at the same time I expressed a hope that when the measure came to be fully discussed other expedients for simplifying the procedure might be devised. In the course of the long discussions which have since taken place sundry suggestions for that purpose have been made; some of these were brought before the Select Committee by my lamented friend the late Rai Kristodás Pál; others have been embodied in a paper written by Bábú Mohini Mohan Roy, who was himself a Member of the Rent Commission; others again have been communicated to me privately by my friend the Maharájá Sir Jotindra Mohan Tagore. The Select Committee have not overlooked or disregarded any of these suggestions. On the contrary, they have given them their most careful attention. We invited judicial officers to examine them and express their opinions upon them, and we specially referred them for the consideration and opinion of the Calcutta High Court. But the replies which we have received have been unfavourable to these suggestions. We have been told, and told on the highest authority, that they could not be adopted without serious risk of failure of justice. Under these circumstances it was impossible for us to endorse recommendations which had by the authority most competent to express an opinion upon them—I mean the Judges of the Calcutta High Court—been unanimously and decisively condemned. It would have been a satisfaction to the Members of the Select Committee, as it would have been a satisfaction to the Hon'ble Judges, if we had been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means too often employed by raiyats to harass their zamindars. But in the face of such strong and authoritative expressions of opinion that these suggestions were dangerous or impracticable, we could not take upon ourselves the responsibility of recommending their adoption. Some minor amendments of procedure we have indeed proposed, and I believe that they will be found useful as far as they go. But I fully agree with the deliberate opinion of the Rent Commission and of the High Court that it is in other quarters than the amendment of procedure that the true remedy for difficulties in the realization of rents is to be found. Some of these remedies can, as the Judges point out, be provided by executive action; means of providing others are supplied by this Bill; and it is to the machinery that we propose to provide for the ascertainment and recording of obscure and disputed facts and rights that the zamindars, if they are properly advised, should, I believe, look for a removal of the difficulties which they now experience in enforcing their rights.

"On this point, then, the views of the Select Committee are in complete accordance with those of the Rent Commission and with those which the Government of India entertained and expressed on the introduction of this Bill.

"But with respect to other matters I freely admit that, in the course of the deliberations which have taken place on this measure, the Select Committee have found themselves compelled to drop certain proposals to which at one time considerable importance was attached by their authors, and from which considerable advantages were expected to accrue. Take, for instance, the proposals as to the preparation of tables of rates. These proposals formed a very prominent feature of the Bill which was submitted to the Government of India by the Bengal Government, and they were incorporated by the Government of India in their original Bill, though not without expressions of great doubt as to their feasibility. There was a great deal to be said for these proposals, and, if they had proved capable of being carried out, they would have simplified many questions and removed many difficulties. Therefore, I think the Government was fully justified in inserting them in the Bill which was laid before this Council two years ago, and that they were entitled to a fair trial before being rejected as unworkable. The Bengal Government did give them a fair trial; they deputed special officers to try and prepare tables of rates on the lines indicated in the Bill; and the result of their inquiries and experiments was to satisfy both the Bengal Government and the Select Committee that the expectations once based on this particular scheme were not likely to be realized. Very similar has been

the fate of the gross-produce limit. This particular proposal did not, if my memory serves me rightly, figure very largely in the earlier discussions on this measure; it was adopted by the Rent Commission, but without, as it appears to me, any adequate examination or consideration of the difficulties by which it was attended; it formed also part of the proposals embodied in the Bill introduced by the Government of India; but whilst I do find in the papers and speeches relating to the Bill indications of doubt as to the possibility of imposing any such general limit, or as to the propriety of the particular limit proposed, I do not find anything to show that it was regarded two years ago as being an essential feature of the measure. It was not until a comparatively late epoch that it attained the dignity of being described as the 'core' of the Rent Bill. Now, it must be admitted that it would be eminently satisfactory if we could devise some form of ultimate barrier against which the waves of rackrenting should ineffectually dash; and when the subject was discussed in the Select Committee—and it underwent a very full and thorough discussion before the Committee—there was a strong feeling on the part of the majority of the members in favour of imposing such a limit, if only a fair and workable limit could be devised. But when we proceeded to examine the facts and figures on which the particular fractional limit proposed in the Bill was based, we considered them insufficient to warrant the inferences drawn from them, and at the same time we were informed by the Bengal Government that to fix the limit at any other fraction would be to provide an ineffectual protection against that form of rackrenting which it was the object of the limit to counteract. Under these circumstances we reluctantly came to the conclusion that this was a form of check which we were not in a position to impose.

"Take, again, those provisions of the Bill which have been the subject of more and hotter controversy than, perhaps, any other of its provisions. I mean those which relate to the transferability of the occupancy-right. The object of the Rent Commission, the object of the Bengal Government in the earlier drafts of the Bill, the object of the Government of India in the Bill of two years ago, was to recognize and legalize a practice which, whether for good or for evil, either had grown up or was fast growing up in all parts of these Provinces, but to surround it with such checks and limitations as might be considered necessary or advisable for the purpose of preventing it from being used to the detriment either of the zamindár or of the raiyat. That, I repeat, was the object which we all had in view: we wished to recognize and confirm existing customs, to give them the express sanction of the law, but at the same time to give them a reasonable shape. We found, however, that the existing customs were so multiform that it would be impossible to devise any one general form of legal check on the right of alienation which might not reasonably be charged with causing hardship to the zamindár in one part of the country, and hardship to the raiyat in another; and, this being so, the conclusion at which the majority of the Committee, after many intermediate experiments and suggestions, ultimately arrived was that, if varieties of custom were to be recognized at all, they had better be recognized in their entirety, and that the balance of advantages was in favour of leaving the custom, at all events for the present, unregulated by any express provision of law. In arriving at this conclusion individual members of the Committee, as would naturally be the case, reached the same goal by different paths. The question was an eminently arguable one, and was one as to which both the advocates of the zamindárs and the advocates of the raiyat were much divided in their views,—I know for instance that the view taken of it by my hon'ble friend the Maharájá of Durbhunga differed materially from that taken by my hon'ble friend Bábu Peári Mohan Mukerji,—and it had to be determined with reference not only to the consideration whether the right of transfer was in itself a good thing or a bad thing, but with reference also to such considerations as whether the advantages of having a positive and definite but inelastic rule outweighed the disadvantages incidental to an elastic but uncertain custom, whether the mahájan purchaser of whom so much has been heard was a reality or a bugbear, and last, but not least, whether any discouragement which might be imposed on the practice of sale would not operate as an encouragement of the practice of subletting. It was under the influence of all these different considerations that we came to the conclusion that with

regard to this particular matter the natural check imposed by custom and usage would probably operate better than any artificial checks which could, under existing circumstances, be imposed by law, and that the safer and more prudent course would be to abstain, at all events for the present, from positive legislation.

"There is no foundation for the suggestion that such a change as this involves a radical departure from the principles of the original Bill. Nor is there any foundation for the suggestion that we have by any of the provisions of the Bill as now revised violated any pledges which we gave on the introduction of this measure. We have been told that the power given to reduce rents in cases where a special settlement is made is inconsistent with the assurance that was given that there would be no reduction of existing rents. Now it is important to be accurate about what was actually said and written with reference to this point. On looking at our despatch of 17th October, 1882 (paragraph 17), I find that we explained our intention to be that a raiyat should not be at liberty to sue for a reduction of rent on the sole ground that it exceeds that indicated by the table of rates. The assurance was that rents were not to be reduced solely on the ground of their being above those shewn in the table of rates, and I need hardly point out that the Bill contains no provision inconsistent with this assurance.

"In my own speech on obtaining leave to introduce the Bill I referred specially to this point. What I said was this:—

"On a comparison of the provisions for enhancement with the provisions for reduction, it might be said that they have a somewhat one-sided appearance. The landlord can use the table of rates for the purpose of levelling up; the tenant cannot use it for the purpose of levelling down. But it must be remembered that the principle on which the Bill is framed is to proceed as far as practicable on the basis of existing rents, and that nothing is further from our intention than to bring about a general reduction of rents. Whether under exceptional circumstances and in special areas—such, for instance, as the area in Behar, where we learn from recent reports that the average rates all round have been enhanced by 500 per cent. in the last 43 years, whilst the area under cultivation has actually decreased, and the rise in prices during the same period has been at most 73 per cent.—it may not be necessary to take steps, if not for a reduction, at least for a re-adjustment of the rates of rent, is a separate and difficult question on which I will not enter now. But I repeat that proposals for a general reduction of rents form no part of the Bill."

"I fail to discover in the Bill as now amended anything which is in the slightest degree inconsistent with any of the statements which I have just quoted. What we intend by the section to which reference has been made is that in very special and exceptional cases special and exceptional powers should be exercised.

"My Lord, I will not go through the other changes which have been made in this Bill since its introduction. The changes themselves, and the reasons for making them, have been fully and completely explained by my hon'ble friend Sir Stuart Bayley, and I have nothing to add to his exposition. I have listened sympathetically to the expressions of regret which have fallen from the lips of several hon'ble members for some of those changes; but I have heard nothing which has satisfied me that the grounds on which they were made were not good and sufficient, or that the arguments which have weighed with the majority of us in the Select Committee are likely to produce a different effect when brought forward in Council. What I wish specially to guard against is any confusion between means and ends, between matters of principle and matters of detail. Where we have seen fit to modify our views we have modified them not with respect to the general principles by which our legislation should be guided, not with respect to the objects at which we ought to aim, but with respect to the particular means which it may be necessary, expedient or advisable to adopt for the purpose of attaining those objects. The objects which we had in view in introducing this legislation were the objects which we have in view now, namely, the provision of reasonable security for the tenant, of reasonable facilities for the landlord. As to the particular form and degree of the securities or facilities which the circumstances of the case justify or require, that is a question with respect to which we may justifiably modify our views in the light of further experience and inquiry. We have given a little more in one direction, a little less in another; but the

general scope and tendency of our proposals remains what it was. Thus, in dealing with the occupancy-raiyat we have lessened the area over which his rights may be acquired, but we have, at the same time, facilitated the proof of the rights to which he is entitled within that area. We have removed some of the checks to which enhancement of his rent was subjected, but at the same time we have tightened others, and have extended the period during which he is to have absolute immunity from all enhancement. Again, in dealing with the landlord, we have declined to adopt suggestions which have been made to us for taking away from him any ground of enhancement through the Courts to which, from long usage or otherwise, he may reasonably claim to be entitled. We have declined to adopt any suggestion which would have had the effect of making any of those grounds unworkable, and thus of perpetuating what has been justly described as a public scandal; we have endeavoured to give the landlord a right which could be honestly enforced through the machinery of the Courts and not dishonestly abused as an engine of oppression out of Court; and we have endeavoured to assist the Courts by indicating somewhat more clearly than under the present law the circumstances under which, and the limitations subject to which, the landlord's remedy is to be applied.

"With reference to these and several other provisions of the Bill, the question has usually been a question not of principle but of degree—a question where we should draw the line between conflicting claims, and, as is usual with boundary disputes, our decision has not been accepted with satisfaction by either party. The question which you are entitled to ask is, 'What is the net result of our proposals?' Do they give too much or leave too much to one side or to the other? The question is *not* 'Does the Bill satisfy the expectations, reasonable or unreasonable, of one party or of the other party?' but does it—to use a phrase to which some of our critics appear to entertain an insuperable objection—does it afford a fair and equitable solution of an exceptionally difficult problem, a fair and equitable compromise between claims which are conflicting and irreconcilable? What we have endeavoured to frame has been not a landlord's Bill, nor a tenant's Bill, but a just Bill. We have endeavoured to give substantial security to the tenant without restricting more than is necessary the powers of the landlord. We have endeavoured to give reasonable facilities to the landlord without weakening more than is inevitable the customary privileges of the tenant. Whether and how far we have succeeded in our endeavour is a question which I leave to persons of cool and dispassionate judgment to determine. After hearing the vehement and angry denunciations by which we have been assailed on either side, they will, I am disposed to think, come to the conclusion that the Government of India has not ill discharged the duty which was imposed upon it of acting as a just and impartial arbiter between conflicting claims.

"I deny, then, that the Bill which is now laid before you involves a departure from the principles by which the Government of India was guided in its introduction. What foundation is there for the other charge to which I have referred, that it is wanting in completeness and finality? 'I had hoped,' says His Honour the Lieutenant-Governor, in his minute of dissent, 'that the legislation now in hand would have carried with it some measure of finality'; 'but,' he goes on, 'in its present outcome there is scarcely the assurance which had been expected of a final settlement of many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' 'I am unable,' says my hon'ble friend Mr. Reynolds, 'to regard the Bill in the form which it has now assumed as an adequate and final settlement of the question raised in this great controversy.'

"Sir, in one sense I admit the charge. That the Bill is one-sided, I deny: that it is not complete or final I will admit. But I will go further and say that any Bill of this kind which claimed for itself the characteristics of completeness and finality would carry its condemnation on its face. Look at the social and economical condition of Bengal at the present day. What are its most striking features? Are they not transformation, transition, growth and change? Here, as elsewhere in India, and here perhaps, more than anywhere else in India, you find the past and the present, old

things and new, brought into sudden and violent contact with each other, with results which are often unexpected, and which, unless there is some intervention to temper the shock, may be disastrous. You have been told with truth—and the truth is one which cannot be too often repeated or too strongly insisted on—that the Bengali raiyat is not the same thing as the English farmer, that the Bengali zamindár is not the same thing as the modern English landlord, that the rules which govern, and should govern, the relations of zamindár and raiyat are not those rules of the law of landlord and tenant with which the modern English lawyer is most familiar.

"The Bengali raiyat is not the same thing as the English farmer; he is something widely different from him. But he presents many curious and instructive points of resemblance to the English customary tenant of some six or seven centuries ago. The rights and powers claimed by the zamindár are not unlike those once claimed by the feudal lord of the manor; the privileges, duties and liabilities of the raiyat resemble in some important particulars those which once belonged to the English customary tenant, and which were gradually developed into the status either of the free-holder or of the copy-holder. In the phrase which is still technically applied to the English copy-holder, namely, that he holds 'at the will of the lord according to the custom of the manor,' we discern echoes of the controversies which once raged round the customary tenant of the English manor, and which still rage round the position of the Bengali raiyat—controversies in which the assertion of high proprietary rights on the part of the landlord is set against the assertion of strong customary privileges on the part of the tenant. If we were to pursue the investigation further we should find equally suggestive analogies. The bewildering multitude of tenures with local variations of nomenclature and incidents finds its parallel in the multitude of subordinate interests in land which are recorded on the Domesday survey, the English record of rights of the eleventh century. Again, it is well known that there is no point in English legal history which is more obscure than the question of the extent to which, and the circumstances under which, alienation of land was legally recognised and actually took place before the 18th century. But in the midst of this obscurity one fact is clearly established, namely, that such alienation as took place assumed the form not of sale but of sub-infeudation or sub-letting, and that the extent to which this sub-letting was carried was distasteful to the superior landlords. We know that at the instance of the great lords a famous statute was passed to stop sub-letting; we know that while the intention of the statute was to stop sub-letting its effect was to legalize free sale, that it enabled the fee-simple tenant to alienate his interest without consulting his lord, and that it has since become the foundation of the modern English law of the sale of land. If there had been a Hansard in the days when the Statute 'Quia Emptores' became law, he might perhaps have supplied us with an additional arsenal of arguments for and against the comparative merits and demerits of sub-letting and free sale.

"However, I do not intend to weary the Council with any elaborate historical disquisition. My object in touching on these analogies between the past and the present is not to demonstrate—what has been demonstrated to satiety—that the application of the modern English landlord and tenant law to the relations of zamindár and raiyat would be both an anachronism and a political blunder, but also to illustrate some of the exceptional difficulties which surround any attempt either to declare or to amend the law bearing on those relations. For to say that the Bengali raiyat is still living in an age which to us Englishmen has become an age of the past, is to present only one side of the picture. There is another side to it. Side by side with the landlord who exercises, and is content to exercise, his old customary seigniorial rights so far as they are compatible with the modern system of Government, we have the auction-purchaser who has bought his rights as a commercial speculation, and thinks only how he can turn them to the best advantage. Side by side with the hereditary tenant, cultivating and living on his land in the old traditional fashion, we have the enterprising planter, who has got his lease and wishes to work it so as to extract from the

land the greatest possible profit in the smallest possible time. The modern theory of competition rents is jostling the old practice of customary rates; the new fashion of terminable leases is threatening to displace ancient occupancy-rights. The thirteenth century is being brought face to face with the nineteenth century, and is striving with more or less success to understand and accommodate itself to its ways. The cultivator for subsistence is giving way before, or developing into, the cultivator for profit; those who have hitherto walked in the dim twilight of custom are emerging into the hard and fierce glare of law as administered by the Courts. The ideas, habits and customs of widely different ages and widely different civilization are being thrown into a common crucible, and are assuming new and strange forms. We cannot arrest this process of change; we cannot predict with certainty the rate at which it will progress or the direction which it will take if left to itself. All that we can do is to endeavour by such means as are at our disposal to guide it in the right direction; to ease off the abruptness of the transition from the old to the new, from an age of feudalism to an age of industrialism; to bridge over the interval between status and contract; to prevent custom from being ousted too violently by competition; to see that rules of law based on commercial transactions between hard and keen men of business are not applied to the ignorant and unlettered peasant before he is able to understand them or to use them.

"Can we afford to stand aside and let things drift, trusting that they may somehow come out right in the end? Such may be a policy which would commend itself to some of the influential classes in this country, to men of the strong hand and the long purse; such is not a policy which the British Government of India has ever ventured, or can ever venture, to adopt; such is not our conception of the duty which we owe to the millions whom Providence has confided to our care. We are responsible for the introduction into this country of forces which threaten to revolutionize and disintegrate its social and economical system; we cannot fold our hands and let them work in accordance with nature's blind laws. We must, to the best of our ability, endeavour to regulate and control their operations, and in so doing it is inevitable that we should occasionally interfere in a manner and to an extent which, to those whose institutions have not, for long ages, undergone the strain imposed by foreign conquest or foreign immigration, may not unnaturally appear difficult to justify or explain.

"That in so doing we should be charged with ignoring or violating the laws of political economy is a matter of course. We do not ignore or violate those laws. On the contrary, the whole of our action as a State in legislation of this kind is based on a recognition and appreciation of the laws which regulate the production and distribution of wealth, just as the whole of our action as a State in dealing with famine is based on the recognition and appreciation of the laws, so far as they are discoverable, which regulate the recurrence of famines. We do not ignore these laws, but we proceed on the view that their operation is capable of being modified and controlled by human action.

"Assuming, then, that interference is justifiable and necessary, what kind of interference is possible and expedient, what kind of legislation is suitable to the circumstances with which we have to deal? Must we not admit, are we not always being compelled to admit, that it is a legislation of opportunism? For a transitional period final legislation is neither appropriate nor possible. What we have to do is to establish a *modus vivendi*, a working arrangement, not merely between conflicting interests, but between the customs, habits, ideas and ways of different ages and different forms of civilization. Our legislation must contain much that is in the nature of expedients, adjustments, compromises; it will inevitably contain provisions which will be to political economists a stumbling-block, and to lawyers—I will say even to law-lords—foolishness, but which, for all that, may be based on good sound common sense.

"Again, whilst fully acknowledging the necessity—the urgent necessity—of interference on some points, we can afford to admit the wisdom of non-

interference on others. There are some proposals about the expediency and suitability of which we can make up our minds with reasonable certainty; there are others about which we do not see our way so clearly, and with respect to which we should prefer to wait a while. There may be points—I frankly admit that there are points—with respect to which the provisions of this Bill are imperfect and incomplete, and with respect to which we are leaving our successors to supplement our task. But the fact that we are unable to do all that we might have wished to do is no reason why we should not do what we can; the fact that there are evils for which no suitable remedy has yet been found is no reason for delaying to apply to other evils such remedies as may appear to be suitable; to admit that the range of human prevision is limited is no unmanly confession of impotence; to acknowledge that the morrow will have its task is no ground for putting off the task of the day.

"What the Council have to consider as practical men is, not whether this is an ideally perfect measure, not whether it is a final settlement of questions between landlord and tenant in Bengal, not whether it is likely to usher in a millennium either for the zamindár or for the raiyat, but whether it represents a step in advance, whether it does anything substantial towards removing admitted defects in the existing law, whether it does not give some substantial form of security to the tenant, some reasonable facilities to the landlord. It is because I believe that the measure, however it may fall short of ideal perfection, does embody substantial improvements in the existing law, that I commend it to the favourable consideration of the Council.

"One word in conclusion on the question which, though it is not technically raised by the present motion, has been appropriately discussed upon it—the question whether we should now proceed with the consideration of this measure or should defer its consideration until the expiration of a certain interval after the Bill has been re-published. The period of delay for which Bábu Peári Mohan Mukerji asks is a period of three months, but we all know that this practically means a delay of not less than a year, and therefore the question before the Council will be whether they will hang up the measure for another year, and thereby, amongst other things, condemn the officers of the Bengal Government and their own Committee to a re-commencement of what my friend the Lieutenant-Governor has properly described as their Sisyphean tasks; the former of piling up reports which are written in the summer, edited and annotated in the autumn, discussed in the winter, and shelved in the spring; the latter of renewing, under circumstances which involve a lamentable sacrifice of valuable time, discussions, the renewal of which is only rendered possible by the fact that the human memory is incapable of retaining, for more than a very limited time, the vast store of facts and arguments which have accumulated round this Bill.

"Now on what ground is this motion based? Is it on the ground that the public have not had sufficient time to consider the points of difference between the Bill which was published with the Preliminary Report, and the Bill which has now been laid on the table. My hon'ble friend Bábu Peári Mohan Mukerji has referred to the Resolution which was issued rather more than two years ago with reference to the desirability of giving greater publicity to legislative measures. That Resolution issued from my Department, and therefore I am in a special manner responsible for it. I concur entirely in every word that it contains, and I have done, and shall continue to do, all in my power to give effect to the principles on which it insists. If, therefore, the procedure which we now propose to adopt were in any manner inconsistent with that Resolution, I should be justly chargeable with inconsistency. But it is not inconsistent with that Resolution. The answer to the suggestion that no sufficient time has been given for the consideration of the Bill as now amended has been supplied by my hon'ble friend Sir Stuart Bayley, and it is this, that the alterations which have been made in the Bill since the date of its last publication are almost entirely in the nature of excision and reduction, and that we have not added any new matter of such importance as to require the opinion of the public upon it. Or is the motion before the Council based on

the wider ground that the information laid before the Select Committee is not sufficient to justify their recommending the adoption of any such proposals as those embodied in the Bill? On this point, again, I need only refer to what has been said by my hon'ble friend Sir Steuart Bayley as to the exceptionally searching and exhaustive nature of the inquiries and reports on which our conclusions are based, and express in the most emphatic manner my concurrence with his opinion that the constitution and procedure of the Select Committees of this Council are entirely unsuitable for that kind of examination of witnesses which has been suggested. That there are depths of this vast subject which we have not fathomed to the bottom, that there are tracts which we have left unexplored, nobody denies; what we do say is that the information before us was sufficient, and sufficiently tested, to enable us to come to certain definite conclusions on certain important points, and that it is upon those conclusions that our recommendations are based. My hon'ble friend the Malárájá of Durbhunga claims the support of the majority of the Select Committee for the motion for delay, and says that the majority of them signed dissents from certain more or less important recommendations of the Report, and therefore must be taken to have dissented from the specific recommendation that the Bill be passed as now amended. The fallacy is obvious, and the accuracy of the assertion is easily put to the test. It will be tested shortly by the vote which is to be given on Bábú Peári Mohan Mukerji's motion. I am one of those members of the Select Committee whose signature to the Report is conspicuous by the absence of a decorating star, but on the question whether there should or should not be further delay in the prosecution of this measure I appeal with confidence to the majority of the Select Committee. To the unflagging assiduity with which the members of that Committee have devoted themselves to their arduous labours no one is more willing to testify and render grateful acknowledgment than their chairman. That they should respond with alacrity to an invitation to a renewal of their labours one could hardly expect, unless indeed they belong to that exceptional class of mortals whose conception of Heaven is that of a place where congregations ne'er break up, and the sittings of Select Committees never end. But in all seriousness I apprehend that their reply would be that the information laid before them, though not complete, was sufficient for the practical purposes they had in view; that further information would not be likely to bring more united counsels; that they had completed their task, whether well or ill, at all events to the best of their ability; and that another year's delay would not be likely either materially to enlarge their knowledge, or materially to modify their conclusions.

"As for those hon'ble members to whom the privilege or penance of sharing in the deliberations of the Committee has not been extended, and who must therefore content themselves with a broad and general view of the measure which is laid before them, I would ask them merely to consider whether the measure may not, in its present shape, be fairly regarded as a substantial and honest piece of work, and whether the advantages which might possibly arise from further enquiry and discussion are not far outweighed by the disadvantages necessarily incidental to the prolongation for an indefinite period of a state of uncertainty, tension and irritation which is in the highest degree prejudicial to the interests of landlord and tenant alike."

His Excellency THE PRESIDENT said:—"I do not think it necessary that I should trouble the Council with any observations of my own at this stage of our proceedings. I shall have ample opportunity, when we come to discuss the several points in this Bill with respect to which amendments are to be moved, of expressing my opinion in regard to them. I will therefore content myself by saying that, although it is likely that during the course of our deliberations this Bill will be considerably improved in many of its particulars, I have no hesitation whatever in giving to its general features my cordial and sincere support. I have convinced myself that it is, as my hon'ble colleague has just said, a very honest and conscientious piece of work. I am quite certain that those who have engaged in advancing it to its present stage have been actuated by the sole desire of doing equal justice to all those interests which are dealt with under the Bill. It cannot be seriously

urged that this Council has not a right to legislate in the direction proposed. It so happens that I became Under-Secretary of State for India while the legislation which resulted in Act X of 1859 was still under discussion, and I then came to the conclusion, which further examination has only confirmed, that it would be idle to contend that legislation of this description is any invasion whatever of the rights accorded to the zamíndárs under the Permanent Settlement. If I thought that any clause of the Bill interfered with rights which have been granted to any class of Her Majesty's subjects in India by the Imperial Government, I certainly would not be found among its supporters; but, on the contrary, I believe that this Bill is in perfect harmony with those principles which inspired the authors of the Permanent Settlement; and I am quite certain that hereafter, when the present controversies have subsided, even those who consider their interests most injuriously affected by what it is proposed to do will acknowledge that this legislation has benefitted the agricultural interests of the country. With regard to the special point which is before us, namely, whether or not the present Bill should be hung up for another year, I can only say that, in the presence of the all but unanimous opinion which has been delivered by my colleagues in favor of proceeding at once to the immediate consideration of the Bill as amended by the Select Committee, it would be impossible for me, even if I myself did not share that opinion, to undertake the responsibility of delaying a measure, the postponement of which, I am told by so many persons competent to speak with authority on the subject, would be so disastrous. In conclusion I may observe that I for one have listened with the greatest interest and pleasure to the discussion which has taken place. Although I have certainly done my best to acquaint myself with all the facts and arguments bearing on this question as far as they are contained in the voluminous literature connected with the subject, this is the first occasion on which I have had the advantage of hearing it discussed by persons so capable of handling it. I have been specially struck with the moderation, the ability, the temper and with the eloquence with which my several colleagues have placed us in possession of their respective views, and I may be permitted to add that the Native members of this Council were certainly not those who have shown the least ability in dealing with the question."

The motion was put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that the Bill as amended by the Select Committee to which it was referred be re-published, and that the consideration of the measure by the Council be deferred for at least three months from the date of its re-publication.

He said the hon'ble members of the Council were already in possession of the reasons why he considered such a course desirable. If the opinion of hon'ble members was that the republication of the Bill at that stage was inexpedient, he would ask whether His Excellency the President could not see his way to put off the consideration of the amendments on the provisions of the Bill for two or three weeks, with a view to enable hon'ble members who were not members of the Select Committee to study the amended Bill, and to enable English-knowing landlords and tenants to give their opinions on the subject.

The Hon'ble SIR STEUART BAYLEY pointed out that the proposition of the hon'ble mover of the amendment simply amounted to this, that the postponement of the Bill for two or three weeks meant its postponement for one year. This, he presumed, was open to the same objection as the first amendment. As had also been pointed out by the Hon'ble Mr. Gibbon, any postponement of the measure would lead to the continuance of the agitation against the Bill. For these reasons he would ask the Council to reject the amendment.

The amendment was put and negatived.

The Council then adjourned to Wednesday, 4th March.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 13th March, 1885.



EXTRA SUPPLEMENT TO
The Gazette of India.

CALCUTTA, SATURDAY, MAY 2, 1885.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR
GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS UNDER THE PROVISIONS OF
THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Thursday, the 5th March, 1885.

PRESENT:

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

BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble the Mahárájá of Durbhunga's amendment that in
line 4 of section 23 of the Bill, after the word "unfit" the words "or permanently less fit"
be inserted, was resumed this day.

His Excellency THE PRESIDENT said that at the close of yesterday's proceed-
ings the consideration of section 23 of the Bill was postponed, with the view of
considering an amendment which had been moved by the Hon'ble the Mahárájá

of Durbhunga. HIS EXCELLENCY understood that the hon'ble member in charge of the Bill thought he would be able to meet the Maharájá's wishes.

The Hon'ble SIR STEUART BAYLEY said:—"I propose to meet the hon'ble member's wishes in the following way, by the insertion of the words 'materially impair the value of the land or' after the words 'does not' in line 4 of section 23.

The amendment was put and agreed to.

The Hon'ble MR. AMÍR ALÍ said:—"Before I move the next amendment, which stands in my name, I would beg permission to make an alteration in clause (a). The amendment will run thus:—

That after Section 24 of the Bill the following section be added:—

An occupancy-raiyat shall be entitled in Bengal Proper to transfer his holding in the same manner and to the same extent as other immoveable property:

- (a) Provided, however, that, where the right of transfer by custom does not exist, in the case of a sale the landlord shall be entitled to a fee of 10 per cent. on the purchase-money.
- (b) Provided also that a gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.
- (c) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.
- (d) When any such notice has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.

"With reference to the subject of this motion, I have already pointed out the reasons which lead me to think that the excision of the transferability clauses from the Bill has been a mistake, and I do not wish to take up the time of the Council at any length in support of the contention that those clauses should be restored. I believe it has been sufficiently established that the raiyats who possess the right of free transfer are more prosperous and better able to withstand the visitations of famine and scarcity than those who do not possess that right. And I believe it has also been sufficiently proved that the fears which are entertained by some people, that if the power of free transfer is given to occupancy-raiyats, the holdings will pass into the hands of moneylenders, are in the main groundless. The information collected at the instance of the Bengal Government, I think, has established conclusively that it is not the case that where the right of transfer is exercised by raiyats their holdings pass into the hands of money-lenders; that in the majority of instances the transfers are, as a matter of fact, made to *bona fide* cultivators; and that wherever the right exists and is exercised the raiyats hold with the utmost tenacity to their holdings; that their cultivation is better and their standard of living superior to those of other raiyats. It also, I believe, is shown upon the evidence to which I have referred that changes in the ownership of occupancy-holdings are less frequent than among the proprietors themselves. I will call one instance to the recollection of the Council, and that is the case of the *guzáshtadars* of Shahabad. In view of these circumstances I would urge upon the Council the acceptance of my amendment. I know that the excision of the transferability clauses has met with the approval of the Executive Government and the high authority of Your Excellency; and therefore in bringing forward the present motion I do so with a certain amount of hesitation and diffidence. The question, however, is one of very great importance, and my apology for urging it on the Council consists in the testimony borne by the hon'ble member in charge of the Bill himself to the prosperous condition of the raiyats who possess the right of transfer. It is said that the right of transfer would prove detrimental to the interests of the zamíndárs. With reference to that I desire to make one or two observations, and I hope they will be considered carefully by the Hon'ble Peári Mohan Mukerji. The zamíndár has been given the power of selling up an occupancy-holding in execution of decrees for arrears of rent, even when there is no right of transferability attached to the holding itself. Of course, where the right of transfer is attached to the holding, as in Bhagulpore and Shahabad, higher prices will be obtained for such occupancy-holdings. But in places where there is no right of transfer possessed by the raiyats the value of the

holding will be nominal, and the price obtained will not cover the amount of arrears and the cost of litigation. Then, in the next place, we have made no change in the power of sub-letting. Well, sub-letting having been maintained without any change, it is not difficult to imagine that people wishing to buy occupancy-holdings can easily get round the provisions in the Bill against absolute transfer by simply offering a good *salámí* and getting the holding in that way. The very complications which the zamíndárs wish to avoid by keeping back the power of transfer will arise under the power of sub-letting. Therefore, by denying the right of transferability, by making it dependant upon custom, we have not gained much, but we have done considerable harm. I believe the Council is aware that, where the right of transferability has not been sufficiently established by long usage, a small fee is paid by the raiyat for obtaining the consent of the landlord; not unfrequently he has to pay, besides, a conciliation fee to the *ámlá*. In places where the custom has been long established, where the practice has been recognized by long usage, the raiyat does not pay any fee. The question having been raised as to the right of the occupancy-raiyat to transfer the tenure, there is every reason to fear that the zamíndárs, even in those places where the right of transfer has been up to this time exercised without question, will not allow it unless a substantial portion of the purchase-money is made over to them. Whether that eventuality is one which is at all desirable I would leave to this Hon'ble Council to judge. I believe the legislature would be extremely unwilling to leave, by the excision of the transferability clauses, any such loophole which will either endanger rights which do exist and are exercised at present, or will be likely to interfere with the growth of the custom of transferability which is admittedly doing so much good towards the prosperity of the raiyat. I will only add a few words to explain the meaning of the amendment. As a matter of fact, the Council will perceive that what I ask for is the re-insertion of the clauses in the former Bill with a slight modification, namely, in clause (a). That clause did not exist in the sections which were cut out of the former Bill. My object in inserting it is to give to those landlords on whose estates the right of transfer does not exist a substantial fee by way of *salámí* for their consent or acquiescence in the sale. The fee they now get is a fee of an unrecognised character. By clause (a) they will get a recognised substantial fee. Of course, in places where the right is exercised now without dispute, they are not entitled to any fee, and it will not be right for them to expect any. In the second place, I confine the operation of the section to Bengal Proper. The Bengal Government in its letter of September last pointed out the reasons why it is desirable to confine the right of free transfer to Bengal Proper.

"In Behar there are various reasons which render it expedient not to extend the right to the whole of that province independently of existing custom. I had accordingly brought forward a proposal in Committee to exclude Behar from the operation of the proposed provision to render occupancy-holdings generally transferable. That proposal was not accepted, but the Committee have since decided to omit the transferability clauses with reference to the entire province. I agree with the Bengal Government in the view that the right should be confined to Bengal Proper alone, and consequently my amendment refers to Bengal Proper alone. As for the meaning of 'transfer' and 'gift,' they are defined in the Transfer of Property Act, and for this reason I do not think it is necessary to insert any definition of those words here. I beg therefore to move that the clauses which I have read out may be re-inserted in the Bill, and the numbering of the sections be altered accordingly."

The Hon'ble SIR STEUART BAYLEY said:—"I have been permitted to explain to the Council what my own personal views are on the subject; but as a member of the Executive Council, the Executive Council having decided that transferability of these tenures should not be accepted as a principle of general application in this Bill, it is not right that I should ask the Council to support the amendment of my hon'ble friend opposite, nor, under the circumstances, do I think that I am justified in again taking up the time of the Council in explaining why the Executive Council decided not to have it. In its present shape it is clear that the amendment is one which could not receive the coun-

tenance of the Government of Bengal, and I therefore think that any discussion on it would be of no practical value. But I would like to point out that the amendment does not provide for the great difficulty which the Government of Bengal had felt in reference to the necessity of excluding the moneylenders. The Government of Bengal, in a letter of September last and subsequent communications, remarked that, even if the right is restricted to Bengal, still they could not support it, unless it was so hedged in that occupancy-holdings should fall only into the hands of persons who derived their main support from agriculture. The motion does not meet the *sine qua non* to which the Government of Bengal insisted, nor can it be accepted without other difficulties arising. It was left, for instance by this motion, for the Courts to decide what 'Bengal Proper' was, and in the next place the registering officer would have to decide what was the custom, and whether it existed or not. With these remarks I leave the matter in the hands of the Council."

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ said :—"When the Government of India recommended a provision for the free sale of occupancy-holdings, they were not ignorant of the possible injury which such a provision would give rise to. In their despatch to the Secretary of State the Government of India said :—

'So far we have considered the landlord's interests, but the protection of the raiyat is a matter of much greater difficulty. The moneylender by means of mortgage might appropriate the whole profits of these holdings, or by foreclosure or purchase he might be possessed of the occupancy-right.'

"The question was thoroughly discussed in Select Committee, and it was found that not only high officers of State considered it to be a dangerous provision, but that the experience which the country had obtained from the operation of such a provision in the Dekkhan and the Sonthal Parganās showed clearly that was not at all desirable. The Chief Justice of Bengal truly remarked with reference to this that he 'thought it equally true, on the other hand, that to give a poor population like the Bengal raiyats the means of selling or mortgaging their tenures at pleasure was a certain means of making them improvident or unthrifty.' It was, therefore, in the interest of the raiyats, and not in the interest of the landlords, that this provision was abandoned by the Select Committee. The hon'ble member has stated in support of his amendment that the condition of the raiyats in places where the custom obtained was one of greater prosperity than in other places. But the question should be viewed in its proper light. In places where this custom has obtained, the institution has been brought about under the operation of the rule of the survival of the fittest. In such cases the institution must necessarily be suited to the requirements of the locality, and must, therefore, be productive of much good; but to thrust upon a poor and improvident people the power to deprive themselves of their substance and homesteads, and of their means of living, is, I submit, not altogether consistent with the other provisions of the Bill. The Select Committee not only provided for a fee to be given to the landlord for his consent to the sale, but they also provided that the landlord could either accept the fee or veto the sale upon three grounds: *first*, that the purchaser was not a cultivator; *second*, that he was a bad character; and *third*, that he was an enemy of the landlord. If the hon'ble mover of the amendment had moved an amendment for recommending the insertion of a rule for free sale with these restrictions, I would have had no hesitation in giving my support to it; but, although I should have found no difficulty in supporting it, I should have thought it was a dangerous one in the interest of the raiyat."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"The Bill as it comes to us is the work of the Select Committee, who have carried out the wishes both of the Government of Bengal and the Government of India. I therefore think the onus is upon those who come here to advocate a change, unless it can be practically shown that the change is one for the good of the country. So far as I have followed the current of the decisions of the Bengal High Court, a mere occupancy-right does not carry transferability so far as Bengal is concerned. I think that the four corners of the present legislation are

enough for our present purpose without going either to the Dekkhan or other parts of India. I think that sufficient has been conceded on the lines of the Bill as it stood. If occupancy was not transferable according to the law as it was interpreted by the High Court, and if the Government of Bengal and the Government of India thought fit that legislation should not advance further, they had devised restrictions for the protection of the public. Whether it was the landlords or the raiyats who required protection, that was hardly the place where one could now go into the question of absolute transferability. It was too large a question. I think that the Council should remember that if the section now proposed were introduced a very large number of sections would have either to give way altogether or would have to be further hedged in by restrictions, which I think it would be very difficult at this stage to introduce. I will, therefore, oppose the motion."

The Hon'ble MR. REYNOLDS said :—"I agree with a great deal of what has been said by the hon'ble mover of the amendment, and especially with regard to what he said as to the additional value which would be given to the occupancy-right by the concession of the power of transferability. The question has been very fully and ably discussed by Mr. Field in a note to his Digest of the Rent Law, and his conclusion was in favour of declaring the occupancy-right transferable. I must add that I cannot altogether assent to what the Hon'ble Peāri Mohan Mukerji said with reference to the precedents afforded by the Sonthal Parganās and the Dekkhan. I do not think they are cases in point with reference to Bengal. The danger of giving to occupancy-raiyats the power of transferability is the fear of the lands falling into the hands of moneylenders, and this is a real danger in places like the Sonthal Parganās and the Dekkhan, where the moneylending classes are an alien race, having no community of interest with the people. We have in the Sonthal Parganās moneylenders who are Bengalis, and in the Dekkhan the moneylending class are Marwāris; but that is not the case in Bengal, and I am still of opinion that with certain safeguards the right of transferability might have been recognized in Bengal without any danger to the interests of the people. But at the same time I am not satisfied with the form of the amendment; for instance, in clause (a) it is provided that where the custom of transferability does not exist, a fee of 10 per cent. shall be payable to the landlord. Such a fee, in my opinion, is too high, and the hon'ble member has not provided for cases in which the right exists by custom subject to the payment of a fee. Then the hon'ble member proposes that a gift shall not be valid unless it is registered, but he has not provided for the case of sales being made under cover of a gift; and above all there is no provision in the amendment for ensuring that occupancy-holdings so transferred shall continue to remain in the hands of the agricultural classes. Though I believe the danger of the money-lender's intrusion has been much exaggerated, I admit that there is some residuum of danger in connection with this matter, against which precautions should be taken, and in the present state of Bengal I should be sorry to see the right of transfer freely imported into the Act without any safeguard against the evils to which I have alluded. I therefore cannot support the amendment."

The Hon'ble MR. HUNTER said :—"My Lord, I had not intended to speak on this amendment, because I am much in the position of my hon'ble friend Mr. Reynolds. I think the amendment in substance good, but I am unable to accept the form in which it is put. To my mind there can be no doubt that the evidence before this Council—evidence which has been carefully gone into by the Select Committee—has abundantly established the fact that the sale of occupancy-rights is growing into an established custom. I believe that by leaving the sale to custom we are subjecting poor men, needy men, to a number of exactions, and to a number of very serious inconveniences during the process of sale. But while I feel very strongly that it would have been a great advantage to the raiyat if we could have given the effect of law to that custom, I do not see my way to accept the amendment in the form in which it has been placed before the Council."

The Hon'ble MR. GIBBON said:—"Much as I desire to see the right of transferability adopted and legalized, I must oppose the amendment. While I desire to see the right of transfer legalized, I wish also to see the just interests of landlords protected, and the country protected against the evils of land-jobbing: neither this evil nor the interests of landlords are protected by this amendment. Much as I desire to see the right of transferability adopted, it should, in my opinion, be adopted for the whole province, and not for Bengal Proper alone. To legalize transferability for Bengal and not for Behar will hereafter be looked upon as having prohibited it for Behar. The hon'ble member has given many reasons for desiring to give the right of transferability, but he has given no reason which is not equally applicable to the circumstances of Behar; if they apply to the circumstances of one province, they apply equally to both. If we legalize transferability in Bengal, not in Behar, it should be by a separate Bill. I am sorry therefore I must object to the amendment."

His Honour THE LIEUTENANT-GOVERNOR said:—"This is an old question which has passed through several stages of consideration up to its final abandonment by the Government. The hon'ble member who moves this amendment will not doubt that, as far as my own views go, I sympathize entirely in the position he takes. The recognition of the free right of transfer on behalf of raiyats having occupancy-rights would, in my judgment, ultimately be a great benefit to the country, though I am willing to admit that, as regards its present adoption, there is no question in which my own opinion has undergone greater modification than in this one. In our first proposal to the Government of India two years ago we recommended the adoption of the right of transfer throughout Bengal in the belief, which we thought sufficiently established, that the practice of transfer was generally prevalent; but later enquiries seemed to show that what might be safe in Bengal would not, under the peculiar conditions and circumstances of Behar, be safe there; and in our second letter we desired to confine the exercise of the power to the districts of Bengal Proper. But even as regards that Province the point which claims especial consideration is that the zamindars themselves have shown the strongest opposition to the acceptance of the proposal; and certainly I can speak from my own experience that, in all my interviews with zamindars on the subject of this Bill, no question has been more prominently brought forward and opposed than this one, and further that the opinions which have been expressed in non-official communications and in the writings of the Press have condemned the policy as one which is likely to be attended with serious evils in the transfer of lands from the hands of the agricultural classes to those who have no interest in agriculture. We have thus to take account of the fact that there is a strong outside hostility to the legal recognition of the right of transfer in this class of raiyats. I fully support the view taken by my hon'ble friend Mr. Reynolds that any reference to the case of the Santhal Parganas or that of the Dekkhan affords no parallel to the circumstances of Bengal. In the Santhal Province there is an aboriginal people, rude, half-civilised and uneducated, amongst whom large numbers of money-lending Bengalis are settled; and to open the door to the transfer of occupancy-rights among such a people would undoubtedly lead, and has already led, to evil effects. But the parallel does not hold good where you have to deal with a people who are beginning to know the value of landed property and can use the discretion as to parting with it or not. Still after much consideration the safer view has prevailed that the introduction of any provisions like those which the hon'ble member has moved should not form a part of our present legislation; though in accepting this view we must all realize the fact that we do not thereby close the door to the growth of a system of transferability. The fact is that the practice obtains all over the country; it extends to a considerable extent in Behar; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district in Bengal is one which no one can dispute; it comes before us on the unquestionable authority of the Registration Department, and is admitted by the landholders themselves. Therefore, I think it is quite our wisest course to let the practice

develop itself, and in a few years it will be very much easier to recognise the practice from the fact of the custom having become established. In view of all these circumstances I would strongly press upon the hon'ble member to withdraw his amendment."

His Excellency THE PRESIDENT said:—"As a reference has been made to my connection with this subject, I should like to have an opportunity of expressing my own opinion upon it. In the first place, we have to consider the matter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of sale or transfer, and the Courts of Bengal, as I understand, have hitherto maintained this view. It is therefore a question as to how far we should be justified in giving the occupancy-tenant a right carrying a money value to which he has not hitherto been entitled by law. That he should have it by custom is a totally different question. It stands to reason when a landlord has allowed such a custom to grow up, when the landlord has permitted sales of occupancy-interests to take place, it is but fair and just that the actual tenant, who has paid consideration for the occupancy-right, should be allowed to dispose of it upon the same conditions as those upon which he bought it. Without, however, wishing to pronounce dogmatically upon this part of the question, I have to observe that when the matter was brought to my notice the Government of Bengal had already decided that the legalising of the custom was at all events not desirable in Behar. It was also decided that its application to Bengal must be hedged and restricted by various safeguards, one of which consisted of the right of the landlord to bar the transfer where the transferee was objectionable to him. Thus it became apparent that even its application to Bengal might be also questioned. I can quite understand that the hon'ble member who has moved this amendment should take a different view of the question, because I believe that he is more immediately acquainted with a part of the country where the raiyats are in a very satisfactory and strong position; and undoubtedly, where that is the case, transferability is not only a convenience, but works without injury to the raiyat and with advantage to the public. But, on the other hand, we must remember that if the amendment were to be adopted we should at once confer upon vast numbers of indigent men the right and the opportunity of mortgaging the land on the unembarrassed condition of which the salvation of themselves and their families depends. However, I need not enlarge upon this view of the question, because the remarks which have already fallen from the Lieutenant-Governor I think amply justify the view which has been taken of the subject by the Government of India. I think it right, however, to say, on behalf of myself and my colleagues, that if, at this stage of the proceedings, arguments had been adduced in favour of such an amendment as that which has been proposed by Mr. Amir Ali, we should have been quite prepared to give to them that attention which they deserve. But, so far from that being the case, even those other members of the Council who are disposed to look with an indulgent eye upon the principle in the abstract, announce to us that they do not feel themselves in a position to support it. Under these circumstances, we—I for one, and I imagine all my colleagues—feel that there is no reason whatever why we should depart from the conclusion at which we originally arrived."

The Hon'ble MR. AMIR ALI then by leave withdrew the amendment.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that to section 25 of the Bill the following clause be added:—

"that he has defaulted to pay within fifteen days the amount of a decree for arrears of rent passed against him."

He said:—"Both the Rent Commission and the Government of India recommended the abolition of the provision for ejectment for non-payment of rent simply on the ground that it would be incompatible with the condition for free transfer of a raiyati holding; but now that the provision for free transfer has been expunged from the Bill, I submit that the permissive provision for

ejection for non-payment of rent be inserted in the Bill. The power of ejection has been enjoyed by landholders from 1793, and, notwithstanding all that has been said by some officers, I challenge not only strict enquiries but any reliable evidence of the fact that the power has been abused during such a long time. And when there is no evidence of that fact I submit that it will be inexpedient to deprive landlords of a right which gave them an effective remedy in cases of non-payment of rent. It acts as a threat on the raiyat against default and delay in payment of rent, and I think the power is essentially necessary to enable landlords to collect their rents with punctuality now that the provision of free sale has been done away with. It has been observed by my hon'ble friend Mr. Amir Ali in moving his last amendment that power has been given by the Bill to put up to sale a defaulting holding, but I need hardly inform the Council that it is no new power which the Bill has given to landholders; it is a right which they have all along enjoyed but which the Committee thought was of no earthly use to them, because when a man has the choice of either putting up a defaulting holding to sale or of applying for ejection it will be in the interests both of the landholder and the raiyat that the landholder should apply for an order of ejection and not for sale. An order for sale involves much additional cost on the raiyat in respect of the necessary processes of Court, such as the proclamation for sale, sale-fees, and so forth, and in the majority of cases it is found, as has been justly remarked by the Hon'ble Amir Ali, that the proceeds of sale does not cover even the cost of processes. The provision for sale as a substitute for the power of ejection is liable to this further objection, that even when a sale has been effected it is in the power of the raiyat to apply for the reversal of the sale, and a suit to that effect may be carried on for years, and the question whether the sale was valid or whether it was invalid would not be settled till years after the sale was effected. In the meanwhile the purchaser has invested money in the land, and other rights have accrued; and if the sale is ultimately set aside both the raiyat and the landlord will be seriously damaged. I submit that in the interests of the landlord and that of the raiyat himself, the provision for ejection contained in the present law should be maintained."

The Hon'ble MR. EVANS said:—"I do not feel justified at this stage of the proceedings in supporting a motion for allowing the old form of ejection. I always had great doubts whether the change made in the Bill would be beneficial; but as this is one of the cardinal points in the Bill I do not think there will be any chance of the Council re-considering the matter, which has been settled and which has such great authority in its favour."

"I entertain very considerable doubts as to its working well. I think that, instead of having to resort to these execution-processes, the landholder should be able to ask the Judge, in cases where there was no bid or an insufficient bid, to stop the sale and make the amount payable within fifteen days. I have not made any substantive proposition, because I am not clear that the relief will be sufficient to justify my introducing any amendment of that kind. I feel that there are inconveniences to the zamindars, and I can only hope that it will work out better than the ordinary execution of money-decrees is working in this country."

The Hon'ble MR. GIBBON said:—"Had the hon'ble mover accepted the suggestion I threw out to him in Committee that the order for ejection should act as a full acquittance of the decree, I would have given him my co-operation. The hardship in adopting the old law, allowing the judgment-debtor to be ejected if he does not pay the amount of the decree within fifteen days, lies in the fact that when he is ejected the decree still holds good against him, and he is still liable to pay the full amount of the decree. I accept the provisions of the Bill simply as the better of two evils, not as an effectual remedy. The provision in the old law which allowed the zamindar to eject if the defaulter did not pay the amount of the decree was valuable only on account of the moral effect it had on the raiyat; and as such it was necessary, I think, to embody it in the Bill; at the same time the difficulties in the way of transferability which have been stated by the Hon'ble Mr. Evans are very true. I have

often found that nobody would bid at the sale of the raiyat's holding and the holding had to go back to the same raiyat. At the same time the difficulties stated by the hon'ble mover of the amendment are also true; process and sale fees are so exorbitant that the amount realized from a sale is often hardly sufficient to cover them. The remedy lies in reducing process and sale fees and in applying a rule of percentage on the amount of the decree or the amount of purchase-money realized."

The Hon'ble SIR STEWART BAYLEY said:—"I understand the hon'ble mover of the amendment to assert that the Rent Commission originally recommended this system of ejection on the ground that, as there was to be a free transfer of occupancy-holdings, ejection would be incompatible with it, and he also said that the Government of India had settled it on this ground. But I must point out that this was an entire mistake. Neither the Rent Commission nor the Government of India connected it with the question of free transfer generally. What they did connect it with was the fact that sale for arrears of rent was provided, which is quite different from the question of free transfer generally; consequently the fact of having removed free transfer from the Bill makes no difference whatever in the grounds urged both by the Rent Commission and the Government. I will read what the Rent Commission said:—

As an occupancy-holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent. We have accordingly enacted (section 20, clause (e)) that no raiyat may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such raiyat and his landlord have contracted in writing that the raiyat shall be liable to ejection for a breach thereof."

And they went on to express their dislike of the system of forfeiture. I think the hon'ble member will find also that the Government uses the same language. The hon'ble member will, therefore, see that the question did not in the least depend on the question of transferability generally, but particularly whether the occupancy-right should be sold for arrears of rent or not; and, as we have maintained the process of sale, we are justified in saying that we are carrying out the views of the Rent Commission, the Government of India and the Secretary of State, all of whom have held that where we have the right of sale we do not want also the process of ejection. At the same time I may remind the hon'ble member, as I pointed out before when the question was discussed two years ago, that though evictions through the Courts were not frequent, yet illegal eviction was very frequent; and I at that time quoted an experienced Magistrate, Mr. Edgar, who had a return prepared of complaints preferred in his district on this ground, which amounted, if I recollect right, to some 500 in two years. The Government of Bengal had supported this statement. As a matter of fact it is not the action of the Courts in this matter which we dread; it is the threat of ejection hanging ever over the head of the raiyat which paralyses his industry, and makes him an easy prey to extortion and oppression. It is this tremendous engine in the hands of unscrupulous subordinates which we desire to restrain. The hon'ble gentleman admits that the real use of ejection is that it acts as a threat, and I think he said it had a very moral effect. We are agreed as to the power, but scarcely as to the moral effect, of the threat. He would wish us to believe that this power is desired in the interest of the raiyat. Such an interest I believe the raiyat and the raiyat's well-wishers would very gladly forego, but I can hardly suppose that my friend uses the argument seriously. That it is in the interest of the zamindar I can understand, and if he puts it on that ground there is a fair scope for argument; but when he claims that it is in the interest of the raiyat that he should be ejected and the surplus value of his holding and improvement should go into the pocket of the zamindar I do not understand. More especially I do not understand it as applied to the amendment in its present form. In order to give it even a semblance of fairness he should have supplied the omission which the Hon'ble Mr. Gibbon has pointed out; he has not put in any provision that ejection in execution of a decree should be deemed to be a full satisfaction of a decree; he has left the raiyat liable for the amount of the decree even after the

landlord has got the land in his own possession and has got into his own pocket the value of any improvements effected by the raiyat on the land. The Hon'ble Mr. Evans has thrown out a suggestion that there might possibly be made a relaxation in the form of the section in case of the sale of the holding not fetching the full amount of the decree. That question was brought before the Select Committee and was discussed, but I do not see any amendment on the notice-paper concerning it. I may, however, inform the Council that one of the grounds on which it was felt to be unacceptable was this, that it would make it the landlord's interest in every case to prevent the raiyat's holding being sold for anything like its full value; if he could fall back upon ejectment without compensation when the price bid was low, it would clearly be his interest to keep the price low, and a powerful landlord would have little difficulty in doing this by keeping away other bidders; but the thing which strikes at the root of the amendment is this, that it is really unnecessary: ejectment is of necessity included in sale, it is merely a question of whether improvements should be forfeited also, for it is obvious that the landlord in the process of sale has a power of ejectment; he puts the holding up to sale, and if he does not get a bid he buys it for four annas or eight annas and the man is ejected. I do not think it necessary to go beyond this. On the main question I may say that we have intentionally and deliberately restricted the power of ejectment, because we think that at the best it is a dangerous power, and it has been part of the deliberate policy of the Government from the beginning of the rent question, from the despatch to the Secretary of State and his reply, to restrict ejectment in every way we can. For these reasons I shall vote against the amendment."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said:—"After what has fallen from the Hon'ble Mr. Evans and the Hon'ble Mr. Gibbon I wish to ask His Excellency's permission to move the amendment in a modified form, namely, that—

'Ejectment under this section shall be in full satisfaction of all demands under the decree.'"

The Hon'ble SIR STEUART BAYLEY said:—"I think it is rather late in the day to raise that question now; it was raised and discussed in Committee, and the hon'ble member has deliberately moved his amendment without it. I do not think that it is quite fair to present a new amendment now in consequence of suggestions which have been thrown out in the course of the debate, but at the same time I do not wish to object to the amendment in this case being put."

His Excellency THE PRESIDENT allowed the Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI to propose an amendment in the modified form, which he asked permission to do.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said:—"I rely on the statements which the hon'ble member in charge of the Bill has read from the report of the Rent Commission and the despatch of the Government of India to the Secretary of State, and it was those statements which I had in my mind when I referred to those documents. The statements may be differently interpreted, but in connection with the fact that the power given to the landlord to put up to sale a holding for which rent is due is not a new power, but one which landlords have exercised since 1793, if not from an earlier date, I think that no meaning other than what I have put on it can be given. The mistake of the Rent Commission and the Government of India lies in supposing that the power of bringing defaulting holdings to sale is a new power given to landholders. But that is not so. Then the hon'ble member has asked how the provision for ejectment can be in the interest of the raiyat. I have explained fully in the speech I have already made that when a sale is effected certain expenses must inevitably be incurred; expenses of application, expenses of proclamation, fees of sale, and so forth, must ultimately fall upon the raiyat; and if the sale-proceeds do not cover

them, the landlord has the right of realization by the sale of the goods and chattels of the raiyat and other processes; whereas the order for ejectment will free the raiyat from any such expenses; and if in addition to that it be conceded as an entire satisfaction of the decree in the execution of which ejectment is made, nothing will be more welcome to the raiyat, as it will save him not only from the expenses incidental to sale, but from all liability under the decree. I submit that in this modified form the proposal should commend itself to the Council."

The Hon'ble MR. EVANS said:—"If the zamíndárs are willing to put it in this form, I should be inclined to give preference to it, provided it was coupled with the further provision giving compensation for tenants' improvements. That, however, is a matter which will require careful consideration, but it seems impossible that at this late stage of the proceedings it can be accepted. As I said before, I should have been glad to support any proposal which would have the effect of modifying the rigour of the law, because the court-fees and process-fees swallow up the value of the property in dispute. From some reliable data which I have recently received as to the summary process of distraint for irrigation-dues, I find as a positive fact that in the majority of cases where the amount of the distraint is small the costs of process far exceed the amount to be paid. I feel that it is in the power of the Executive Government very greatly to diminish the evil by lowering process-fees, and I can only hope that in the interest of the raiyat the very warm anxiety displayed by the Government will induce them, having regard to all the circumstances, to use some means of reducing the cost of process. If that is done the raiyats will have a great benefit conferred on them."

His Honour THE LIEUTENANT-GOVERNOR said:—"The inconvenience of allowing fresh amendments to be raised in the course of the discussions has been forcibly exemplified in this instance. It seems to me very unreasonable that the hon'ble member should, after having gathered the views of other hon'ble members upon a question brought forward by him, raise a new discussion in an amended form in the hope of catching some votes in support of his proposal. Here we have been led into a long discussion as to the character and amount of process-fees. Instead of adhering to the amendment of which he gave notice, he raises a question on a point with regard to which the Council has received no notice. I shall certainly oppose the amendment. I think it is not convenient to review the subject in any modified form after the question has been thoroughly discussed and the proposal has been rejected."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to section 25 the following clause be added:—

"(c) that he has not paid his rent at the appointed time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that to section 25 the following clause be added:—

"that he has committed persistent waste by neglecting the repair of irrigation-works or caused the deterioration of the soil."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said:—"I support the motion. I think a provision like this will be a necessary provision by virtue of the addition which has been made to section 23 on the motion of the hon'ble member in charge of the Bill. The Council has already decided that the raiyat should not have it in his power to deteriorate the quality of the land, and I think in all consistency we should see that some penalty should be attached to a breach of that provision. I think the form in which the amendment is put is the form which the penalty should take for a breach of the provision."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment. It appears to me that a good deal of what the hon'ble member in charge of the Bill has said in speaking on the amendment in regard to eject-

ment for non-payment of an arrear applies as much to this amendment. The objection is to what the hon'ble member called the moral effect on the raiyat, not a moral effect in compelling him to do his duty, but in dealing with any claim of whatever kind made against him by his landlord. I do not think it can be fairly said that, because we have inserted in section 23 the words that a raiyat must not materially impair the value of the land, it follows that we should provide the penalty of ejectment as a proper penalty for a breach of duty in that respect. What the amended clause proposes might be a ground for damages or for an injunction, but I cannot admit that it will be a reasonable ground for ejectment, the landlord having his remedy of not being injured as long as the rent is paid and having the right to sell in default. Then the words proposed seem to me to be dangerously wide. It is not easy to say what is persistent waste, or that a man has neglected to repair irrigation-works without some definition of his duty as to such repairs. I do not think such a suit would be likely to be successful, but there is the fact that danger would arise from the moral effect such a provision is likely to have. The same remarks apply to the words 'deterioration of the soil'. We should, I think, leave the landlord his remedy by way of a suit for damages or injunction against the cultivator, but I am strongly opposed to the principle of suing for ejectment on such grounds."

The Hon'ble SIR STEUART BAYLEY said:—"What I had to say has been anticipated by the Hon'ble Mr. Reynolds. As I said before, it has been the deliberate policy of the Government of India to restrict the grounds for ejectment. On looking at Mr. Field's digest, I see that in giving the substantive law in the text that 'the raiyat shall not, without the consent of the landlord, materially alter the condition of the land held by him, and render it unfit for agricultural or horticultural purposes' the remedy is stated to be a suit for damages or an injunction to restore the land to its original condition. He says the conditions of good agriculture are not sufficiently understood in India to raise a question of this nature. The hon'ble member will recognize Mr. Field as an authority on a point of this kind; but, without basing my argument entirely on Mr. Field's authority, I think the importance of not permitting the threat of ejectment in every case between landlord and tenant is so great that when other remedies can be found we ought not to give such a power. I therefore think we ought not to accept this amendment."

The amendment was put and negatived.

The Hon'ble THE MAHARAJA OF DURBHUNGA by leave withdrew the amendments that to section 25 the following clauses be added:—

- "(e) that he has, without his landlord's written consent, sub-divided or sub-let his holding, or any part thereof, save as expressly authorized by this Act;
- "(f) that he has by writing, or statement reduced to writing, disclaimed the title of his landlord before any public officer or Court."

The Hon'ble MR. EVANS moved that for sections 28 and 29 the following be substituted:—

"No instrument, whereby an occupancy-raiyat is bound to pay for land in which he has an occupancy-right a rate of rent in excess of the rate which was payable by him in the agricultural year next preceding the execution of the instrument, shall be admissible in evidence unless it is registered.

"No occupancy-raiyat whose rent has been enhanced in respect of any land in which he has an occupancy-right shall be liable to any further enhancement for fifteen years from the year in which his rent in respect of such land was last enhanced."

He said:—"It is with very great regret that I have to make many of the objections which I am about to make, because I recognise that a great portion of the matter I am objecting to is intended to give protection to the raiyat, and I am thoroughly desirous that the raiyat should be protected as far as it can be done by means of a workable scheme; and so far I am entirely at one with the views and objects which have moved the Government of Bengal in this matter, and have no desire to diminish in any way any protection which we

can give justly and in a workable form to the raiyat. What I fear is that in the form in which the section stands it will, as a matter of fact, be unworkable in practice and will create more mischief than it will remedy. Some objections may, no doubt, be raised to the amendment which I propose, but I have no kind of partiality for the particular form of my amendment as long as the matter is substantially dealt with in some form or other. We find, as would be expected with regard to a matter of this kind, that the increase of rent paid by an occupancy-raiyat with a fixed tenure must be, from the nature of things, either by decree of Court or by agreement between the parties; because, if there is a dispute between the parties, there is no means of enhancing the rent but through the Court, and if there is no dispute the parties settle the matter between themselves, as they do in regard to all other matters in which they are able to agree. With regard to the provision which we have made in this chapter for settling disputes which arise between landlords and occupancy-raiyats as to increases of rent, where the dispute is of such a nature that they cannot settle it without going into Court, I am entirely satisfied and have no objections to make. But it must be known that it is not desirable that the parties should be forced to go into Court when it is not necessary and when the dispute can be settled less expensively out of Court. We know that in this country litigation is costly, and in many cases leads to the ruin of one or both of the parties, and more especially of persons who are ignorant. As to the restrictions on settlement by agreement, there are very serious objections that occur to me. Section 28 prescribes that if enhancement by agreement is not made exactly according to the provisions of the Act, the result will be that it is void; that is to say, that the agreement, so far as the increase of rent is concerned beyond what the raiyat was paying the year before he came to an agreement, is absolutely and entirely void. The result is not that money so paid voluntarily under a void agreement is recoverable; no doubt the landlord will keep the money in his pocket, but if at any time he sues for rent at the enhanced rate which the raiyat has consented to pay, the raiyat will be able at once to say he has not to pay that amount of rent, because the increase of rent by agreement or consent is unenforceable. The contract is void. This section goes on to say that it shall be void in all cases—that is the effect of it—excepting in cases provided for in section 29. And it embodies this condition, that the agreement must be in writing and registered; that is to say, it must be a registered contract, and you cannot register a contract unless it is in writing. The next point is that the rent as it existed the year before must not be enhanced by more than two annas in the rupee or 12½ per cent.; and thirdly, the contract must fix the rent for a term of at least 15 years. That is to say, it prescribes that every contract which enhances any man's rent, which binds him to pay a higher rent than the year before, is *ipso facto* void if it does not contain a statement that the rent is fixed for 15 years. The contract is void by the absence of that formality. The next provision is that the registration of the contract shall not be ordinary registration, but must be a registration under this section. The section provides that—

"The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 96 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature."

"Practically, as far as I understand the provision, it directs that the registration of all contracts which bind a raiyat to pay more rent than he paid the year before should be a special registration. Whether the provision that the registering officer shall ascertain all these things is directory or imperative is not very clear, but it is apparently contemplated that the registration shall be special. But later on it is provided that the Local Government may make rules for the guidance of the registering officer for making registrations under this section; so that it does seem to be some kind of special registration, and therefore documents registered under the ordinary law of registration will not be considered to be registered according to this section, and such registration will be void. The Council will see what difficulties will arise on that point when I explain what the difficulties are which beset it. Having explained to the Council that unless all these conditions are fulfilled a contract is void, I shall now consider what is the practica

effect of them in two classes of cases. The first class of cases is that of a very large number of raiyats in this country who have no written engagements for their rent. The Council is aware that it is provided in the Permanent Settlement Regulations that the zamindar shall give a pattá and the raiyat shall give a kabúliyat, and that engagements shall be in writing, and that the writing shall be in a certain form. The Council is also well aware that it was found absolutely impossible to bring about these results. The penalty prescribed was that the zamindar should be non-suited if he did not produce an engagement in the prescribed form. So far as a form is prescribed, it is repealed by the Regulation of 1812, and so far as there is an authoritative order that engagements shall be in writing, it has remained a dead-letter in almost every part of the country from that day to this. In the Act of 1859 the provision is kept up that either the landlord or the raiyat may claim a written engagement, but it is optional and has very little effect; and there are still large tracts of country in which written engagements, especially amongst the poorer and smaller classes of raiyats, are not as a matter of fact in writing. The reason why this provision has had no effect is that there is a considerable mass of raiyats who have a rooted and traditional hatred of putting their names to any kind of document. Now, even if the Council is prepared to enact that every engagement for rent should be in writing, which no one has suggested, I do not see how we can possibly hope, if raiyats have this feeling, that any legislation we can make will secure engagements being in writing, and I do not see how we can secure that variations of unwritten engagements should be in writing. If an engagement is not in writing, how can any variation of it be expected to be in writing? I think we may take it as certain that people who do without written engagements will continue to do without them, and that we shall not be able by any Act to drive them to have written engagements. Then what is the position in case the Bill stands unamended? The engagement to pay a certain rent is unwritten, and the variation by which a raiyat agrees to pay a larger amount of rent will also be unwritten, and so long as there is peace between the parties the raiyat will go on paying his rent. But it may be that years after the enhancement of rent has been made the landlord or his successors will have to institute suits for arrears of rent, and then the tenants, if well advised, will plead that the enhancement was made after the passing of this Rent Act, and the enhancement is therefore void *ipso facto*, because it was not made in writing. They may say, 'It is true we have paid the enhanced rent for many years, but still the Court cannot enforce it; therefore we demand to be put back to the position in which we were five, six or ten years before the enhancement was made.' I think every one will agree that that is not a desirable state of things; and the remedy is simple, namely, to allow things practically to remain in the position in which they are now with regard to oral engagements. At present there is no particular law on the subject, but, owing to the impossibility of proving an oral agreement to pay enhanced rent, the zamindar has to prove that the raiyat has actually paid the enhanced rent for some years. He will not go into Court for a decree for enhanced rent on the ground of an oral agreement. But what happens is this. When a raiyat has orally agreed to pay an enhancement of rent and has paid it for two or three years, the landlord, when he sues for arrears, proves that the raiyat is now paying a certain amount of rent which he had agreed to pay, and, having paid that rent for some time, it is abundantly clear that he must have agreed to pay at that rate; so the Court gives a decree. The reason why he gets a decree is that there is no law which makes oral agreements void. If you make oral agreements void the result will be that the raiyats will have the defence which I have stated. I do not think it is in accordance with the principles of equity or of natural justice to allow such a defence. The English Statutes which provide that certain engagements shall be in writing, such as the Statute of Frauds, were passed for purposes of public policy; but we find that in those Statutes exceptions are made in favour of contracts partly performed. I think it would be unreasonable to make a provision to this effect without any limitation or exception whatever, so that even 20 or 30 years after an enhancement is made and cheerfully submitted to by the raiyat, he may show that the original engagement was void, and he can then revert to the

position in which he stood before that time. I take it that the principle which was found necessary in England that part-performance should be a substitute for the formalities must be recognised because of the ordinary way in which mankind transact their business, and because of the way in which certain classes of raiyats make their engagements, and that some provision ought to be made in the Bill to provide that part-performance of the contract shall be sufficient as proof of such an agreement having been made. I have not embodied that in my amendment, because I thought it better to propose an amendment in wider terms. But I wish it to be clearly understood that it is not my intention to place the raiyat in a worst position than he is in now in regard to oral agreements. I would be perfectly willing, although it is not contained in my amendment, if the Council think it necessary, in order to meet the real difficulty which I have pointed out, that they should prescribe how much part-performance of an oral agreement should be sufficient. I mean to say that at any rate I would not be disposed to think that an allegation of the payment of one month's rent would be sufficient to satisfy the Court. No Court would be satisfied of the existence of such an agreement unless the raiyat had paid at the enhanced rate for one year at least. It would be a matter for the Council to consider whether the carrying out of an agreement for one or two years should be deemed sufficient instead of a written contract. If persons will go on without written contracts, you cannot force them to have written contracts; then you must provide that there must be such sufficient performance of the unwritten contract as to satisfy the Court that the arrangement has really been made and, what is more, that it has been acted upon. I have always considered that the fact of a raiyat having paid rent at an enhanced rate for one, two or three years without demur is much stronger evidence of such an agreement having been made than a registered document; because documents are often collusively given. I have had cases in which the raiyat has said that he gave a registered document because the landlord had paid him something to do so in order to injure another man, and they have sometimes actually produced witnesses to prove that they had been told that they would not have to pay increased rent under the registered contract; but when we find that a man has actually paid at the enhanced rate for two or three years, we may surely be satisfied of the reality of the transaction. We shall have an unworkable scheme if we keep the section as it is now, and I apprehend that it will have to be amended some way or other.

"Then, having told the Council of this difficulty, I come next to consider what will be the effect of this section on written engagements. First, I will observe that I do not think that we shall be able to induce the people of this country to change their common forms of pattá and kabúliyat. I do not anticipate that we shall be able for many years to come to get the people to deviate in the smallest degree from their common forms. At present I seldom or never see a kabúliyat in which the raiyat has stated 'My rent in the last year was so and so; I have now agreed to pay the further sum of so and so.' There may be a few such agreements of that kind, but I doubt if it is ever done; the tenant will go on giving pattás and kabúliyats in the same way as before, containing no statement except that he agrees to pay a certain rate of rent for certain land. The raiyat will give a fresh kabúliyat stating the amount he has to pay under the new agreement, and stating nothing else. The first effect of such written engagements will be that they will be void unless the kabúliyat contains in itself a statement that the rent is fixed for fifteen years. Pattás and kabúliyats will not as a matter of fact contain that provision, and why should you make it void because it does not contain that statement? I do not object to the term of fifteen years, but you have made it imperative that it should be so stated in the contract, and it will follow that when the enhanced rate is attempted to be enforced the raiyat will say that the kabúliyat which he has given is *ipso facto* void, because it does not state the term of 15 years for which the enhanced rent is not to be altered; it may state no term or it may state a shorter term. Instead of making that an imperative incident in the form of the pattá and kabúliyat, the object will be very easily attained by

merely stating that the legal effect of the agreement shall be that the rent cannot be enhanced again for fifteen years.

"Then I come to a further matter, namely, registration. I feel that there is considerable force in what Mr. Hennessy and others have said that it is very hard to compel registration of contracts for such small amounts, that the registration-fees are very high and the distances at which the registration offices are situated are great. But desirous as I am to protect the raiyat, and admitting that registration does give him some protection against false documents which a gumáshta may have manufactured and to which he may have affixed each man's mark (for in most cases the raiyats cannot write), therefore, although it is in many cases very inconvenient to cause the registration of documents of such small amounts, amounting in some instances to an enhancement of only two annas, on consideration I think it is better to modify rather than abandon this rigorous provision, and the practical working of my proposal would be this, that, although contracts may exist between the parties, no contracts at all will be produced in Court. And with regard to these small raiyats, they will be in the same position as if the engagements with them were unwritten, because, although there may be written engagements, they being unregistered will not be admissible in Court; therefore the Court will simply have to look to the prior rate of rent paid. Although we are breaking the ordinary rule that registration is not necessary in respect to small matters, it may be worth while to do so; but in going this distance I am going a very considerable way. It is because I will not consent, so far as I am concerned, in any way to participate in the formation of any scheme that will not work that I am making these observations now. I am willing that contracts, if in writing, should be registered, but if there are no registered or written engagements part-performance should be considered sufficient.

"I come to a further objection. I pointed out that the section appears to require special registration; that the registering officer has to make special enquiries under sections 74 and 75 of the Bill as to which the Government has to prescribe certain rules; so that if the contract is not registered under this special registration it will be held that that omission renders the written instrument void. As I have said, a pattá or kabúliyat will not shew any enhancement at all. The result will be that these pattás and kabúliyats will be documents some of which will be compulsorily registered under the present Registration Act and some of them under this special registration. Every prudent man will take care, if a contract is of sufficient value to make it worth while, to register it, and if he does not do so he will have to prove part-performance. If it does not state any enhancement, he will register it in the ordinary form. Then if it does create a liability to pay a higher rent, though it be not so stated, will it be void because it is not registered in the special form? If it is not to be void, that should be specially stated in this section. Then the registering officer is directed to hold an enquiry under this section; first, whether any abwábs are included in the document. Considering that abwábs are illegal and the Courts will not enforce them, what is the use of compelling the registrar to see that the kabúliyat does not contain any provision for the payment of abwábs? If we are going to do this with regard to pattás which bind the raiyats to pay more rent, why not make the same provision with regard to every pattá? Why should we not provide that no kabúliyat shall be registered which has a provision for the payment of abwábs? The answer is that if it does contain such a provision the Courts will not enforce it. I am speaking of the difficulties which will increase the cost of registration. The registering officer has also to hold the enquiries stated in section 178. That section contains all the restrictions in contracts which we have thought it necessary to make under the Act, and again I say that whenever a contract is brought into Court and it appears to the Court that any of the provisions of the Act is contravened, or that the contract contains covenants contrary to section 178, such covenant will be declared by the Courts to be void. But we are not content that they shall be declared void by the Courts; we wish to prevent a tenant from signing anything until long enquiries have been made on difficult questions of fact as required by section 178. The registering officer will first have to ascertain the fact whether the raiyat

is an occupancy-raiyat at all; then he will have to go into several other matters, one of which (sub-section (3), clause (a)) is as to whether the contract takes away the right of a raiyat to transfer or bequeath his holding in accordance with local usage; he has to enquire whether there is a local usage, and if that usage is contravened; but that is one of the matters very much in dispute in some parts of the country. Then section 178 provides that nothing in the section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land; so that if the lease appears to have anything to do with waste land he will have to satisfy himself that it is *bonâ fide* for waste land only, and then he will allow a relaxation of some of these conditions. I do not think that all these enquiries are necessary; they are exceedingly well meant, and I entirely sympathize with the objects of His Honour the Lieutenant-Governor, and my very deep respect for his judgment and knowledge renders it painful to me to differ from him. Still when I see these difficulties I feel I shall be neglecting my duty if I avoid pointing them out so that we may make such provision as may be necessary. Considering the great difficulties in regard to registration, you are making it more difficult and more expensive, because the registering officer may keep the parties dancing attendance upon him for weeks together because he is not satisfied as to the existence of certain local customs and other matters with regard to which he is required to satisfy himself. And then, when all these investigations are done, what is the effect? All the registering officer has done goes for nothing; because when documents which are required to be registered are taken into Court the raiyat is at liberty to prove that the document does contravene the provisions of the Act; and if he can prove that he can afford to say 'I told the registering officer a number of lies and so satisfied him, but I can prove by indisputable evidence that as a matter of fact the contract does contravene certain parts of this Act'; and the result will be that all the investigations of the registering officer will be perfectly worthless and the matter will have to be fought out in Court. I therefore think it will be better and sufficient as regards these matters to enact only that written contracts shall be registered, which is a very great protection. I do not mean to say that it is absolute protection, because nothing is an absolute protection. You have for instance cases of false personation of the raiyat, though that is rare. There are no laws under which it is not possible to commit fraud if a man is willing to go in for perjury, conspiracy, forgery and false personation. If such things are resorted to, they are occasionally successful, but what really and in all ordinary cases prevents the commission of such acts is the strong arm of the criminal law and the heavy sentence of transportation for life. I object to all these expensive extra processes of registration. If a pattâ is in the ordinary form and does not disclose the fact that it enhances the rent, are we prepared to declare it to be void or not? If not, that is a fatal objection to the whole scheme of special registration.

"These are the general objections which I have to the section, and I think they may all be met just as well by something else as by the amendment which I have put on the paper. My amendment is no doubt apparently defective in that it does not contain any provision with regard to part-performance, but the practical result will be much the same. If the Government of India is disposed to meet the point with regard to unwritten engagements being admitted on proof of part-performance, that would be sufficient. And with regard to written engagements, by not providing any particular form in which they must be made and making the fifteen years' term a mere statutory provision for enhancement, it will be found to work better, and it will meet my general objections to the section.

"There remain only a few remarks which I have to make upon the particular question contained in clause (a) as to the restriction upon enhancement, namely, that it shall not be more than two annas on the rupee. I have already said so much about it in the general observations I have made when the motion for the consideration of the Bill was before the Council that I do not propose to add very much to what I then said. I pointed out that there are two or three classes of cases in which it will be impossible to impose such a

limit of enhancement in defiance of justice and common sense. There are certain well-known cases in which it is inexpedient at any rate that a limit should be imposed. Where the enhancement is merely on the ground of rise of prices, and where there has been an enhancement within the last 10 years, I do not believe that enhancement of more than two annas in the rupee could be got, and I think two annas may represent what is ordinarily obtained in such cases; but there is a very large class of raiyats who are allowed to sit on land on low rates in consideration of cultivating a particular kind of crop, and the landlord ought to be able to say to them 'If I cease to make you cultivate this particular kind of crop, what would you give for the land?' and we know that in such cases enhancements of 50 and 100 per cent. and more are common. The zamindar, sooner than fight a large body of raiyats and incur the large expenses incidental to legal proceedings, will in many cases take one-half of what he would be entitled to if he took the raiyats into Court; and if an enhancement of 25 per cent. instead of $12\frac{1}{2}$ per cent. were agreed to between the parties, what would be the necessity of compelling the landlord to sue? Under this clause the zamindar must put them into Court. The raiyats will come in and say 'You are our father and mother and take an enhancement of 25 per cent.'; he will say 'I cannot do so under the law, but you may enter a consent decree for 25 per cent. with costs.' There are large numbers of raiyats who have for some reason or other been allowed to sit at low rates and are legally liable to an enhancement of more than $12\frac{1}{2}$ per cent. besides the special classes I have mentioned, and it is unreasonable to prevent their settling with their landlord out of Court. I feel certain that it will be better to strike out the two annas limit and to leave the parties to settle among themselves. The self-interest of the raiyats might be trusted to prevent their giving any more than they think the zamindar will get. But when the raiyat has come to the conclusion that he will lose his suit and the zamindar will get large enhancement, is it wise to prevent him compounding the matter for a comparatively small enhancement? I know it is strongly argued that the raiyats are in need of protection, and I have said what I had to say on that subject on the last occasion. The raiyats, as we have seen, have the power to combine together and fight their landlord, and in many cases they will do so when they see a chance of success. But when they see that their neighbours have failed they will say 'The Courts are very expensive and uncertain, and we will give an agreement sooner than take the risk', and it is their interest to do so; but you say 'You shall not do this; it is better for you to go to Court'. Is the Council quite certain that it is a better judge of what is best for the raiyat—as to whether he should go into Court or not—than the raiyat himself? I think as regards that matter the raiyat is really the best judge. While I would seek to protect the raiyat in every way which is for his benefit, I would decline to put in something which, though it is intended for his protection, will work more mischief than it does good, and will not as a matter of fact prove to his advantage. If the Council will not come to the conclusion to omit the $12\frac{1}{2}$ per cent. limitation upon enhancement, I certainly will ask that some provision may be made for some of those cases in which raiyats hold at specially low rates in consideration of cultivating particular crops."

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ said that, after the eloquent speech of the learned and Hon'ble Mr. Evans in support of the motion, he had very little to say in support of it. The provision for a registration of engagement, which provided for the payment of enhanced rent would be a very great hardship upon the raiyats themselves. Their trouble and expense and the hindrance of their daily avocations would not be the least of these inconveniences. One should have supposed that in a matter like this the Council would be guided in the direction in which the present law had been found by judicial decisions to be effective. But he could challenge hon'ble members present to point to any judicial ruling saying that the absence of the provisions like those contained in sections 28 and 29 had led to hardships. On the contrary, the ruling at present supported the view which had been so eloquently maintained by the hon'ble member. He would read a decision given by Justices White and Maclean in a case in which the zamīn-

dār was allowed to give evidence of a verbal agreement to pay enhanced rent on the part of the raiyat. The following was the opinion:—

"A verbal agreement was proved in the Lower Court to have been made between the defendant and the lady's agent, and this document was put in evidence to meet the defendant's objection about the extent of his holding and the rate of rent. The Lower Appellate Court has treated this document as a lease, or agreement for a lease, and consequently held that he was not at liberty to admit the verbal evidence which was produced in the first Court. I am unable to concur in the view taken by the Judge of the document. In my opinion it amounts to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement are true, and consequently the document requires neither to be stamped nor registered."

The Hon'ble MR. MANDLIK said that the question now brought before the Council by the Hon'ble Mr. Evans was one of two conflicting principles. If ample security was provided to the raiyats by means of registered contracts, a great deal of litigation could be avoided. While he was so far in favour of the amendment, he could not discuss the new provisions properly until they were duly brought before the Council in writing.

The Hon'ble MR. REYNOLDS said that this was one of the most difficult questions with which the Select Committee had to deal, as on the one side there was no object to be gained in driving the parties into Court, and it was very desirable that they should be left to make their own arrangements; and on the other hand there was a mass of evidence to show that if no restrictions were put upon contracts out of Court, there was hardly anything to which a raiyat could not be got to agree. A number of instances had been given in the papers before the Council from which it was clear that the raiyat could not be considered a free agent in making a contract with his landlord, and that if he signed the agreement he did not really know what he was about. For these reasons the Select Committee had decided that no enhancement out of Court should be legal unless agreed to by a registered contract, that the rent must not be enhanced so as to exceed two annas in the rupee, and that the period must be fixed at 15 years. The Hon'ble MR. EVANS considered that such a rule would lead to difficulties both with regard to raiyats who had no written engagements and to those who had such engagements: and that there were certain classes of cases in which the two annas limit would be unreasonable, especially cases in which raiyats held at low rents in consideration of their cultivating particular crops.

With regard to this point MR. REYNOLDS might refer to the report of the Behar Rent Commission. The members of that Committee were practical men, who must have been fully conscious of the objections which might be urged against their proposals: but they were unanimous in recommending that no enhancement out of Court should be allowed except under a registered contract. A similar provision existed in the present law in the North-Western Provinces. Under section 12 of Act XII of 1881, there could be no enhancement except under a registered contract, or by suit in Court, or by order of a Settlement-officer. He thought that when these facts were taken into consideration it could not fairly be said that the provision for requiring registered contracts would present insuperable practical difficulties.

Then, as to the form of the contracts, MR. REYNOLDS was not sure that he had understood the hon'ble member's objections on the subject of registration. It was not contemplated, in MR. REYNOLDS' opinion, that there should be anything which could be called special registration, or that the registering officer should be bound to make any detailed enquiries. It was only intended that the registrar should satisfy himself that the contract was in accordance with certain plain provisions of the Act, and that the raiyat understood the terms of the contract, and entered into it as a free agent. But MR. REYNOLDS would offer no objection to the striking out of sub-sections (2) and (4) of section 29 if it were thought that this would simplify the proceedings.

The hon'ble member went on to refer to the two annas limit, and he remarked that this limit would operate unfairly in certain classes of cases, and

that it would be better to allow 25 per cent. out of Court than to drive the parties into Court. MR. REYNOLDS believed, on the other hand, that there was great danger in legalizing large enhancements out of Court. If the landlord wanted a greater enhancement than two annas in the rupee, he ought to be required to submit his claim to the decision of a Court. If there was a practical difficulty in any case, it would be in regard to the cultivation of particular crops, and in regard to this MR. REYNOLDS thought it would be enough to make special provision for cases of existing contracts under which raiyats might be holding at specially low rates in consideration of their cultivating a particular crop. The provision need not extend beyond existing contracts, because in future it would be in the landlord's power to let the land at the full rate, and to grant a reduction so long as the particular crop was grown.

Then, reference had been made to what were called amicable agreements, where no written contract existed at all; and it was proposed to recognize these as binding if they were supported by proof of part-performance. MR. REYNOLDS thought that such a provision would go far to diminish the value of the section altogether, and would allow enhancements to almost any extent out of Court. He believed that the proposals of the hon'ble member, even with the modification which he understood him to be ready to make, would have a very injurious effect on the section relating to enhancements and on the controlling power which it was intended to exercise in the matter of enhancements out of Court. If hon'ble members doubted whether the section, if passed into law in the form in which it came before the Council at present, would meet all the circumstances of the case, he would ask them to remember that it might be amended hereafter, and he urged that for the present it would be better to allow the section to stand as it was, and to maintain the principle, which had been already enforced in the North-Western Provinces, and which was recommended by the Behar Committee, that the rent of the occupancy-raiyat should not be enhanced except by a registered contract or a suit in Court. If the arguments on both sides were taken into account, he believed that there was far more danger in such an amendment as had been suggested than there was in leaving the section as it stood. He therefore hoped the amendment would not be accepted.

The Hon'ble MR. AMIR ALI said that he was opposed to the amendment proposed, on the grounds which he had already pointed out in his remarks on Monday last. The two-annas limit was a necessary one. The riyat can hardly be supposed in the majority of cases to be in a position to hold his own against the zamindari influence. In many places the demand for land was so great that the raiyats were anxious to agree to any terms; and whether they were able to pay the enhanced rents or not, it was enough for the zamindars to show a high rental on the village-papers. If the two-anna limit would drive the parties into Court, then, he would contend, that the four-anna limit on enhancements in Court should be restored. As regards the objection on the ground of the difficulty of registration, that seemed to him to apply to all cases of registration. Part-payments should not be presumed to be a proof of an agreement; for that would simply leave the matter where it now was.

The Hon'ble MR. GIBBON said:—"I must say I concur in all the arguments which have been brought forward by the Hon'ble Mr. Evans in condemnation of the section as it stands in the Bill, but I go further. I disapprove altogether of the policy of restricting amicable settlement of the rents or of laying down the conditions or terms under which landlords and tenants shall be compelled to come to an amicable settlement amongst themselves. The Hon'ble Mr. Reynolds has quoted the proceedings of the Behar Rent Commission with approval. I was a member of the Behar Commission and concurred in the findings of the commission but on a reference to the proceedings of the Committee it will be found that they never attempted to lay down the terms or conditions under which landlords should come to a settlement with their tenants. They had simply declared that the mutual arrangements to be come to between landlord and tenants should be in writing and registered, and I

maintain that that is the correct solution of the question and the one which should be arrived at by this Hon'ble Council. The framers of this Bill have taken away the present procedure of issuing notices of enhancement through the Court, which is a cheap and easy process for bringing pressure to bear on the tenants to enhance their rents. It is therefore no longer necessary to place such restriction on amicable settlements as is now being provided under the Bill. The whole purport of this portion of the Bill is to force the landlords and tenants into the Court. If parties are to be forced to settle their affairs through the Courts, they should be settled free of expense. This I deem to be an impossibility. Why put parties to the expense of going to the Court when they do not wish to go there? The restrictions imposed by the Bill are useless, obstructive and unnecessary and can and will be evaded by the bad men among the landlords. Take for instance an application under section 158. If a landlord applies to have the rents, terms and conditions of a holding declared, and the tenant elects to declare that he is holding at an enhanced rent, what Court in the world would declare that his proper rent is a lower one? It can also be evaded by an amicable suit. I may be allowed to say that I equally object to the amendments of the Hon'ble Mr. Evans. The true solution of the difficulty is, as proposed by the Behar Commission, that whatever agreement is come to should be in writing and registered, be the conditions what they may."

His Honour THE LIEUTENANT-GOVERNOR said that he was bound to recognise the temperate spirit in which his hon'ble and learned friend Mr. Evans had brought forward proposals on which evidently he felt very strongly. The hon'ble member had placed before them arguments against written contracts and the registration of such contracts and the particular limitation of enhancements out of Court with all the legal force and acumen, with which, as they all knew, he was so well accustomed to plead in Courts, and HIS HONOUR did not at all undervalue the force of his logic. But HIS HONOUR could not agree in all that had fallen from the hon'ble member on these points. He understood the hon'ble member to say that it would be practically impossible to enforce the limitations of enhancement out of Court to two annas in the rupee, and he apparently wished to maintain that parties should be left to make their own arrangements without any such interference on the part of the law.

That kind of argument might be reasonable enough in England, where parties to contracts in such dealings met on something like an equal footing, and might be left to look after their own interests: but he thought it was asking the Council too much to believe that parties here in India were at all in an equal position. All the facts were against that supposition. The Hon'ble Mr. Reynolds had given an accurate statement of the case, and, if there was any necessity to add evidence in support of his contention, HIS HONOUR could adduce a great deal in support of the fact that in matters of this kind the riyat was placed every day at a great disadvantage and was justified in claiming protection from the law. From the evidence taken in the Behar Commission, it was found that the riyat might be regarded in the position of a "minor," that is, of one who could not be left to his own intelligence to enter into a contract. If there was one principle more than another upon which the Council had been agreed from the very commencement of this legislation, it was that a proved necessity existed for imposing a limit upon the zamindar's demand. The riyat was not a free agent, and from documents produced in this Council last year it was shown that he was constantly compelled to sign agreements which would have been incredible if the papers themselves had not been produced. What was true of Behar in this respect was notorious from the cases which had come up from Mymensingh, the 24-Parganas, and in fact from all parts of the country. It must always be borne in mind that in the Bill as it had been drafted the limitations of enhancement out of Court in no way deprived the landlord of his right to get a higher rent if he was justly entitled to it. In enhancements by suit no limitation had been imposed; and if the zamindar had grounds for thinking that he should get more by way of enhancement than two annas in the rupee or 12½ per cent. upon the existing rent, let him take the case to Court, where there would be the assurance that the facts

on both sides would be fully examined and a decision passed after the sifting of all the evidence. Even the hon'ble member (Mr. Evans) admitted that a 12½ per cent. enhancement was a reasonable increase, and his plea was only for exceptional cases. But such hard cases might be otherwise provided for without infringing the principle, upon which section 29 was based, that where there is not the guarantee of fair dealing which the control of the judicial Court afforded some positive check must be put upon excessive enhancements out of Court. His Honour therefore considered some such provision as this was absolutely necessary to regulate enhancements, and that it should form part of the Bill.

The Hon'ble SIR STEUART BAYLEY said:—"It is with great regret that I have even in appearance to oppose the motion of the hon'ble gentleman opposite. In all the multitudinous points that have come before us in Committee it has been my good fortune almost invariably to find that there was a substantial agreement between us; and even on this question I trust it will be found that our divergence is more apparent than real, or at all events that the alterations I am prepared to make will go a long way to reconcile my learned friend to these clauses. The section is, in the opinion of some, one of the most important in the Bill. This view, for the reasons given in my opening speech, I am unable to share, as I think the effect of the section must be more indirect than direct. But if not one of the most important, it is certainly one of the most debateable sections, and one about which I have had extreme difficulty in making up my own mind—a difficulty by no means lessened by the very divergent views we have heard expressed on the subject in debate.

"To turn now to the actual objections taken by the hon'ble member. These I find to be partly to the form and partly to the substance of the section. So far as they refer to the form, I could wish that they had been brought forward at an earlier stage in order that I might have consulted with him at leisure as to the best way of meeting them. He objects to the form, if I understand rightly, because the section involves a special system of registration, and the specification of certain conditions in the deed; and therefore a deed of enhancement which has been registered in the ordinary way, and which fails to specify these conditions, as for instance that it is to be in force for 15 years, is invalid, and it is doubtful even if rent collected under such a deed would not be an illegal exaction. Well! on these points I am quite prepared to alter the section so as to meet his objections. The fact is that the clauses which provide for comparison and examination by the registering officer are a survival of the section of the original Bill which provided for the approval of these contracts by a Revenue-officer. It was the intention under the Bill as it now stands that they should be registered in the ordinary way by ordinary agency, but in view of the objections pointed out by my hon'ble friend to the retention of the special conditions and form of registration, I am glad to adopt the suggestion of Mr. Reynolds that the sub-sections providing for these should be abandoned.

"Next I come to an objection which is one rather of substance than of form, though it partakes of both characters. It is directed against the provision that all enhancements by contract must be in writing. The objection is that as a matter of fact in nine cases out of ten such contracts are not reduced to writing, still less are they registered, and if they are written they rarely refer to the old rent, but generally take the shape of a fresh pattá for a specified term of years. The hon'ble member very justly urges the impossibility of changing the immemorial custom of oral contracts by a stroke of the pen, and points out that the effect of the law will be that a raiyat having orally agreed to pay an enhanced rent, and having given practical effect to the agreement, may at any future time—ten, fifteen or twenty years hence—turn round and, by showing that the rent in 1884 was so much, effectually meet his landlord's claim for arrears, because the latter cannot produce a registered contract enhancing the rent subsequent to 1884, and the raiyat might even possibly sue him successfully for illegal exactions.

"I cannot deny the force of these objections. I had myself supposed that while this section would effectually bar a suit for enhanced rent, if not based on a registered contract, it would not have the effect of overruling the general presumption that existing rents are fair and equitable, and that the Courts in

the case supposed, finding satisfactory evidence of a rent having been paid for a number of years, would presume that rent to be fair and equitable, and would not go back to enquire what the rent was in 1884; but I am informed authoritatively that Mr. Evans' construction of the Bill as it stands is correct, and that the effect would be as he supposes.

"Now the Government and the Select Committee do undoubtedly attach immense importance to getting these contracts reduced to writing and registered. I do not deny the difficulty, but I feel that if this difficulty can be overcome, not only will all rent litigation be reduced in quantity and simplified in quality to an incalculable extent, but the educational effect in enabling the raiyat to understand and maintain his rights will be enormous. For my own part I attach more weight to this educational or indirect effect of the section—a great deal—than I do to its direct effect. For these reasons I fully sympathise with the Government of Bengal in their desire to give special prominence to the principle that all contracts for enhanced rent should be in writing and registered. But in asserting this principle I do not think we should overlook the disturbing and immoral effect of allowing the raiyat to repudiate years hence the oral contract which he has accepted and carried out regularly and continuously. My hon'ble friend Mr. Reynolds has pointed out that in the North-Western Provinces a raiyat's rent can be enhanced by agreement, only if that agreement is written and registered. This is true, but the registration in the North-Western Provinces is carried out by the establishment which is especially organised for recording and registering the rights of every raiyat in the country. The enhanced rent would in any case have to be recorded in the Government registers kept by this establishment of village accountants, and it involves but little more trouble to have the agreement itself registered by the same machinery. In Bengal we are, most unfortunately, destitute of this machinery. We have no patwáris, save in Behar, and there we have only a very demoralised kind of patwári, unchecked and unsupervised by the kánúngo who safeguards the institution in the North-Western Provinces. The conditions therefore are essentially different, and no analogy can be drawn between the facilities which exist for the registration of such contracts in the neighbouring province and the difficulties which must attend it in Bengal; nor do I think this argument justifies us in refusing to provide a remedy for the very serious objections which Mr. Evans has pointed out to the effect of the section as it stands. The remedy should, I think, be sought on the direction indicated by the hon'ble gentleman in his speech, namely, that where an oral contract has been given effect to by the continuous payment of the enhanced rent for a certain number of years, this performance should have the effect of validating the contract, and I would adopt the analogy of the rule in the case of the 'prevailing rate' and fix the term of three continuous years during which the rent has been actually paid as sufficient performance to validate the contract in the place of registration.

"Turning now to the substantive objection which the hon'ble and learned member opposite has taken to the essential point of the section, that the rent shall only be enhanced by contract to the extent of two annas in the rupee above the previous rent, I need not repeat at length what I said in my opening speech. I pointed out then that the limitation was so easily nullified by a false recital, that if the rent was once accepted by the raiyat, the limitation would be no bar to an unscrupulous landlord; and I admitted that in cases where a landlord after succeeding in a test suit might get his raiyats generally to agree to pay the rent decreed in that suit, it would be injurious to all parties to prevent such an agreement being made and to force the landlord to bring each raiyat separately into Court to confess judgment. But, on the other hand, you have heard what vital importance the Government of Bengal attach to the retention of this clause, especially as a safeguard in those parts of the country where the raiyat's rent is already too high and where his position is so weak that he can be induced to agree to any terms his landlord may impose on him; and in the face of the urgent advocacy of the Government of Bengal I cannot recommend that this limitation should be dispensed with. There remain the special cases referred to by Mr. Evans where an unduly low rent is paid in

consideration of a special crop being grown. I think it is essential to except these cases from the general rule, and I am prepared to introduce a clause to this effect. If therefore the hon'ble gentlemen is willing to withdraw his amendment, I will move that section 29 of the Bill shall run as follows:—

'The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

- '(a) the contract must be in writing and registered;
- '(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;
- '(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows:—

- '(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- '(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- '(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

The Hon'ble MR. EVANS said he had heard with much pleasure the views of the hon'ble member in charge of the Bill, and he thought that there was substantially very little difference of opinion between him and the hon'ble member even as to the two-anna limit, ~~more that he should be allowed to move it,~~ while the hon'ble member merely entertained doubts on it. He would therefore withdraw his amendment on the terms proposed by the hon'ble member in charge of the Bill; but on the distinct understanding that he did not abandon his opposition to the limit on enhancement out of Court as useless and pernicious. He would not have withdrawn his amendment so far as it concerned this point had not the Maharájá of Durbhunga been about to move a special amendment for striking out this clause.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that clause (a) of sub-section (1) of section 29 be omitted.

The Hon'ble MR. EVANS remarked that this was the amendment he referred to and he had said all he wished to say on the subject. He should strongly support the amendment.

The Hon'ble BĀBŪ PRĀRI MOHAN MUKERJĪ said I have the honour to support the amendment moved by the Hon'ble the Maharájá of Durbhunga. Both the Rent Commission and the Government of India took the position that Government had the right of determining the rates of rent payable by tenants to their landlords. The Rent Commission observed in paragraph 44 of their report:—

'Government never intended in 1793 to abdicate the function of determining the proportion of produce payable by the raiyat, a function cast upon them by the ancient law of the country,'

and the Government of India stated in their despatch to the Secretary of State, dated the 21st of March, 1882:—

'In his well-known minute of the 3rd February, 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zamíndárs had never been denied or disputed.'

*But Lord Cornwallis never said such a thing. The position taken by the Government of India was not only disputed, but had been conclusively dis-

proved by the landholders. His Honour the Lieutenant-Governor apologetically quoted yesterday extracts from contemporary State literature in support of the alleged right of Government to determine rates of rent, but there was no need of any apology for his quotations. I shall presently show that contemporary State literature left no doubt whatever on the question, but before so doing I wish that it should be borne in mind that there were two parties in connexion with the proposal for a permanent settlement of the land-revenue, one for it and one against it, and that no point could be established by referring to the vacillating opinions of the parties expressed before the settlement was made. The reference, for instance, made by His Honour to the opinions of Warren Hastings was most unfortunate. All know that his conduct towards the landholders in having deprived them of their estates and let them out in farms evoked a severe censure from the Court of Directors, that it formed one of the grounds of his impeachment before the House of Commons, and a Parliamentary Statute, 24 George III, cap. 24, was passed, among other purposes, for the object of undoing the acts of Warren Hastings in this respect, and restoring their estates to the landholders after due enquiry. A correct insight into the nature and effects of the Permanent Settlement can be got only from the Regulations themselves and from the writings of Lord Cornwallis and of Sir John Shore, who, after a most searching and careful inquiry into the rights of landholders and tenants, came to the conclusions recorded in their minutes. The settlement was not an idea suddenly conceived and forthwith put into execution. For years before it was actually made there was an elaborate enquiry into the nature of the status and rights of zamíndárs and of their raiyats, and the conclusion to which the Government came was that 'the regulation of the rents of the raiyats is properly a transaction between the zamíndár and his tenant and not of the Government'—Shore's minute dated 18th September, 1789. In another part of the same minute he said:—

'The Institutes of Akbar show that the relative proportions of the produce settled between the cultivator and the Government; yet in Bengal I can find no instance of Government regulating these proportions.'

'The rent which the zamíndárs received from their raiyats was the parganá or established rent. It was nothing more nor less than the competition-rent. This is proved beyond all doubt by the minute of Lord Cornwallis, which was quoted by the Government of India in their despatch to the Secretary of State. His Lordship said:—

'Whoever cultivates the land, the zamíndár can receive no more than the established rent, which in most cases is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.'

'Again, the Preamble of Regulation II of 1793 showed that Government left 'it to the people themselves to distribute the portion payable by individuals,' and that 'Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.' The hon'ble mover of the Bill observed, on the occasion when the Bill was introduced, that the right of Government to interfere in the matter of determination of the rents payable by raiyats was clearly recognised by the Marquis of Hastings, and the hon'ble member gave to the Council extracts from His Lordship's minutes in support of his view; but, although the Marquis of Hastings was no friend of the zamíndári settlement, the opinion he formed of that settlement after he had been in the country for a number of years varied considerably from the opinion which the hon'ble member communicated to the Council. I shall read to your Lordship an extract from the writings of the Marquis of Hastings contained in Bengal Revenue Selections, Volume III, page 340.

'The whole foundation of our Bengal Revenue Code resting on the recognition of private property in the soil, and the relinquishment by Government of any right in land occupied by individuals beyond that of assessing and collecting the public revenue, it may be assumed that the sadr málguzár, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the absolute property of all land in which no other individual possessed a fixed and permanent interest, and which may have been held

and managed by such málguzá, his representatives or assignees. Lands occupied by contract cultivators, accounting for their rents immediately to the sadr málguzá, were thus to be regarded as the full property of such málguzá, subject to the stipulations of the contract. It was also doubtless intended to recognize the full property of the zamíndárs in unclaimed waste lands lying within the limits of their maháls.

"The question was again discussed in 1827 in connexion with Mr. Harrington's 'Bill for maintaining the rights of khúdkhast, chupperbund and other resident raiyats.' I think it necessary to read the opinion upon it by Mr. Ross, one of the Judges of the then Sadr Court.

'The clause, if enacted as it now stands, would probably be construed by the Courts as intending to confer an istimrári right upon every resident raiyat who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had not varied during that period—a construction which could not fail to be productive of injustice to the zamíndárs, by encouraging their raiyats to claim rights which they had never actually possessed, and which they had never been considered to be entitled to.'

"And, as regards the rights of resident raiyats generally, Mr. Ross made the following valuable observations:—

'That all resident raiyats are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed regulation, is, I think, also questionable: such a right is not claimed, I believe, by mere raiyats, whether resident or non-resident, in the Upper Provinces; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country.'

"The question before the Council was fully discussed, and I hope finally settled, by a Select Committee of the House of Commons in 1832. A large number of gentlemen who occupied eminent positions in the service of the Government of India or who had retired from that service, men like John Kay, Holt Mackenzie, James Mill and a host of others, were examined, the whole field of State literature was ransacked, and the conclusion to which they came was that—

'Unless the Government should, either by public or private purchase, acquire the zamíndári tenure, it would, under the existing Regulations, be deemed a breach of faith, without the consent of the zamíndárs, to interfere directly between the zamíndárs and the raiyats for the purpose of fixing the amount of land-tax demandable from the latter under the settlement of 1792-93.'

"It is for Your Lordship and this Hon'ble Council to determine whether in the face of such authoritative opinions, the distinct disclaimer of the right to interfere contained in the Regulations, and of the conclusions arrived at by the paramount authority in the realm, a limitation to enhancement of rent of the nature contained in the Bill is at all warrantable.

"The question might be considered in another aspect. It appears from Sir John Shore's minute, dated the 8th of December, 1789, that the rates of rent which obtained at the time of the Permanent Settlement ranged from half to three-fifths of the value of the produce of the land. This statement is confirmed by the fifth report of the House of Commons, and I find from copies of settlement papers of 1783, obtained from the Collector's Office of the 24-Parganá, that the rates of rent per bighá of land are variously stated at Rs. 2-10, Rs. 2-13, Rs. 2-14, Rs. 3-3, and so forth. The highest rents which obtain at present in the 24-Parganá barely show an increase of 50 per cent. over the rents which obtained in 1783. Considering that the prices of produce have trebled and quadrupled during this interval, it is clear that the zamíndárs have used with the greatest moderation their powers as to settlement of rent, and that the rates which obtain at present are far below the rates which they are entitled to get. A limitation like the one in question would therefore deprive them of their just dues, although they have hitherto exercised their powers with laudable moderation, and the tenants are very far from being rackrented, the undisputed fact being that the rates of rent vary from one-twentieth to one-third of the value of produce in these provinces.

"The injustice of the limitation is also clear from the fact that the re-settlements annually made by the Bengal Government in their khás maháls and temporarily-settled estates show that the rates of increase are much greater than two annas in the rupee. I find that in 1833-84 the re-settlements show an increase of Rs. 24,210 over Rs. 88,799, or 4½ annas in the rupee; in 1882-83 an increase

of Rs. 81,968 over Rs. 92,021, or 5½ annas in the rupee; in 1880-81 an increase of Rs. 1,31,805 over Rs. 2,81,682, or 7 annas in the rupee; and in 1879-80 an increase of Rs. 64,504 over Rs. 1,72,804, or 6 annas in the rupee. I do not for a moment wish this Hon'ble Council to understand that the increases shown by these re-settlements were anything but fair and equitable: I have every reason to believe, on the contrary, that the enhancements of rent were very moderate.

"Looking at the economic aspect of the question, I wish hon'ble members will bear in mind that there is no pressure of population on land in these provinces. The total area of the different districts, including those of Orissa and excepting Nuddea, Jalpaiguri and Darjeeling, about which full information is not forthcoming, is 128,344 square miles, as shown by the returns submitted by the Board of Revenue; and I find from the Hon'ble Dr. Hunter's statistical accounts that the total cultivated area in these districts is 79,307 square miles, showing a difference of 49,037 square miles or somewhat more than one-fourth of the area of these provinces as still uncultivated. The effect of the limitation would, therefore, be to check the extension of cultivation, and lower, in an abstract sense, rents which are at present very low already. Low rents are neither good for the raiyats nor good for the country. Experience has everywhere shown that they act as a damper on the condition of the tenants and are a great drawback to their prosperity. Our own country has furnished instances of the fact. I shall read to this Hon'ble Council an extract from a paper connected with Dekkhan Raiyats' Relief Bill:—

"There is undeniable evidence in the report before us that the very improvements introduced under our rule, such as fixity of tenures and lowering of assessments, have been the principal causes of the great destitution which the Commissioners have found to exist."

"The history of the proposed limitation is also significant. The draft Bill of the Rent Commission contained no restriction whatever to freedom of contract in this respect and to enhancements out of Court. It found no place also in the Bill drafted by the Hon'ble Mr. Reynolds, the Bill which was submitted by the Bengal Government, and the Bill which was forwarded to Her Majesty's Secretary of State for his sanction. For the first time a limitation of six annas in the rupee was inserted in the Bill which was introduced in Council in March, 1883, and it was reduced to four annas in the rupee by the Select Committee last year. An attempt was made when the question came up in its turn to reduce the limitation to two annas in the rupee, but the motion was rejected by the majority of the Select Committee, the mover finding himself in the minority of one only. At a subsequent meeting the question was all of a sudden taken up, although it was not on the notice-paper, and the limitation was fixed at two annas in the rupee.

"I shall conclude by noticing one or two observations which have fallen from hon'ble members. In expressing his intention of moving that the restriction to enhancement of rent by suit in Court should not exceed four annas in the rupee, the Hon'ble Mr. Amír Alí has virtually condemned the two-annas limit by contract as unjust and inequitable. The remark made by more than one hon'ble member to the effect that the limitation in question would not check the acts of unscrupulous zamíndárs is an additional argument why the honest should not suffer by it. His Honour the Lieutenant-Governor has observed that the case would have been different if the legislature had to deal with a class of tenants better capable of understanding their rights and entering into sentient contracts than the Bengal raiyats; but I hope after Your Lordship has gained some experience of the country, and before Your Lordship leaves our shores, you will carry with you the conviction that in intelligence and in a thorough knowledge of their civil rights and duties, not less of their social and religious duties, the raiyats of Bengal and Behar might compare favourably with their fellows in any other country."

The Hon'ble SIR STEUART BAYLEY said that he would answer very briefly. He would have to recall the attention of the Council to the question which was now before them, and which was really remote from the learned disquisition in which the hon'ble member had just been reviewing a number of various

subjects, beginning with the iniquity of Warren Hastings and ending with the religious duties of the Behar raiyats. The question before them was whether the clause limiting enhancement out of Court to two annas in the rupee should stand. In its practical aspect the question had already been debated on Mr. Evans' motion, and he had nothing more to say on this score. The Permanent Settlement had really nothing whatever to say to it, and he thought he might say that the Council had sufficiently satisfied itself before the second reading of the Bill that the authors of the Permanent Settlement were themselves convinced of the right of the State to interfere to limit the raiyat's rent; that in limiting that rent to the parganá rate they did so interfere; that they expressly reserved their right to interfere further if necessary, and whether they had done so or not no settlement could possibly so bind a subsequent Government as to take away from it the inherent right to fulfil its primary duty of giving protection to the main body of its subjects. He would only further say that he must oppose the motion.

The Hon'ble MR. REYNOLDS remarked that he had no wish to detain the Council, but could only say again that the clause was one which the Government of Bengal had decided to adopt, and to which they attached great importance, and it was one of the few safeguards left in the Bill against undue enhancements. He did not think the Council should agree to strike out the clause.

The amendment being put, the Council divided:—

Ayes.

The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble G. H. P. Evans.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble T. M. Gibbon.

Noes.

The Hon'ble J. W. Quinton.
The Hon'ble H. St. A. Goodrich.
The Hon'ble H. J. Reynolds.
The Hon'ble W. W. Hunter.
The Hon'ble T. C. Hope.
The Hon'ble Sir S. C. Bayley.
The Hon'ble C. P. Ilbert.
Lieutenant-General the Hon'ble T. F. Wilson.
The Hon'ble J. Gibbs.
His Excellency the Commander-in-Chief.
His Honour the Lieutenant-Governor.

So the amendment was negatived.

The Council adjourned to Friday, the 6th March, 1885.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 28th April, 1885.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Friday, the 6th March, 1885.

PRESENT:

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

PETROLEUM BILL, 1885.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Petroleum Act, 1881. He said:—

"I must state that when the Act of 1881 was under consideration a Committee, on which were representatives of the Chamber of Commerce and the Trades Association, carefully considered the schedule which it was proposed to attach to the Act, and which had been taken from the English Act of 1871, and they reported in favour of it and Government adopted it. It must be remembered that the Act provided that petroleum must stand the test of 73° to enable the Government to admit it into the country, and the method of testing the oil is laid down with great minuteness in the schedule. In spite, however, of all this care, shortly after the Act came into force, cargoes arrived here and in Bombay which had left America after it was known that 73° was the admission standard, which when sampled and tested on arrival flashed below the authorized standard, and in consequence came within the definition of dangerous petroleum and was refused import.

"This led to a very long correspondence between the shippers, the Governments of Bengal and India and the Secretary of State; and Mr. Redwood came out from England to test the oil on behalf of the shippers; after some months, on further testing, it gave the required results and the oil was allowed to import, but not until after the shippers had been put to very great expense. Very many and intricate experiments were carried out by Messrs. Warden and Podler here, Dr. Lyon in Bombay, Sir F. Abel and Mr. Redwood at home, with the hopes of finding out a method which would ensure correct testing; and we

have now received a new schedule prepared by Sir F. Abel, of the War Department, who is the highest authority on the point, and it is to insert this in the place of the former schedule which is one of the objects of the present Bill.

"The Government is greatly indebted to the gentlemen to whom I have just alluded for the great care and attention they have given to the subject. Dr. Lyon took privilege leave and went home, and worked with Sir F. Abel and Mr. Redwood; and the experiments carried out there, here and in Bombay have been almost beyond number. The matter was of the greatest importance, as the trade is one of great magnitude and the nature of the oil requires that only such as is ordinarily safe should be admitted into the country.

"In asking today for leave to introduce the measure I do so in order that the Bill may be before the public for sufficient time to enable the Trade to consider its provisions, especially the schedule, carefully, while there are some further details regarding which, though not of a nature to affect the commercial world, will require further consideration from Sir F. Abel and the experts; it is also advisable to have standard instruments at Calcutta, Bombay, and perhaps Rangoon, tested and approved, and registered before the Bill becomes law. Under these circumstances the measure will be introduced and allowed to lay over until the Council meets again in Calcutta next cold season.

"From the Statement of Objects and Reasons it will be found that the principal points for amendment are—

"(1) The alteration of the standard. 'Dangerous petroleum' is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3° and no one sample has a flashing point below 70°.

"(2) The nature of the vessels to hold dangerous petroleum. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in 'glass', among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels, and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of 'dangerous petroleum', bursting, even if 'securely stopped', when exposed to powerful sunlight for a brief period, the prudence of including glass vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word 'glass'.

"(3) The landing of petroleum at special places, and fees. The Government of India is of opinion that the restrictions at present placed on the importation of non-dangerous petroleum may be somewhat relaxed, and, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored.

"(4) The new schedule and instruments to be verified. It is proposed to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted. It seems desirable, for the convenience of the public, to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall be constructed. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus.

"The new schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay; and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. It is believed that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained."

The Motion was put and agreed to.

BENGAL TENANCY BILL.

The debate on this Bill was resumed this day.

The Hon'ble MR. AMIR ALI said:—"Whatever I had to say on the subject of fixing a gross produce limit upon enhancements of rents I have already stated in the general observations I offered the other day on the Bill, and I do not therefore propose to take up the time of the Council by referring to those points again. But in view of the opinion entertained by the majority of the hon'ble members, as far as I have been able to gather them, I think it would be useless to bring forward the next amendment which stands against my name. I therefore desire leave to withdraw it. The amendment which I intended to have moved is to insert the following words in line 4 of clause (a) of sub-section (1) of section 24:—

"or so as to entitle the landlord to recover in the aggregate more than one fifth of the average value of the gross produce of the land in staple food-crops calculated at the price at which raiyats sell at harvest-time."

Leave was granted.

The Hon'ble THE MAHARAJA OF DURBHUNGA moved that clause (b) of sub-section (1) of section 29 be omitted.

The Hon'ble BABU PRABU MOHAN MUKERJI said:—"I have already submitted to the Council with reference to section 9 the arguments bearing on this question, and do not wish to address the Council on the present occasion. I need hardly say that I support the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"The reason why we cannot accept this proposal is obvious, that it will leave the raiyat liable to annual or quarterly enhancements by suit. It could scarcely be expected that the amendment could be accepted."

The amendment was put and negatived.

The Hon'ble BABU PRABU MOHAN MUKERJI moved that in clause (b) of sub-section (1) of section 29, for the word "fifteen" the word "ten" be substituted. He said:—"I have already submitted to this Council the arguments in support of my proposition that an enhancement of rent should obtain currency for 10 years and not 15. The rapid strides which the country is making in material progress make it desirable that the shorter minimum period should be adopted. If there is an actual rise in prices within 10 years, there is no reason why the landlord should not get enhanced rent on account of such rise of prices, and it would be a sufficient check against any oppressive suits if the landlord is restricted from bringing a suit after the rent has been once enhanced before the expiration of 10 years from the first enhancement."

The Hon'ble MR. QUINTON said:—"I oppose this amendment because it applies only to enhancement by contract and not to enhancement by suit. It

appears to me that whatever term is fixed in the one case ought to be fixed in the other. As many enhancements will be by suit, I think it will be hard on the raiyat to fix a less period in such cases."

The Hon'ble MR. GIBBON said:—"As I am of opinion that all the terms and conditions of a voluntary contract should be left to the parties concerned, and that they should not be driven to Court, I am strongly of opinion that no term should be inserted in the Bill. Being of that opinion, I would prefer that all contracts, if there is to be a limit, should be for a shorter period even than 10 years. But as no such proposition is before the Council, I shall vote for the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"The question between 10 and 15 years in regard to contracts is of course a question of degree. Having once settled that the rents of enhanced contracts are to run for a fixed period, it is a question of the balance of advantage. I do hope my hon'ble friend will consent to the necessity of fixing the same term for enhancements by contracts as for enhancement by suit."

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ said:—"My amendment upon section 9 was lost simply on the argument that the same rule should obtain in the case of a tenure-holder as in the case of a raiyat; and as the Bill contains a provision to the effect that 15 years should be the minimum period in regard to the enhancement of rents of raiyats, the same period should be maintained as regards tenure-holders. Hon'ble members do not meet any of the other arguments advanced by me. With reference to the present amendment, the only argument urged by the hon'ble member in charge of the Bill is that the period must be the same as the period fixed for tenure-holders. None of the other arguments adduced by me have been met by any hon'ble member either on the present or the previous occasion. I submit this is simply arguing in a circle. Of course, the amendment rests on the vote of the Council, but I think it is a very striking fact that the previous amendment was lost because there is this provision in reference to raiyats, and this motion is objected to because there is a previous provision with reference to tenure-holders."

The Hon'ble SIR STEUART BAYLEY asked permission to explain. He said:—"The hon'ble member has quite misunderstood what I intended to say. I said that the section as to enhancement by contract ought to be the same as that for enhancement by suit. The real vote would then be taken on the section relating to enhancements by suit. I did not in the smallest degree intimate that the provisions of this section would depend on the provision relating to enhancements of the rents of tenure-holders."

The amendment was put and negatived.

His Excellency THE PRESIDENT said:—"We have now reached that stage in the Bill when it will be convenient for the hon'ble member in charge to introduce the modification we have agreed to as to the result of the discussion which took place yesterday."

The Hon'ble SIR STEUART BAYLEY said:—"I will now move the amendment which was agreed on the motion of the Hon'ble Mr. Evans in reference to section 29. I accordingly move that for section 29 the following be substituted:—

"29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

"(a) the contract must be in writing and registered;

"(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

"(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

Provided as follows:—

"(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

"(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

"(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I should wish, if it can be done, to consider this new section at the next meeting of the Council, or after the Council adjourns in the course of the day. I may perhaps have to propose a short amendment on one of the clauses of the proposed section."

The consideration of the proposed new section was postponed till after the adjournment for luncheon.

The Hon'ble MR. REYNOLDS moved that in section 30, for clause (a) the following clause be substituted:—

"(a) that the rate of rent paid by the raiyat is substantially below the prevailing rate, that is to say, substantially below the rate generally paid for not less than three years by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no reason for his holding at so low a rate."

He said:—"It is not the object of the amendment to re-open the question of the abolition of the prevailing rate as a ground of enhancement. That question has been decided by the Select Committee, who have justly remarked in their report that this is the only means by which a landlord can remedy the effects of fraud or favoritism on the part of his agent or predecessor. I submitted to the Committee an amended form of the section, which would, in my opinion, have provided a sufficient remedy, while guarding against that misuse of this ground of enhancement, of which such strong and concurrent testimony has reached us from various parts of the country. My proposal, however, was not favourably received, and I do not now desire to revive the discussion on the question of abolishing this ground of enhancement altogether. If I refer at all to the general question, it is only because I imagine that the Council will expect me to offer some explanation in reference to what fell from the Hon'ble Mr. Evans in connection with the Malinagor enhancement cases. I understood the hon'ble member to contend that the Bengal Government could not consistently advocate the abolition of this ground of enhancement while at the same time it was pressing the Courts to enhance the rents of its own tenants on this very ground. Now, I think it right to state that these cases were instituted in 1876, at a time when attention had not been called, as it has been called of late years, to this matter of the enhancement of rents. I don't think the head of the Government can fairly be taxed with inconsistency for advocating in 1885 the repeal of a law which one of his subordinates put in force in 1876. This ground of enhancement was the law then; it is the law now; and while it continues to be the law the Government is as much entitled to have recourse to it as any private zamindar. Moreover, when the facts are looked at, I think this case affords a strong support to the position which the Government of Bengal has taken up regarding this question. What the Government has said is, that it is wrong in principle to enhance one raiyat's rent on the ground, not that it is too low in itself, but that other raiyats have agreed to pay more; that such enhancements are often productive of hardship; that no real prevailing rate can be found; and that, therefore, in 19 cases out of 20, landlords are tempted to fabricate a rate for the purposes of the suit. Now, here is a case in which a number of raiyats were paying not merely lower rents than their neighbours but rents altogether inadequate; the strict application of the law would have warranted an enhancement of (in some cases) 200 per cent.; but

just because the Government applied the law fairly, and did not attempt to manufacture a rate, the litigation has gone on for nine years, and matters are very much where they were when it began. I don't think there could be a stronger instance of the hopelessness of fairly applying this rule of enhancement. If the Government had established its claim it would have been a great hardship to the raiyats to have had their rents enhanced by so large an amount, but the Government has so far failed to make out its case because it has failed to show what the prevailing rate is. A plaintiff will almost always fail to show this unless he takes measures beforehand to establish, or, in other words, to manufacture, a rate, and accordingly that is the general means of proceeding in these cases. To use the forcible language of an acute and experienced Judge—'The prevailing rate is as a rule manufactured by the aid of raiyats bought over to submit to enhancement, and the new rate thus introduced is made to spread over the country by the agency of the Courts.' The landlord who attempts to work this ground of enhancement fairly will find himself involved in litigation as tedious and as unprofitable as these Malinagor suits have proved to the Government of Bengal.

"This, however, is somewhat foreign to the subject of my amendment, which merely aims at introducing a slight alteration in the wording of the Bill. The Select Committee have changed the language of the present law, and in some respects they have changed it very much for the better. But they have introduced a novel and most dangerous principle—the principle of ascertaining the prevailing rate by taking an average of existing rates. This, I think, is the interpretation which any Court would naturally put upon the words which direct the Court to have regard to the rates generally paid during a period of not less than three years. This is entirely opposed to the present law, as will be seen by a reference to the reported case of *Sumeera Khatoon*, I. W. R., p. 58, 31st August, 1864. In that case the Hon'ble Judges remanded the suit for a fresh trial and desired the lower Court to 'bear in mind that its adoption of the average rate from the different rates given by the several witnesses was an incorrect and unsafe mode of fixing the proper rate, and that the onus of proving what the proper rates are was on the plaintiff and not on the defendant.' If section 31 (a) of the Bill means anything, it means that the Court is to do what the High Court said was an incorrect and unsafe method to adopt.

"This doctrine of an average rate is not only illegal, but it is fraught with most mischievous consequences. I need hardly remind the Council that suits on the ground of the prevailing rate are entirely one-sided; they are always cases of levelling up, never of levelling down. The landlord may sue to enhance on the ground that a tenant's rent is below the prevailing rate, but the tenant cannot claim a reduction on the ground that he is paying more than the prevailing rate. If the principle of an average rate is once introduced, the inevitable result must be that all rents will be levelled up to the maximum. Suppose that there are three rates, at one rupee, two rupees and three rupees per bigha. Under the present law the Court would perhaps decide that no rate was sufficiently established and general to be entitled to be called the prevailing rate. But under the wording of the Bill the Court would look at the rates generally paid; and it would almost certainly come to the conclusion that two rupees was the prevailing rate. This would be all very well if the rents of all the raiyats were thenceforth to be fixed at this rate. But the only result of the decision would be to knock out the one rupee rates. The two rupees and three rupees rates would remain. In the next suit, the Court would probably decide that the prevailing rate was two rupees eight annas, and thus each successive case would be a ground for a higher and a higher claim in the next. It may be said that, as a raiyat who has once been enhanced will be protected for fifteen years, the process will at any rate be a slow one. But this really affords no security. The landlord will institute one or two cases to get rid of the lowest rates. He cannot again enhance those particular raiyats, but he can enhance all those whom he has not sued. He will sue different raiyats in successive years, and within the statutory period of fifteen years he will be able to bring all the rents in the village up to the highest level paid by any one.

"My amendment proposes to meet this by declaring that the Court shall look not to the rates but to the rate generally paid. This is entirely in

accordance not only with the law as laid down by the High Court in the case I have already quoted but with the wording of the old Regulations. Section 6 of Regulation V of 1812 declares that 'pattas shall be granted, and collections made, according to the rate payable for land of a similar description in the places adjacent.' The onus would lie on the plaintiff first to show the existence of a prevailing rate in the village, and secondly, to prove that the defendant was paying at a lower rate than this. I do not say that this would remove all the objections to the retention of this ground of enhancement in the law, but it would give the landlords all that the old law was intended to give them, and it would prevent that flagrant abuse of the law which seems likely to result from the present wording of the Bill."

The Hon'ble MR. QUINTON said that he would reply very briefly as to the reason for the vote he was about to give. He had been from the first opposed to the prevailing rate being a ground of enhancement, and if he thought the amendment of his hon'ble friend was merely confined to the removal of an inconvenience which would attend the working of the provisions for enhancing rent he would give him his hearty support. But the question was very fully considered by the Select Committee, and from what his hon'ble friend had said in his argument about the village rate, he (MR. QUINTON) had come to the conclusion that the amendment in its present form would almost entirely change the ground of enhancement as set forth in the Bill. He was opposed to the prevailing rate as a ground for enhancement, but he was still more opposed to putting in the Bill any provision which would in reality render it more objectionable as a ground of enhancement. On these grounds he must vote against the amendment. He would not give any reasons for his vote, because he thought it was not desirable that the speeches of hon'ble members should cover the same ground as that which had already been taken by the hon'ble member in charge of the Bill.

The Hon'ble MR. EVANS said:—"With regard to the first point I think the hon'ble member has misunderstood the position as to the particular case I referred to and the effect of the observations I made on the last occasion. The suits brought against the raiyats in 1876 were for enhancement on all the grounds of enhancement, and they were finally thrown out in 1878 on the ground that the notices served by the Government were ambiguous and did not show properly the grounds on which enhancement was sought to be made. Then Government instituted fresh suits in 1881, I think, and what was remarkable was that the Government then abandoned the grounds of enhancement on which they had sued in the first instance, and rested their case entirely and solely on the ground of the prevailing rate; and the observations I made were intended to show that if it had not been possible to work the prevailing rate without creating fictitious rates of rent, it was strange that the Government officers should have been of opinion that the prevailing rate should be selected as the best of all the grounds which were taken before; and I also remarked that inasmuch as the cases were now being prosecuted in appeal by the present Government, I could not believe it was the opinion of the law officers of Government that none of these suits would succeed without the manufacture of fictitious rates. Therefore I thought that the persons who were acting on behalf of the Government in these cases must entertain a different view in regard to that matter. And with regard to these cases having been an inheritance from the former Government, that could be no defence, because the officers of Government were now contending in appeal before the High Court that they had made out their case, and were entitled to have these heavy enhancements decreed on the sole ground of the prevailing rate. I merely explain this to show that my observations have been misunderstood. Then we come to the statement of one of the Judges, who stated that it was customary to manufacture fictitious rates. That means that some people have resorted to the practice of taking kabūliyat containing nominal rates of rent which were not intended to be enforced, and that they suborned raiyats to make documents by way of proof of a rate which was non-existent. This matter of manufacturing rates, of giving illusory evidence of this kind, was what led the Council

to make it a direction that the Court should have regard to the rates paid for the last three years. As to manufacture of false evidence, there is no class of cases in India in which false evidence is not constantly manufactured. The moment any law is passed, there are many persons who at once proceed to see how evidence can be manufactured to meet the requirements of the law. If this manufacture of false evidence were a good ground for repealing this part of the present rent law, it would be an equally good reason for repealing one-half of the laws we have made. With regard to the other matter of average rates, as long as we preserve the words of the present law 'the prevailing rate,' and not the average rate, the rulings of the High Court which prohibit the striking of an average, except to a very small extent in very special cases, would equally apply to the present section as settled by the Select Committee; and that there is nothing unfair in giving a direction that the Court should look to the prevailing rates will be apparent from the case in 5 W. R., page 70, in which the Court expressly said that the Judge must look to the rates prevailing at places adjacent. I do not think we have in reality in any way changed the law or the rulings on the subject of average. Say, there are two rates, one of Rs. 5 and one of Rs. 2; merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think the class of judgments I have more than once referred to, in which the Judge says 'This man is found to be holding at Re. 1; the claim is to have his rent enhanced up to Rs. 2 on the ground of the prevailing rate, and there is a great deal of contradictory evidence as to what the prevailing rate is; I doubt the evidence which makes it out to be Rs. 2, but I find that except in isolated cases land of this description is never held under Re. 1-8; therefore, I shall be safe in finding that the 'prevailing rate' is not less than Re. 1-8',—that is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so. Because it seems, according to Colebrook, that he, having found in 1811 that the parganá rates were in many cases undiscoverable, thought it would be wise to provide some rules with regard to such cases, and the rule having been made in the Regulations of 1812, gave rise to the provisions as to 'prevailing rate' in the Act of 1859. Under the expression 'the prevailing rate for similar lands held by similar classes of raiyats in places adjacent' the Courts have been able to give a certain amount of relief; and this ground of enhancement has, I think, on the whole been found the most workable of the grounds provided in Act X of 1859.

"Then with regard to the actual amendment which has been brought forward by my hon'ble friend, I will point out that the great objection is this, that it incorporates into the definition directions which the Select Committee propose to give to the Judges. Every lawyer knows that if into a definition of the ground on which enhancement is to take place you incorporate a number of things which the Court may have regard to, you make those things so positively a part of the definition, that in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground. I fear it will be exceedingly difficult for a Court to conduct an investigation in this way without an enormous amount of expense and laborious investigation, and that there will hardly be a case which will not be capable of being upset by a special appeal to the High Court. It is not because I wish to change or widen the law that I think the draft, as it has been settled by the Select Committee, should remain. I should be sorry again to do what has been inadvertently done in Act X of 1859, that is, to offer to landholders grounds of enhancement which are unworkable; and if that is done again after the strongly expressed determination of the Government and of the Select Committee to make the grounds really workable, I think we shall be incurring a very grave responsibility, and that we shall find it very difficult to justify ourselves. We have in fact cut down the area from which we are to draw the comparison; we have cut it down to the village, and complaints are heard that we have cut it down too much, because as the law stands you may enhance rent of a whole village by showing that the neighbouring zamindár has succeeded in getting his villages to pay higher rents. Adjacent land, it has been held, need not be conterminous. Although the provision as it stands in the Bill somewhat restricts the power which the zamindár at pre-

sent possesses, we thought it well, on the whole, to cut it down, because it has been found that raiyats have now great difficulty in meeting suits for enhancement of rent on the ground of the prevailing rate, because the area for comparison is wide and vague, while zamindárs find it difficult to know how much proof to give as the area is undetermined. But having cut down the area of comparison to the village itself, one does not like to insert words likely to increase the risk of its being unworkable. And that will be the effect of the proposed amendment. I am therefore obliged to oppose it."

The Hon'ble MR. HUNTER said:—"My Lord, I should like to say a few words on this subject, as I start from an opposite point of view from that which has been taken by the hon'ble mover of the amendment. I think the prevailing rate is in itself a good ground of enhancement. It is a ground which has always existed; and it has been continuously enforced in the management of estates since we entered the country. It is a ground which has been recognised by our early Regulations; and it was formally embodied in the law of 1859. It has been frequently urged upon the Select Committee to expunge that ground or to modify it in some way, so as to render it ineffectual. The Select Committee have taken precisely the opposite course. They have endeavoured to give reality to the old law in this as in other matters, and to render the prevailing rate an effective ground of enhancement where it can be equitably urged. I believe that the amendment now brought forward would have the effect of nullifying this ground of enhancement by rendering it very difficult to enforce it in the Courts. It would lead to the very abuses and fabrication of evidence which the hon'ble member who moved the amendment has so frequently and so eloquently deplored. I therefore think that if the prevailing rate is to remain at all, the Select Committee have done wisely in giving reality to it."

His Honour THE LIEUTENANT-GOVERNOR said:—"I concur with my hon'ble friend the mover of the amendment. I think the amendment gives better security against fabrication and provides better safeguards against abuses than those which will prevail under the section as it stands. In putting forward this amendment we recognise the retention of the prevailing rate as one of the main grounds of enhancement, though I believe that whatever wording may be adopted, in the application of it you will find that it is practically unworkable, from the fact that it is totally impossible to prove in any part of the country the existence of a prevailing rate. It is defended on the ground of its antiquity; but if that is its main ground of defence, then there are a great many other things which we might have to fall back upon. One of these was that in the early days zamindárs who did not pay the land-tax were immediately punished in person and kept in prison. The growth of information and experience has shown the way in which the prevailing rate is worked. The difficulty of establishing the existence of a prevailing rate has led to irregular and improper means to fabricate it. The resort to such measures is demoralizing to those who use it and unjust to the unfortunate raiyats. Wherever we have had local enquiries and anything like detailed investigation, the fact has come out that there is no such thing as a prevailing rate, and that the rates of rent in every village were innumerable. This was the result of the personal enquiries held by Mr. Finucane, Mr. Tobin and Bábu Parbati Churn Rai upon this particular point in different districts; and I believe that if detailed enquiries were made elsewhere, you would find exactly the same results. I am glad to hear from my hon'ble friend Mr. Evans that he thinks the form of safeguard adopted by the Select Committee in the Bill will secure that the Courts do not take the average of numerous rates in the decision of suits under the section. It is only to make this point stand out clearer that the wording of the amendment which I would support has been suggested. The Courts have always held that the provision of the law as it stands should not be worked in the way of taking the average of many rates. The section by the amendment only gives emphatic support to this rule. With regard to the personal matter which has been brought against me with reference to the rent suits at Malinagor, I wish to say that, so far as regards the time when those suits were instituted

in 1876 or 1878, the argument *ad hominem* which the hon'ble and learned member (Mr. Evans) directs against me, can have no application to me, because in those years I was employed in another and distant field of service, and had nothing to do with Bengal; but it is obvious that even if I had then been Lieutenant-Governor of these provinces, I could not possibly have interfered in the matter. The prevailing rate is a ground of enhancement in the existing law, and it was perfectly open to our Collectors and law officers to adopt it for enhancement in particular cases. But beyond that I would justify myself on the ground that a Lieutenant-Governor is not in a position to know what cases are going on in litigation between Government and others, and there may be hundreds of cases going on in different districts at the present moment in which the prevailing rate is being urged as a ground of enhancement. As my hon'ble friend, the mover of the amendment, has observed in the present state of the law, the Government has as much right as anybody else to appeal to the grounds which the law allows, though it may not be wise in doing so. It may be observed that even in the Malinagor suits it has not yet been proved that there is such a thing as a prevailing rate. The decision of the Judge was a very summary decision, and I understand that an appeal to the High Court has led to a call for the papers to ascertain whether there is such proof of a prevailing rate as to justify the finding of the District Judge. Therefore this particular case gives no support to the theory of a prevailing rate. As the principle of a prevailing rate however is to be retained in the Bill, the aim of the amendment is by providing an additional safeguard against its wrong use to prevent the recourse to an average rate, which the law never intended."

The Hon'ble SIR STEUART BAYLEY said:—"I think I should be grateful to the Government of Bengal that they have not opposed the ground of the prevailing rate altogether; they have however discredited it, by saying that it does not exist, and that there is no justification for it. I will not follow my hon'ble friend Mr. Reynolds in the exhaustive disquisition which he has given as to the reasons there were for supposing that the prevailing rate can never be found, but I will confine myself to the particular points which are before me. But I must first say one word with regard to the decision to which the Select Committee came not to abolish the ground of the prevailing rate generally. The main reason, as I explained before, was that in one shape or another it has been allowed as a ground of enhancement since the time of the Permanent Settlement; the parganá rate of which had been transmuted into the prevailing rate, and had in that shape been in the Statute-book since 1812. In that case I may fairly say it will be hard to remove the prevailing rate altogether, even if there were no other reasons for retaining it, and those who oppose it will have to show very strong reasons for doing so. But there is really a very sufficient reason why it should be retained, namely, that there are no other means by which the zamindár can recover a just rate of rent from those raiyats who by reason of relationship to the *amlé*, or of caste, or by bribery, have been allowed to enter and hold at very insufficient rates. My own experience as to the management of wards' estates has convinced me that where gumáshtas have not been very closely looked after, they are in the habit of letting in their relations and friends at very low rates of rent, and the zamindár has no means of remedying the results of the fraud or friendship either of a predecessor of his own or of his predecessor's agent or gumáshta; and it was for that reason that I voted with the majority of the Select Committee for the retention of the prevailing rate. I could not accept the suggestion to which my hon'ble friend Mr. Reynolds refers as having been made by him to the Committee because it threw on the zamindár the impossible task of proving that fraud or favoritism attended the original letting to the raiyat, and the remedy would have been quite useless.

"I now come to the alteration proposed in the amendment, which at first sight seems a very little one. At first sight it merely uses the singular where we use the plural, but it also inserts as part of the definition what the Bill as it stands puts in as a guiding direction to the Court; and that makes all the difference in the world. In the one case the Court is bound by a hard-and-fast

rule which, if the case fails to tally exactly with the definition of the prevailing rate, causes it to fall to the ground; in the other the directions are for the guidance of the Courts as to the steps they should take to ascertain the existence and reality of the ground taken for enhancement. That is my real objection to the amendment. The proposed amendment will not have the effect which anybody on first reading it will suppose it is intended to have. It is apparently intended to allow enhancement on the ground of the raiyat's rent being below what is the prevailing rate as it is now understood by the Courts. My hon'ble friend Mr. Evans has told us that the Courts are very rightly not allowed to make an average. But the amendment goes further than this. It comes to this, that if there is more than one rate, if everybody is not holding at the same rate, then the ground of a prevailing rate could in no case be at all maintained. If a zamindár wants to enhance the rent of a raiyat who holds at Re. 1-8 per bighá, and shows that out of 24 other raiyats 14 pay at Rs. 4 and 10 at Rs. 3-8, the Court must, as I understand the amendment, reject the suit, because, as in such a case there is no one single and universally prevailing rate, no enhancement can be made. If that is the meaning of the amendment, it will not do what it purports to do; it proposes to give a ground of enhancement, and then takes it away; it is practically aimed at the abolition by a side wind of that ground of enhancement as now understood and worked by the Courts. For these reasons I prefer the section as it stands, and which, we are informed, is in accordance with the present law and the interpretation put upon it by the Courts, and we are told that, if the section remains as it is, the Courts will not work it upon the principle of an average.

"I ought also to mention to the Council that I received a paper this morning too late for circulation; it is a communication protesting against our limitation of the vicinity to 'the village'; at present it is the rate prevailing in places adjacent, and now we have, as my hon'ble friend Mr. Evans has explained, restricted it to the word 'village'. The paper is from Messrs. Thomson and Mylne, landholders of Shahabad, gentlemen who, as everybody who knows the facts will acknowledge, through a long career and by their excellent example as agriculturists in Behar have earned the highest possible reputation both as progressive agriculturists and also as good landlords. These gentlemen object to our restricting the right of enhancement on the ground of the prevailing rate to the village, because they say it prevents a landholder who has allowed the rate to remain low in his own village from taking advantage of the more severe and stringent action of his neighbour in the neighbouring village. The answer to that has already been given by my hon'ble friend Mr. Evans, namely, that the point was carefully considered by the Committee. The grounds which led to the change which has been made are two—first, that a very wide interpretation was given by the Courts in recent cases to the words 'places adjacent', and in one case it has been interpreted to cover not the adjacent villages nor even the whole parganá, but the neighbouring parganás, which might be 30 or 40 miles off. It is perfectly clear that when you compare a raiyat's rent with rents paid in places at some distance you do him an injustice, because as long as you confine it to his own village he can prove what the rates are. But if you go outside his own village, the raiyat is quite unable to show what the rate there really is, and is at the mercy of the evidence brought by the other side. And from that point of view—and it was to a great extent accepted by the representatives of the zamindárs—we came to the conclusion that it is on the whole fair to restrict the comparison of rates to the particular village. I make these observations, although no one has objected to the alteration which has been made by the Committee, because it is the only opportunity which I have had to refer to the objections which have been made by my highly-respected friends Messrs. Mylne and Thompson."

The Hon'ble MR. REYNOLDS said in reply:—"I purposely avoided referring to the general question. I did not attempt to argue in favour of the abolition of this ground of enhancement altogether. The charge brought against the amendment is that it would practically be depriving the landlord of this means of enhancement. If the general question is raised, I quite admit with the hon'ble member that this is the only means by which a landholder can

remedy acts of fraud or favouritism of his agent or of his predecessor; but if that is the ground on which the hon'ble member defends his position, why does not he confine the operation of the section to cases of that kind? Then, with regard to the question as to the operation of the amendment in the case put by the hon'ble member, namely, that if one raiyat paid at Re. 1-8 per bighá, and the rest some at Rs. 4 and some at Rs. 3-8, the section as proposed to be amended would prevent any enhancement at all, of course, a possible example can be put in reference to any proposal; but the object of the amendment is honestly to say that where there is no rate substantially established to be the prevailing rate, enhancement on the ground of the prevailing rate should not be allowed; and that I think is according to the existing law. If there is no prevailing rate a suit for enhancement on that ground ought to fail. But I would ask the hon'ble member to consider the hypothetical case I put, where 10 raiyats pay at Rs. 2, 10 at Rs. 3 and 10 at Rs. 4. I don't think that in such a case there should be any enhancement on the ground of the prevailing rate, because such a rate would not have been established. But the section as it stands would tend to the enhancement of all rents up to the maximum of Rs. 4, and that would not be in accordance with the principles of the present law."

The amendment was put and negatived.

The Hon'ble the MAHARAJÁ OF DURBHUNGA by leave withdrew the amendment that for clause (b) of section 30 the following be substituted:—

"(b) that the value of the produce of the land has been increased otherwise than by the agency or at the expense of the raiyat."

The Hon'ble BĀBÚ PEĀRÍ MOHAN MUKERJÍ moved that in clause (b) of section 30, for the words "staple food-crops" the words "the crop grown on the land" be substituted. He said:—"The use of the words 'staple food-crops' would give rise to this anomaly, that when the crop grown on the land had risen in value, the landlord would get no enhancement whatever if the price of the staple crops had not risen simultaneously; while, on the other hand, when the price of the staple crops had risen, and the price of the crop grown on the land had not risen or probably had declined, the raiyat would still have to pay enhanced rent, and at the same time have to spend more money in buying his food-grain. So that the provision would operate hardly both on the landlord and the raiyat; and with a view to prevent this anomaly I move this amendment, which I think is in conformity to the law as it exists at present."

The Hon'ble MR. GIBBON said:—"I certainly think my hon'ble friend has misunderstood the provisions of this section. The use of the term 'staple food-crops' is rather as a standard of value than as a means of enhancement; it is to be used for the purposes of adjustment. I think he has failed to see that the standard will affect the reduction of rents as well as their enhancement in the future. Any crop the price of which is dependent on its export value cannot be used as a standard of adjustment. If the amendment proposed be carried, it will infuse an amount of uncertainty into our system as to become intolerable; it will become impossible to follow the fluctuations of the markets. Any commodity that is to be taken as a general standard of value for the adjustment of rents must be a commodity that is in general use among the people amongst whom it is grown; only such commodities can be regular in their prices. Staple food-crops vary little in their prices from year to year, whereas the value of indigo, tea, sugar and other crops dependent on their export value for their prices constantly fluctuate, and for some years past they have least a downward tendency; the acceptance of such commodities as a standard might have the effect of reducing rents instead of enhancing them."

The Hon'ble SIR STEUART BAYLEY said:—"I explained in my opening speech what the intention of the Committee was. We took the staple food-crops as an index to prices generally. We deliberately rejected the idea of enhancing or reducing rates of rent according to the crop grown on the ground.

If the hon'ble member will look at the result of the words he proposes, he will find when he comes to enhance rents he will have to ask the Court to compare the prices of crops grown today with the prices of crops grown 10 years ago. But he will first have to prove what the crop grown 10 years ago was. This he can never do. It is not the fact that the same crop is grown for 10 consecutive years. It is especially in the more highly priced crops that variations occur more frequently. But that is not my main objection. My real objection is one of principle, that the raiyat's rent ought not to be raised because he is a shrewd man and grows the crop which will pay him best; and similarly the landlord's rent should not be diminished because the raiyat is a foolish man and grows the crop of the least value. For working purposes we assume all rents to be at a fair and equitable rate. It will require no great acumen to see that if the rates are to be altered according to the crop it will be injurious both to the landlord and to the raiyat; and if the raiyat is to be taxed for growing more expensive and remunerative crops it will in the aggregate work more harm to the zamíndár than even to the raiyat."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that for clause (b) of section 30 the following be substituted:—

"that the net value of the produce has been increased otherwise than by the agency or at the expense of the landlord."

He said:—"My Lord, without expressing any opinion of my own on the motion, I will state briefly the reasons which have led the hon'ble member to propose this amendment. His first argument is the general one based on the poverty of the raiyats in Bengal. My hon'ble friend considers that the raiyats, especially in Behar, are so poor as to render it exceedingly inexpedient to give to the landlords the trenchant ground of enhancement embodied in this section (30). The second argument of my hon'ble friend may be briefly stated as follows. Not only does my hon'ble friend consider that the raiyats are too poor to be subjected to so sharp a weapon of enhancement, but he also considers the advantages which the raiyats obtain from an increase in the prices are to a large extent illusory. He believes that the expense of cultivation increases *pari passu*, that very little gain really accrues to the raiyats from a rise in prices, and that what little gain does ultimately accrue to them, is needed by the raiyats to improve their position. My hon'ble friend fears that, if a rise in prices is made a ground of enhancement, not only will the cultivator obtain no advantage but he will be in a worse position than before. The effect of the amendment will be to render it more difficult for a zamíndár to obtain an enhancement on the ground of a rise in prices, I have laid before my hon'ble colleagues the arguments of my hon'ble friend, and I now leave the matter in the hands of the Council."

The Hon'ble SIR STEUART BAYLEY said:—"I must object to the amendment. The long series of litigation since 1859 has proved that it is impossible to say what the nett value of produce is, and no Court has ever been able to find out the cost of cultivation; therefore this ground of enhancement will be absolutely illusory, and the Committee accordingly rejected it."

The amendment was put and negatived.

The Hon'ble THE MAHARAJÁ OF DURBHUNGA moved that for clause (c) of section 30 the following be substituted:—

"that the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat."

The amendment was put and negatived.

The Hon'ble BĀBÚ PEĀRÍ MOHAN MUKERJÍ moved that for clause (c) of section 30 the following be substituted:—

"that the productive powers of the land held by the raiyat have increased otherwise than by the agency or at the expense of the raiyat."

He said:—"This is the present law on the subject. It gives the zamíndár the right to enhance rents for any increase in the productive powers

of the land, however caused, unless the cause of increase is the raiyat's own expense or agency. I do not wish to press at this moment the question of the zamindar's proprietary right in the land. But it will be found that, even if the raiyat's rent is enhanced, it leaves to the raiyat also a share of the increase which is caused not by his own agency or expense but either by natural or artificial causes. The Bill limits the right of enhancement simply to the ground that the increase is caused by fluvial action, but there may be several other causes with which the raiyat has nothing to do, which improve the productive powers of the land, and for which improvement the zamindar has an equitable cause of enhancement. Suppose that a railway is constructed, or a public embankment is thrown up which prevents a part of the land from being trespassed upon by cattle or wild animals, or that such work prevents the land being inundated by the overflow of the river, and that this increases its productive powers; again, suppose it be shown that by the better provision made by the Government for the conservation of forests there is greater regularity in the rainfall, and there is therefore an improvement in the productive powers of the land; I submit that in these cases the landlord is equally entitled to a share in the profits. The zamindar's rent cannot be increased to the full value of the profit; the raiyat will get his share in it. Supposing him even to be a co-proprietor in the land, still the zamindar, as well as the raiyat, should get their respective shares by reason of such improvement in the productive powers of the land. Instead, therefore, of limiting the ground in the way it is done in the Bill simply to fluvial action, the words of the present law in that respect should be retained."

His Excellency THE PRESIDENT said:—"I think I shall best consult the convenience of the Council by putting this motion to the vote. It is obvious that not only great loss of time but great inconvenience must result from the hon'ble member again moving an amendment which has already been dealt with by the Council. It is quite true there are four words in this amendment which are not to be found in the amendment which has just been negatived, but they do not virtually render the amendment of the Hon'ble Peari Mohan Mukerji in any sense different from that which was moved by the Hon'ble the Maharaja of Durbhunga."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI by leave withdrew the amendment that in section 30, clause (d) and the explanation be omitted.

The Hon'ble THE MAHARAJA OF DURBHUNGA by leave withdrew the amendment that to clause (d) of section 30 the words "or other specific cause, sudden or gradual," be added.

The Hon'ble MR. REYNOLDS by leave withdrew the amendment that clause (d) of section 31 be omitted.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in clause (a) of section 31 the words "during a period of not less than three years" be omitted. He said:—"The use of these words will lead to this, that if the majority of the raiyats of a village have submitted to enhancement of rent on account of a rise in the value of produce, and a dozen or a score of raiyats obstinately refuse to pay enhanced rent, the landlord will have to wait for three years before he can sue these recalcitrant raiyats for enhancement of rents. I submit that in a suit instituted under the clause in question it will be enough for the Courts to enquire whether the rents paid by them have been paid *bona fide* by the majority of the raiyats. Enquiry into payment for three consecutive years is not necessary for the decision of such a suit. *Bona fide* payment of rent for a single year is enough to enable the Court to decree a suit for enhancement on these grounds. In other words, I move that the restriction as to proof of three years' payment be removed."

The Hon'ble SIR STEUART BAYLEY said:—"I must ask the Council to reject this amendment. It was explained by my hon'ble friend Mr. Reynolds and by His Honour the Lieutenant-Governor yesterday that a prevailing rate is frequently manufactured by *bogus* kabuliyaats, that is, a raiyat undertakes to pay a rate of rent which he does not in reality ever intend to pay with the object of proving a high rate in a suit brought against another raiyat. Our object is to show that the rate which ought to be proved is not a rate of this kind, but the actual existing rate, and payment for three years is considered to be good and sufficient proof to afford protection against colourable agreement."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amir Ali, that in line 2 of clause (a) of section 31, for the word "rates" the word "rate" be substituted.

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amir Ali, that section 32 of the Bill be omitted. He said:—"My Lord, this section was so fully considered in the Select Committee, that it would not be right for me to detain the Council by offering any further remarks upon it."

The Hon'ble MR. REYNOLDS said:—"This matter was discussed at length by the Committee, and I do not think the decision come to should be disturbed."

The Hon'ble MR. HUNTER said:—"My Lord, speaking for myself, I also hope the Council will not disturb the arrangement."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in clause (a) of section 32, for the words "the decennial period" the words "a period of three years" be substituted. He said:—"This section requires that, for the purpose of determining what is the average price of grain for the purpose of working the rule of proportion, the Court must take the average of the immediately preceding ten years. This, I submit, will not only be a work of difficulty and add to the delay and expense of enquiry, but it will in many cases tend to reduce the amount of enhancement which the landlord will be clearly entitled to get. I think that a much shorter period, say three years, will be a reasonable period for striking an average to work the rule of proportion."

The Hon'ble MR. REYNOLDS said:—"This question was discussed at some length in Select Committee. Originally the term of five years was inserted in the Bill, and it was urged that the period of five years was too short, and concrete examples were given in which it would work injustice, in some cases to one party and in some cases to the other. We, therefore, agreed to the decennial period, but at the same time we added clause (c) to enable the Court to take a shorter period in case it was impracticable to take the decennial period."

The Hon'ble MR. HUNTER said:—"My Lord, I too hope that the Council will not alter the term of years fixed by the Select Committee. There are cases in which it would be almost impossible to take a period shorter than ten years. The hon'ble mover of the amendment suggests three years. I would ask him whether, during a year of famine or in the two years following, enhancement of rent should be granted against a tenant on the ground of the rise of prices? The high prices caused by famine after extend over three years. There is really no answer to this. The result of substituting three years for ten years would be that after a period of famine, and while the cultivators were reduced to the last stage of weakness and misery for want of food, a legal system of enhancement (based on the sufferings of the tenants) could be pushed on throughout the famine-stricken districts."

The Hon'ble SIR STEUART BAYLEY said :—" I quite agree with my hon'ble friend Mr. Hunter. It was on his suggestion, and after going into statistics to show how prices varied from year to year and how they were affected for some time after a bad year, that the decennial period was adopted. Nothing is more striking than the slowness with which prices fall after a calamity of that sort, notwithstanding that the harvests have been abundant in the subsequent years. We thought it best to counteract the operation of such special years by taking a large average."

The amendment was put and negatived.

The Hon'ble the MAHARAJA OF DURBHUNGA by leave withdrew the amendment that in lines 3 to 6 of clause (b) of section 32, the words from "reduced by one-third," &c., to "purposes of comparison" be omitted.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that in lines 6 to 10 of clause (b) of section 32, the words commencing with "provided" be omitted. He said :—" This proviso is based on an entire misconception of the actual state of facts. It takes for granted that in every case, whenever there is a rise in the value of produce, there is a greater proportionate rise in the cost of cultivation. In the voluminous literature on the subject there is not a single statement by any officer to the effect that the rise in the cost of cultivation is in any greater proportion than the rise in the price of produce. Unless that statement can be proved, countenance should not be given to a provision like this which takes the fact to be assumed. There are three contingencies with reference to this matter—first, the cost of cultivation may increase in the same ratio as the cost of produce, in which case the rule of proportion will work equitably without any reduction on the ground of the increased cost of cultivation, because it will leave the raiyat not only a proportionate increase of profits but also give him a proportionate increase in the cost of cultivation. If the cost of cultivation is increased in less proportion, it will give the raiyat greater profit, the landlord less. It is only in the third case, where the cost of cultivation has increased in a much greater ratio than the price of produce, that the rule of proportion will work hardly on the raiyat. Unless the Council has before it evidence to show that the cost of production had increased in any greater ratio than the price of produce, I submit it will be unfair to make a provision like this. In my dissent I explained my meaning by a hypothetical case. Suppose the price of produce of a bigha of land to be Rs. 8 and the rent Rs. 3, the cost of production Rs. 3 and the profit to the raiyat Rs. 2. Then, if the price rises to Rs. 10, by the rule of proportion the amount of the enhanced rent will be Rs. 3-12, the cost of produce will be Rs. 3-12 and the profit to the raiyat will be Rs. 2-8; so that every case in which there is a rise in the value of produce the rule of proportion contemplates a proportionate rise not only in the profits of the raiyat but also a proportionate rise in the costs of cultivation. It is on these grounds that the 15 Judges, in laying down the rule of proportion, distinctly said that the cost of cultivation was not to be taken into account, because it may for all practical purposes be taken for granted that there is a proportionate rise in the cost of cultivation with a rise in the value of produce."

The Hon'ble MR. REYNOLDS said :—" I think the hon'ble member asks too much when he asks the Council not to pass this clause unless it is prepared to show that the cost of production tends to increase more rapidly than the price of produce. It is because it is so difficult to prove the cost of production that all schemes for enhancement on this basis must fall through. There is reason to believe that the cost of production has a tendency to increase in a greater ratio to the rise in price; and if this is the tendency in a considerable proportion of cases we ought to give the raiyat the benefit of the doubt and make the rule general, because we have no data to show to what exact number it will or will not apply. I join issue with the hon'ble member in the hypothetical case of a tenant whose gross produce is Rs. 8, the rent Rs. 3, the cost of production Rs. 3, and his profit Rs. 2. Considering that the average size of holdings in this province is five bighas, the raiyat in that case will have an annual profit of Rs. 10 on the whole area of his holding. I put it to the Council whether a man in that posi-

tion ought to be enhanced at all, and, if at all, whether the enhancement should not be fenced round with modifications of this kind, so as to give the tenant a fair chance of having sufficient left to him to live upon."

The Hon'ble MR. HUNTER said :—" My Lord, I regret that my hon'ble friend has again raised this question, but I am prepared to meet his amendment with a direct statement of figures, which I hope will be convincing to this Council. The hon'ble member complains that to deduct one-third from the rise in prices, as an allowance for the increased cost of cultivation, would seriously diminish the enhancement of rent. Let me commend to my hon'ble friend's notice the following concrete case :—If a holding at an old rent of Rs. 12 yielded at old prices Rs. 30 worth of produce, and the value of produce were to increase to Rs. 60 or double, then, deducting one-third of the excess value, the proportion would be as follows. As the old value (Rs. 30) is to the new value less one-third of the increase (Rs. 50), so will be the old rent (Rs. 12) to the new rent. The new rent, therefore, would be Rs. 20, and I feel sure that my hon'ble friend would not, in his own estates, desire to raise the rent of any tenant by a higher proportion on the ground of a rise in prices. I should feel confident, my Lord, to leave the matter without further comment, if only my hon'ble friend were concerned; because I know his fairness of dealing with his tenants. But, as there are perhaps others who cannot be answered by this *argumentum ad hominem*, I wish to add one other observation. Underlying this particular question of a one-third deduction of the increase, is the general question as to the division of the unearned increment occasioned by a rise in prices. The hon'ble member's amendment would give the whole unearned increment to the landlord. The Bill divides the unearned increment between the landlord and the tenant. The exact proportion of two-thirds to the landlord and one-third to the tenant, as given by the Bill, was decided on after long and mature consideration. I think it is a fair division, and I would, therefore, oppose any attempt to now re-open the question."

The Hon'ble SIR STEUART BAYLEY said :—" My hon'ble friend Mr. Hunter has left me very little to say, for he has stated exactly the line I was prepared to take. I explained in my opening speech how the cost of cultivation tends in this country to increase in a more rapid ratio than the price of produce, and how it acts on the raiyat. Most of the labour is done here by the raiyat or his family, or, where outside labourers are employed, they are paid in grain. On the other hand, what are the other elements which enter into the cost of cultivation beyond the labour used? The principal cost is for cattle, ploughs, manure, &c. Now, while pasturage land is daily diminishing owing to the pressure of population, the cost of keeping cattle is increasing, so much so that within the last few years the raiyats are growing crops for their cattle. For the same reason manure is also becoming dearer, and this adds to the cost of cultivation. What my hon'ble friend said is very true, that the principle underlying the question is that of the unearned increment—in what proportion it should be divided. The Government of Bengal in the letter of the 15th September proposed a deduction of one-half; the Committee decided upon allowing one-third. The fact that the Courts cannot ascertain what the cost of cultivation is, and consequently what proportion of the increase of price should be deducted, is an accepted fact; therefore an arbitrary proportion must be taken, and the question is, where the line is to be drawn. The question has been carefully worked out in the report of the Rent Commission. I will read two extracts from their report. They said :—

"The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place, the coinage consists of silver, and the relative value of

silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes.

"Then they go on to consider how the unearned increment is to be divided. They said:—

"In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zamindar nor the raiyat, but by general causes, the reasoning used above (§55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule * * * will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the raiyat and the remaining one-third to the landlord.

"It will be seen that while some members of the Rent Commission thought the raiyat should have two-thirds and the zamindar one-third of the increment; the majority came to the same conclusion as the Government of Bengal that it should be equally divided. We have after fully considering all opinions come to the conclusion that one-third should be deducted for increased cost of cultivation, and that the rent should then be increased in full proportion to the increase of prices."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ by leave withdrew the amendment that clause (c) of section 32 be omitted.

The Hon'ble THE MAHARAJĀ OF DURBHUNGA moved that in section 33, line 4, after the word "improvement" the words "made after the commencement of this Act" be inserted. He said:—"My reason is that zamindars who before the passing of this Act did not think of registering improvements made by them will be unable to get any enhancement on those improvements."

The Hon'ble MR. REYNOLDS said:—"I think the hon'ble member overlooks the effect of section 80, which provides for improvements made before the passing of the Act; the present amendment is therefore not required."

The Hon'ble SIR STEUART BAYLEY said:—"Section 80 was inserted to meet the case to which the hon'ble mover has referred. If, therefore, the words proposed are inserted in section 33, there will be no ground for inserting that section."

The amendment was then by leave withdrawn.

The Hon'ble MR. GIBBON moved that section 35 be omitted. He said:—"I will call the attention of the Council to the wording of this section. It says that—

"Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable."

"The first portion of the section allows the Judge a discretionary power to overrule the law. Section 7 gives the Court directions as to what shall be considered fair and equitable. It allows the Court to decree enhancement when the rent paid is below the customary rates paid by other people. Sub-section (2), gives an absolute discretion to the Courts only to allow enhancement when the Court considers it fair and equitable. Section 8 goes further. It allows the Court, in cases where it considers that immediate enhancement will fall hardly on a tenure-holder, to allow the enhancement to be made gradually. Section 30 and the following sections lay down the ground upon which occupancy-holdings may be enhanced, and it lays down rules to guide the Court as to what is fair and equitable. Section 36, which we have not yet come to, allows the Court, where the immediate enforcement of a decree for enhancement in its full extent will be attended with hardship to the raiyat, to be carried out gradually. Therefore to declare that the Court shall not in any case decree an enhancement which

under the circumstances it considers unfair and inequitable, is unnecessary. It allows the presiding officer, when the bias of his mind tends that way, to ignore the provisions of the Act and follow the bent of his mind; it will give him an excuse to set aside the provisions of the Act. Where it suits the bias of his mind he may, whenever he pleases, set aside the law. We are giving to all judicial officers, even the most inexperienced, a power which the most experienced may hesitate to exercise. The reason to my mind must be cogent, the necessity very great, before we allow a Judge sitting in Court to override the provisions of the law."

The Hon'ble SIR STEUART BAYLEY said:—"I am not prepared to accept the amendment. The principle that all rents decreed by the Court should be fair and equitable has no doubt been accepted by the Council, but it is not the case that each ground of enhancement carries with it the limit beyond which the law would deem enhancement unfair and inequitable. In its previous stages the Bill provided a maximum, but when the maximum limit was removed, it was provided by one general clause that where the rent decreed, although coming under the rules prescribed by the law, are unfair and inequitable under the specific circumstances, it should not be decreed by the Court: the special circumstances should be taken into consideration. That is the meaning of the section. I know my hon'ble friend will not wish any Court to decree what it does not think fair and equitable. The object of the section is to enable the Court to act by its judgment in the matter. I don't think there is danger that the Courts will be misled by the discretion, because there will always be an appeal to the High Court; the High Court will soon call to order any Judge who exercises his discretion in an improper manner. It is a judicial discretion."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amir Ali, by leave withdrew the amendment that in line 6 of section 35, after the word "inequitable" the following words be inserted:—
"or which would enable the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble THE MAHARAJĀ OF DURBHUNGA by leave withdrew the following amendments:—

That section 37 of the Bill be omitted.

That, in the event of his last preceding amendment not being carried, in lines 7 and 10 of sub-section (1) of section 37, for the words "fifteen years" the words "five years" be substituted.

That in lines 15 and 16 of sub-section (1) of section 37, the words "or dismissing the suit on the merits" be omitted.

That in section 38, clause (b), line 3, for the words "average local prices of staple food-crops" the words "in the value of the produce of the land" be substituted.

That in section 39, sub-section (3), line 6, for the words "one month" the words "two months" be substituted.

That in line 2 of sub-section (4) of section 39, after the words "Board of Revenue" the words "after hearing any of the interested parties who might have duly entered appearance" be added.

The Hon'ble MR. HUNTER moved that in sub-section (6) of section 39, for the words "shown thereby" the words "shewn in the lists prepared for any year subsequent to the passing of this Act" be substituted. He said:—"My Lord, this Bill will substitute a new and sharp procedure for the enhancement and reduction of rents in place of an old and a complicated one. Under the existing law, such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of the produce. In order to obtain an enhancement on this ground, the landlord had first to prove

an increase in the selling prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the increased prices to the actual produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complex factors at present and in time past. The present Bill substitutes for this difficult and complicated process the simple question of a rise or fall in the prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is that enhancements which were not practicable on this ground will now become practicable. But the Bill further simplifies the burden of proof. In the first place, it confines the question to the prices, not of the actual produce of the land, but of certain staple food-crops; in the second place, it provides for the publication of price-lists in the official Gazette, which lists are to be accepted by the Courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point.

"The Bill originally proposed that these lists should be taken as conclusive evidence. It appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill as now revised accords only the value of presumptive evidence to these lists. In doing so, however, I would again urge on my colleagues that we have given the same legal value to two classes of evidence, of which the real value is essentially different. For the lists to be published in the official Gazette are of two distinct classes—old lists of prices collected under no adequate safeguards for their accuracy, and new lists of prices to be collected under the very efficient safeguards provided by this Bill. I believe that the future lists to be compiled under those safeguards will be worthy of acceptance as presumptive evidence. But my enquiries show that the old lists, collected without any of those safeguards, cannot safely be accepted as presumptive evidence. At a late stage in the deliberations of the Select Committee, a decennial period was substituted in place of a quinquennial period; so that the figures submitted to the Committee only enable me to show what would be the results of accepting the price lists for the quinquennial periods originally contemplated. If, then, we take the price-lists submitted to the Committee for quinquennial periods, they curiously conflicting different results in adjoining districts—districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of silver, and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Hugli river would give an enhancement of 12 per cent. in the Bardwán district; and an enhancement of 28 per cent. in the Nadiyá district on the other side. Further up the Ganges the enhancement would be 10 per cent. in the Patna district on the southern bank, and close on 20 per cent. in the Muzaffarpur district on the northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent. in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating from the price-lists of rice alone. If we endeavour to correct their discrepancies by adding a second crop to the calculation, say maize, as the Local Government will do under the provisions of this Bill, we get still more astonishing results. In the Bhagalpur district, rents would be enhanced 25 per cent. if calculated on the average prices of rice submitted to the Committee; but they would be reduced 46 per cent. if calculated on the price-lists of maize. In the next district but one to the west, Muzaffarpur, rents would, on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates; but they would be reduced about 22 per cent. if estimated in maize rates. In the Patna district, which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhagalpur, nor 22 per cent. as in Muzaffarpur, but only 2 per cent. These results are worked out from the figures submitted on behalf of the Bengal Government to the Select Committee. I am aware that they are incomplete, and that they would be revised before they

were published in the Gazette. But, after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give to them the value of presumptive evidence. I would ask the Council, therefore, while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had under the Evidence Act at the time when they were collected: that is to say, they shall be held by the Courts to be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zamindárs, nor on behalf of the raiyats, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants—a double-edged weapon—which may produce startling results both in the enhancement and in the reduction of rents."

The Hon'ble SIR STEUART BAYLEY said:—"We are prepared to accept this amendment in substance subject to re-consideration as to the wording of it" The amendment was put and agreed to.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in sub-section (7) of section 39, line 1, for the words "Local Government" the words "High Court" be substituted.

The consideration of the following amendments was temporarily postponed:—

(1) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that section 40 be omitted.

(2) The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI to move that section 40 be omitted.

(3) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that, if his last preceding amendment be not carried, in sub-section (1) of section 40, lines 2 to 6, the words from "or on the estimated value," &c., to "partly in another" be omitted.

Also to move that in sub-section (1) of section 40, lines 6 and 7, for the words "either the raiyat or his landlord" the words "the raiyat and his landlord" be substituted.

Also to move that for sub-section (2) of section 40 the following be substituted, namely:—

"The application may be made to the Civil Court."

Also to move that for section 40, sub-section (3), and sub-section (4), clauses (a) and (b), the following be substituted, namely:—

"On receipt of the application the Court shall ascertain the description and quantity of the rent in kind paid or payable for the last preceding ten years, and the tenants shall pay in future each year the amount in money which would purchase the same description and quantity of produce at the average prices prevailing for the same in the locality for the five years immediately preceding that for which payment is made."

Also to move that in sub-section (5) of section 40, in line 5, for the words "revenue proceeding" the words "civil suit" be substituted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that section 43 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. The new rights which the Bill contemplates giving to non-occupancy-raiyats have necessitated the introduction of a number of new sections simply to give them protection in certain exceptional cases where the zamindárs have not protected themselves by agreements. It is these cases only that the provisions of the Bill, commencing with section 43 and ending with clause (10) of section 46, deal with. It introduces a system which is entirely unknown to this country, and the entire procedure is both cumbersome and expensive as well to landlords and raiyats. I submit that for the purpose of a few exceptional cases such a cumbrous and expensive procedure, and one altogether unknown to the country, may well be dispensed with."

The Hon'ble RAO SAHEB VISHNANATH NARAYAN MANDLIK said :—" This is a very novel provision. Mr. Field said :—

'I am unable to see the justice of the restrictions proposed to be placed on the enhancement of rent of non-occupancy-raiyats.'

"This new legislative creation is a tenant-at-will, and it strikes me that the direct result of these provisions will be to increase the number of day-labourers and to decrease the number of these new creations. I say new creations advisedly, because the High Court has ruled in the case of occupancy-raiyats what their privileges are, and according to what Mr. Field says, both in the work on which the Rent Commission proceeded and in his work on land-laws generally, it seems the legislature so late as 1859 and 1869 have left this new question untouched. I cannot understand what equitable rights a man can have who takes land on certain definite terms. I therefore support the amendment."

The Hon'ble MR. REYNOLDS said :—" We are hardly in a position to discuss this amendment until the amendment of section 29 has been settled. It is not definitely stated that the provisions of section 29 are to extend to this chapter. I contend that these provisions are right and proper. The assertion that a non-occupancy-raiyat is a mere tenant-at-will raises a very large question. If we admit the general principle, which, I think, we should, that it is desirable to regulate enhancements, I am aware of no reason why it should not be extended to non-occupancy as well as occupancy-raiyats. With regard to section 46, we leave enhancements out of Court entirely to arrangement; the only protection we give to the non-occupancy-raiyat is that, if he refuses to agree to the enhancement proposed, we give him the liberty to claim a five years' judicial lease. I think it very reasonable that he should have that consideration granted to him. It has been all along put forward as an object of our legislation to extend the occupancy-right as far as possible, and this section and section 46 do not go unreasonably far. I should be sorry to see any alteration made in section 46."

The Hon'ble MR. GIBBON said :—" I may say briefly that I do not approve of the motion. I approve of the section as it stands. The occupancy-raiyat is in a different position to the non-occupancy-raiyat. The occupancy-raiyat is not compelled under any portion of the Bill to enter into any written engagement with the landlord. If his position is disputed by the landlord, he can appeal to the provisions of the Bill to have the terms and conditions of his holding determined. When a non-occupancy-raiyat is let into possession of land, he may be let in under a written agreement; at the end of that agreement he may have his rent enhanced or adjudicated; and if it is to be adjudicated the procedure for such adjudication is laid down. If the landlord and the non-occupancy-raiyat come to terms amongst themselves, it is very necessary that the landlord should at once put into writing the terms on which the tenant holds the land. It is not necessary that it should be alleged that he held for three years without written agreement, in order that his holding should be binding. If his holding is by verbal arrangement, he can reject any claim for enhancement and claim an adjudication of rent for five years. I cannot see what effect the provisions of section 29 will have on this section. I maintain that the section is right in principle and will be equitable in practice and should be retained."

His Honour THE LIEUTENANT-GOVERNOR said :—" I also oppose the motion. The non-occupancy-raiyat has not a satisfactory position. He enters on land on such terms as he can settle with the landlord, and it is quite in the power of the landlord when the term of his engagement expires to evict him under section 44, clause (c). But if the landlord demands enhanced rent, section 46 comes into operation, and the raiyat is obliged either to agree to the terms proposed or to the rent determined by the Court, for which section 46 provides. Considering that the object which the majority of the Select Committee have always had in view, of affording some measure of protection to the non-

occupancy-raiyat, I think it is necessary for the future relations of landlord and tenant that this section should be allowed to stand."

The Hon'ble SIR STEUART BAYLEY said :—" I agree with His Honour the Lieutenant-Governor as to the necessity of supporting the rights of non-occupancy-raiyats. It has all along been one of the objects of the Government of India in introducing this Bill to provide a certain amount of modified security in the position of non-occupancy-raiyats. As I said on a previous occasion, the strength and security which our Bill gives to non-occupancy-raiyats is very far short of that given to occupancy-raiyats, but is in advance of the present law, and has been deliberately made. The particular section which we are asked to remove is one which provides that the rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement under section 46. I cannot accept this amendment as it stands. It is rather premature to discuss the bearings of the clause which I propose to insert in section 29, but I cannot avoid following the hon'ble mover of the amendment by saying a few words. If we accept the principle of part-performance for one class of raiyats, the same considerations point to its being accepted for the other class. The effect of this is worth considering. It means that after the initial lease of the non-occupancy-raiyat expires, if his rent is enhanced verbally, the landlord would not sue for the enhanced rent except on proof that the raiyat had paid for three years. The result would be to facilitate the growth of occupancy-rights, for first comes the period of the initial lease, then the admission of three years' subsequent occupation, and then, if the enhancement is contested, will come in the provisions of a judicial lease for five years. I propose therefore that, when the discussion comes on on the amended section 29, the hon'ble member should say whether he desires to introduce a similar clause in this chapter. If he does, I shall of course be prepared to accept it. In the meantime I must protest against the acceptance of the amendment before the Council."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ moved that in section 43 the words and figures "or by agreement under section 46" be omitted. He said :—" I have already submitted the arguments in connection with this amendment in my speech on the preceding amendment."

The amendment was put and negatived.

The Hon'ble THE MAHARAJĀ OF DURGUNGA by leave withdrew the amendment that in clause (b) of section 44, line 4, the words "consistent with this Act, and" be omitted.

The Hon'ble THE MAHARAJĀ OF DURGUNGA moved that in clause (c) of section 44, line 2, the word "registered" be omitted. He said :—" The reason is that there is no registered lease."

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS moved that in clause (c) of section 44, after the words "registered lease" the words "for a term of not less than five years" be inserted. He said :—" I need not detain the Council with any detailed or elaborate argument in support of this amendment. The position of the non-occupancy-raiyat is this, that he has to pay the rent agreed upon, and if admitted to occupation on a registered contract he may be ejected on the ground that the term has expired. There is no stipulation or arrangement in the wording of the Bill as to the term for which the initial lease ought to be granted, but I believe it will be generally considered that the grant of a lease for a reasonable term of years ought to be encouraged, and my position is strengthened by one of the dissents, in which it is remarked that the effect of the operation of some of the provisions of this chapter will be to place the non-occupancy-raiyat in a worse position than at present; the landlord, having an absolute right to eject him, will in every case grant a lease for a short period and reduce the non-occupancy-raiyat to a mere tenant-at-will. That will be guarded against to a certain extent by this amendment that the initial lease shall be in every case for a

period of not less than five years. If the landlord desires to take advantage of the clause which permits him to eject the raiyat at the expiration of the lease, the lease originally given should not be for less than five years."

The Hon'ble MR. QUINTON said:—"I think this proposal is worthy of support. The hon'ble member in charge of the Bill has said that one of the objects of the Bill is to give a greater degree of protection to the non-occupancy-raiyat than what he enjoys under the existing law, and there have been, since this legislation commenced, various schemes proposed to give effect to it. The main protection proposed to be given is that where the landlord wishes to enhance the rent he must give notice, and if the tenant refuses to pay the enhanced rent the landlord can demand such rent as the Court thinks fit for five years. This is undoubtedly a great protection beyond what he enjoys under the existing law. But it appears to me that if the power of ejectment stands as it is now, that the landlord may turn him out on the expiration of the lease by a mere notice to quit, the landlord can nullify all the clauses of this chapter by giving the necessary notice. I think therefore that the chapter as it stands is open to the objection that the protection it holds out can be defeated by such means."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said:—"I think this amendment will give non-occupancy-raiyats what they not only never possessed but will convert them into something like occupancy-raiyats, giving them a right to hold for at least five years, although the zamindār may wish to let in a raiyat for only a year or two for a mere temporary purpose. If the raiyat does not agree to such short term, the lessee will have the option to reject the engagement and to apply to some other landlord, or to come to some other arrangement with his landlord. But there is no reason why to a raiyat who has admittedly no rights whatever the landholder should be forced to give a lease extending for at least five years, and if he does not do so he will have no right to eject the tenant. Nothing that has been placed before the Council justifies or warrants a provision of this kind."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"Provisions like this will defeat the very object for which they are enacted, and I trust the amendment now proposed will not be accepted by the Council."

The Hon'ble MR. HUNTER said:—"My Lord, I oppose this amendment. I believe that it strikes at one of the fundamental principles of the Bill, namely, the distinction between the occupancy and non-occupancy raiyat. The Bill makes provision for the very effective protection of the occupancy-raiyat; it also provides for the development of the non-occupancy-tenant into an occupancy-raiyat. But one of the principles which I personally laid stress on from the commencement, was the recognition of the initial freedom of contract between a landlord and a new tenant. After much discussion this principle was accepted by the Select Committee, and the initial freedom of contract between a landlord and a new tenant was formally affirmed by that body. I regard this amendment as an attempt to indirectly weaken the effect of the decision thus arrived at. I do not think that the amendment is justified either by the position of the non-occupancy-tenant in the past, nor by the status which he actually possesses at present. Further, I think that it would be at once impolitic and unjust, at the present late stage of the measure, to introduce a provision which would seriously curtail the acknowledged rights of the zamindārs in regard to a large class of tenants."

The Hon'ble MR. GIBBON said:—"I also oppose the amendment."

HIS HONOUR THE LIEUTENANT-GOVERNOR said:—"I support this amendment because it gives to the non-occupancy-raiyat a securer position than the Bill as it stands will give him. I may be allowed to allude here to a part of the opening speech of my hon'ble friend Sir Steuart Bayley that my words and action in a previous debate on this measure are inconsistent with the position I

now assume. I stated, if I remember rightly, in the discussion of the Bill last year that there was a wide distinction between the position of the occupancy and that of the non-occupancy raiyat, and I am prepared to stand by that doctrine. Now when I made that statement I was arguing against the proposal of the Government of India in its recommendation to the Secretary of State, that the whole distinction between rights of occupancy and non-occupancy should be abolished; that legislation should proceed on the basis of not recognizing any distinction between the two classes; that we should begin from the recognition of all riyats being in the same position. My contention was that any legislation based upon such a theory was wrong as being contrary to the practice recognised since the Permanent Settlement. I urged that every Collector in the country would tell you that non-occupancy-raiyats do not stand in the same privileged status and position as the raiyat who has occupancy-rights, and I felt sure that, if legislation on the wide basis proposed by the Government of India was attempted the difficulties connected with legislation on the subject would be very greatly enhanced. I would appeal to hon'ble members whether, in dealing with a Bill which ignored any distinction between the two classes, the difficulties would not be very much more serious than now when we recognise such difference; and I may claim the support of those hon'ble members against whose interests I am supposed to have acted whether I have not, in this matter at any rate, represented the principle which they accept. The words in which I entered my respectful protest against the recommendations of the Government of India can be quoted, and, to say the truth, I am rather proud of the fact that the decision of the Secretary of State was in accordance with the views which I held. But it is quite a different thing that, while you recognise a distinction between the two classes of riyats, you still can recognise the necessity that the non-occupancy-raiyat should have facilities placed in his way which will enable him to grow into an occupancy-raiyat; and in dealing with the subject I have never varied from the expression of the hope that this legislation would put such facilities in the way of the non-occupancy-raiyat not only in his own interests but in the interests of the zamindār. All the provisions which have ever been contemplated to secure his status by means of compensation for disturbance, judicial leases or otherwise came not from me nor, as far I am aware, from any particular member of this legislature, but originally from the report of the Famine Commission. As the Bill has come out of the hands of the Select Committee, I do not think the non-occupancy-raiyat has been secured in the position which I would desire him to have; and anything therefore which has a tendency to improve his position, to enable him to reap the fruits of his industry and to secure with the acquiescence of the zamindār his growth into the position of an occupancy-raiyat deserves the favourable consideration of the Council. If therefore the Council see their way to accept the proposal that the initial lease should be for a term of not less than five years I shall be glad; because while the zamindār will still have the right of eviction, he will gain thereby an opportunity of seeing whether he has got a good tenant or a bad one.

The Hon'ble SIR STEUART BAYLEY said:—"I have rarely had more difficulty in making up my mind on any point than on that now before the Council. But before I deal directly with the question you are asked to vote upon, I wish to offer a few remarks with reference to what has just fallen from His Honour the Lieutenant-Governor. I must venture respectfully to correct a misapprehension into which His Honour has fallen. In my opening speech I was quoting from what the Lieutenant-Governor said in the debate in this Council two years ago after the Bill drawn in accordance with the Secretary of State's views had been introduced. I was certainly not guilty of quoting from any paper which His Honour may have written protesting against the letter of the Government of India of March, 1881. No such paper has been published, and if it exists I could not with propriety have referred to it. The particular expressions which I used were out of the above speech, in which he dissented to the compensation for disturbance scheme in regard to non-occupancy-raiyats, on the ground that the non-occupancy-raiyat had no rights. I only wish to correct this misapprehension."

"Coming now to the actual point before the Council, the arguments on the two sides respectively appear to be these. We want the non-occupancy-raiyat to have the chance of acquiring the occupancy-right. At the same time we want not to take away from the zamindár all power of selecting a good raiyat, and all power of regulating the rents of his raiyats. In respect of the former I have always supported the position that the zamindár should have the power to eject a raiyat at the end of an initial lease. Unless you give him that right I do not see how, if he lets in accidentally an unsatisfactory, cantankerous or turbulent man, he is to get rid of him. I think it is fair he should have some selection in the first letting of his land. On the other hand, we want the occupancy-right to accrue in the hands of the non-occupancy-raiyat. I have not supposed that zamindárs will, as a rule, be anxious to eject the raiyat at the end of the initial lease. I would still believe, in spite of what the hon'ble member has said in his dissent, to the effect that in all cases the zamindár would give a one year's lease in order to be able to eject the raiyat when he pleases, yet wiser counsels will prevail and that he will see that it is not for his interest to do so. I may mention also that the question of giving a long lease in the first instance was urged upon us by high authority, and it was considered a good deal by the Select Committee, but it was not accepted at the time. It was considered, I must confess, not so much with regard to the question of ejectment at the end of the time, as with regard to the question of compensation for disturbance. The principle of the proposal was that a non-occupancy-raiyat ought either to have a long lease or, if he only received a short one, then he ought to have compensation for disturbance. But compensation for disturbance fell through. Now the question has to be decided, is it an object to leave the zamindár a right to select his raiyat, and to say for how long he shall have a lease in the first instance, or that we should tie his hands and say 'You shall not have a raiyat for less than five years'? I have great difficulty in making up my mind, as anybody's decision will depend upon whether he thinks the old rights of the zamindár ought to be retained, or that the necessity of supporting the raiyat is of paramount importance. On the whole, I think we ought not to overthrow the rights of the zamindár, and I think we have given the raiyat a fair chance of becoming an occupancy-raiyat. I am afraid also that the specific safeguard, even if unobjectionable in principle, could so easily be evaded as to be valueless. On the whole therefore I incline to vote against the amendment."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved that for clause (d) of section 44 the following be substituted :—

"on the ground that he has refused to agree to pay enhanced rent at a rate not exceeding double the rate of rent paid by him during the preceding five years".

He said :—"This is offered to the Council as an alternative for the expensive and tedious procedure contained in the Bill. I think it will afford sufficient protection against capricious enhancement of rent and ejectment on the ground of refusal to pay enhanced rent. This double limit is the limit which was from the time of the Rent Commission suggested as a reasonable provision not only for non-occupancy but for occupancy-raiyats."

The Hon'ble SIR STEUART BAYLEY said :—"The amendment means that we should get rid of the judicial lease. Now, this judicial lease is really an essential part of the protection given to the non-occupancy-raiyat, and, whatever value may be attached to the protection as it stands, I quite agree with those who think the protection will not be worth anything if a judicial lease is not permitted when the non-occupancy-raiyat's rent is enhanced by the Court. I therefore oppose the amendment."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahārājā of Durbhunga, that in section 44 the following be added as a ground for eviction :—

"(e) on the ground that he has committed waste or caused the deterioration of the soil."

He said :—"It has been settled by the Council with reference to the occupancy-raiyat that even he may not be allowed to commit with impunity waste on the land or cause deterioration of the soil. If the non-occupancy-raiyat, whose legal status and rights are much inferior to those of the occupancy-raiyat, does these things, I cannot think it reasonable that the Bill should contain no provision for such cases."

The Hon'ble SIR STEUART BAYLEY said :—"I think the Council decided yesterday that the proper penalty in such cases was not eviction but a suit for damages or for an injunction. 'Waste' was a word which had absolutely no meaning as applied to cultivation in this country. Why! the whole process of agriculture in this country has been described by a great authority as one of 'spoliation of the land'. All cultivation here, if compared with the English method, would be regarded as waste, and the use of the word would introduce an extraordinary amount of uncertainty and litigation."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahārājā of Durbhunga, that to section 44 the following be added as a ground for eviction :—

"on the ground that he has, without his landlord's consent in writing, sub-divided or sub-let his holding or any part thereof, save as expressly authorised by this Act."

He said :—"Both the Government of India and the Secretary of State have recommended that sub-letting should be discouraged. The evils of the institution are well known. If it be held an objectionable practice in the case of occupancy-raiyats, how much more so it must be in the case of non-occupancy-raiyats. Even the friends of the raiyats have urged on the legislature the necessity of provisions for preventing the evils of sub-letting, and I find that it was one of the institutions which the Famine Commission very strongly condemned in their report."

The Hon'ble MR. RAYNOLDS said :—"I think the question of sub-letting is sufficiently provided for by section 55, and that of sub-division by section 58."

The Hon'ble SIR STEUART BAYLEY said :—"Sub-division is absolutely invalid without the landlord's consent in writing, and sub-letting is only validated under certain very exceptional circumstances under a registered lease."

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI said :—"I wish to point out that the provisions as to sub-letting in section 55 apply only to occupancy-raiyats, because, although the word 'raiyat' has not been qualified, the provision which it contains that a sub-lease may extend to nine years is inconsistent with the position of a non-occupancy-raiyat in the Bill."

The amendment was put and negatived.

The Hon'ble BĀBŪ PEĀRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahārājā of Durbhunga, that to section 44 the following be added as a ground for eviction :—

"on the ground that he has disclaimed the title of his landlord before any public officer or Court".

He said :—"The result of the judicial decisions have established that in Bengal as in England a tenant disclaiming his landlord's title forfeits his tenancy. The amendment fairly summarises the results of the judicial decisions. As to the equity of the principle there can be no doubt. Nor do I see any objection on the score of principle to enacting it. A tenant can never be harassed by false claims in this respect, for the disclaimer is entirely his own act, and unless it is reduced to writing by a proper authority he cannot be proceeded against in respect thereof. The necessity for enacting such a provision for the protection of the landlord is clear. In questions of boundary disputes or disputed title, it is common for tenants to be won

over by the rival party who may not really be in possession. In common rent-suits raiyats thus gained over raise issues of title and plead adverse possession. The whole question of title is fought out as a side issue. We are sure this hon'ble Council has no sympathy with such dishonest tenants or with the unnecessary and reprehensible fostering of litigation. In Bengal the consequences of such disclaimer are very effective checks upon false claims to hold land as rent-free, which, in the present state of the law, it is very difficult for the landlord to disprove. Justice and expediency alike demand that the judge-made law on the subject should not be repealed by implication."

The Hon'ble MR. REYNOLDS said:—"I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable."

The Hon'ble MR. ILBERT said:—"I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-books. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it the Courts regard it with disfavour and limit its application in every possible way."

"And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section enabled a tenant who entertains a *bona fide* doubt as to the person entitled to his rent to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court. And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land in his possession rent at a rate to be fixed by the Court. By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further."

The amendment was put and negatived.

The Hon'ble BARÚ PRÁRI MÓHAN MUKERJI, on behalf of the Hon'ble the Members of Durbhunga, withdrew the following amendments:—

That in section 44 the following be added as a ground for eviction:—

(1) on the ground that he has persistently obstructed the landlord or any person authorized by him in entering upon the holding for any lawful and reasonable purpose."

That in section 44 the following be added as a ground for eviction:—

(2) on the ground that he is a person imprisoned for debt or convicted of any offence against his landlord or any resident cultivator of the village."

That in section 44 the following be added as a ground for eviction:—

"(j) A landlord may, in any other case, obtain a decree for eviction by giving one year's notice to quit and such compensation as the Court may consider fair and equitable under the circumstances of the case."

That in line 8 of section 45, for the words "six months" the words "one year" be substituted.

That to section 45 the following proviso be added:—

"If the landlord fails to prove the service of the notice to quit, the Court shall, on proof of his right to eject, grant to the tenant six months' time to vacate the holding from the date of the decree."

The Hon'ble MR. AMÍR ALÍ moved that after section 45 the following section be inserted:—

"Where, after receipt of such notice and before institution of suit, the raiyat expresses his willingness in writing to pay for his holding a fair and equitable rent to be determined by the Court under section 46, clause (b), or by arbitrators appointed by the Court or by the parties themselves, the raiyat shall be entitled to remain in occupation of his holding at the rent so determined for a term of five years from the expiration of his lease, but on the expiration of that term he shall be liable to ejectment under the condition mentioned in section 45, unless he has acquired a right of occupancy."

He said:—"I have stated in my dissent that the Bill provides no efficient safeguard against the ejectment of a non-occupancy-raiyat with a view to prevent the possibility of his acquiring an occupancy-right. To exemplify my meaning I have simply to point to clause (c) in section 44 which I move to omit from the Bill. It has been stated in this Council that 90 per cent. of the raiyats in Bengal possess occupancy-rights. My view is that the majority of the raiyats of Bengal, who possess occupancy-rights, possess it only by courtesy. One of the most experienced Native officers of Government in the Executive Service—I allude to Bábú Bunkim Chunder Chatterji—thus speaks on the point:—"Most of the agriculturists are tenants-at-will, and the zamíndár can eject them at his pleasure; rights of possession are in many places only chimerical; the raiyats have possession by law, but not as a fact." My hon'ble friend Dr. Hunter, in his *Statistical Account of Bengal*, says that "the husbandmen seldom change their holdings, and the same land generally descends from father to son, so that most of the cultivators may be said to have a sort of occupancy, although when a dispute occurs with the superior landlord the cultivator generally loses his case"—5 Vol., page 92. Another writer of great experience ascribes this to the fact that in the *jama-wásil-báki* papers the zamíndárs constantly change the names of the raiyats. One can easily imagine that those who believe the acquisition of occupancy-rights by the raiyats is in derogation of the right of the landlords should endeavour by every possible means to prevent the raiyats acquiring those rights. One must judge of the future always by the past. Hitherto the landlords have had recourse to illegitimate methods for the purpose of preventing the acquisition of occupancy-rights; how much more will the endeavour be repeated after the recent angry discussions? Is it likely that any raiyat once let in under a registered lease will be allowed the chance of holding that specific land or any land within the *village* for 12 years or more? In the face of what has already happened, in the face of what we hear asserted every day, it is idle to say that there are no just grounds of apprehension on this score. Every raiyat will henceforth be let in under registered leases, and will be required to give up his holding on the expiration of his lease and get other land beyond the village, and this process will henceforth take place under the countenance of the law. Will such a thing be to the eventual good of the country? I believe there cannot be two opinions regarding the beneficial results accruing from a general extension of the right of occupancy. When one considers the insecurity attached to a common tenant's position, of his consequent unwillingness to improve his cultivation, to do more than eke out a bare subsistence, the necessity for giving some substantial guarantee against frequent and arbitrary eviction will at once be realised.

"If you give some assurance to the raiyat that his holding is his own, that it would descend to his heirs, that he would not be ejected from it as long as he paid a fair and equitable rent, you furnish him with a strong motive to

develop the resources of the soil. With a view to afford the non-occupancy-raiyats some protection I beg to move the insertion of the section I have read out."

The Hon'ble Mr. REYNOLDS said:—"However much I sympathise with the object of the hon'ble member, I am afraid his amendment is inconsistent with the principle, which has been already accepted, of the zamindar's right to eject at the end of an initial lease. The Council has decided that a landlord ought to have the power to get rid of a tenant at the end of that term. But the amendment of the hon'ble member is directed to the root of that principle; therefore I think that to accept the amendment will be inconsistent with the decision of the Council."

The Hon'ble Sir STEUART BAYLEY said:—"I oppose this amendment, because it is absolutely inconsistent with the decision which the Council has just come to."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI said:—"I do not withdraw my amendment that section 46 be omitted, but I think that as a necessary result of the loss of my amendment on section 45 this amendment will be also be negatived."

The amendment was put and negatived.

The Hon'ble BABU PEARI MOHAN MUKERJI, on behalf of the Hon'ble the Maharaja of Durbhunga, moved that section 47 be omitted. He said:—"I think this section as it stands is altogether unnecessary. It simply tries to formulate a rule which is merely a rule of evidence on which the Courts would be guided by the general principles of the law of evidence. If the section is inserted, it will simply be superfluous. If a lease comes after a previous lease, it cannot be said that the raiyat has been newly admitted to occupation under the second lease. I think this question may well be left to the Courts."

The Hon'ble Mr. REYNOLDS said:—"This section really seems to me one of the most practical use and value in the whole chapter. A non-occupancy-raiyat is liable to be turned out at the end of an initial lease or any subsequent lease, if he has not attained rights of occupancy. His only protection is in the possibility that the zamindar will not take the trouble to apply to the Court. The section was retained by the Select Committee, as it gives a very practical and valuable security."

The Hon'ble Sir STEUART BAYLEY said:—"I entirely agree as to the great importance of this section. If this section were of no importance, and if the Courts would always come to the same conclusion without it, I am not sure that I understand on what grounds the hon'ble member is so anxious to expunge it. It is because it is of much value that I object to its omission."

The amendment was put and negatived.

The Hon'ble Sir STEUART BAYLEY then moved that for section 29 the following be substituted:—

"29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

"(a) the contract must be in writing and registered;

"(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

"(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

"Provided as follows:—

"(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

"(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced

rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

"(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

The Hon'ble BABU PEARI MOHAN MUKERJI said:—"I think the draft which has been circulated embodies the conclusions to which the Council arrived at yesterday's meeting after the debate on the Hon'ble Mr. Evans' motion. I should beg only to suggest that the provisions of this section, which applies to only occupancy-raiyats, should be extended also to non-occupancy-raiyats."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The only point I have to suggest is that which was referred to yesterday by the Hon'ble Mr. Evans, namely, the principle which he advocated as to occupation for three years, and which is accepted by the hon'ble member in charge of this Bill. The principle which I maintain is most definite, namely, that of the registration of a lease which is not admitted, as may be seen from the first proviso in this amendment, which runs thus:—

'Nothing in clause (a) shall prevent the landlord from recovering rent at the rate actually paid for a continuous period of three years immediately preceding the year for which the rent is claimed.'

"The less determinate element is accepted, and the more determinate element is rejected. With regard to the third proviso, which runs thus:—

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable',

I think the term 'specially low rate' is very indefinite, and will lead to litigation; so also is the expression 'in consideration of cultivating a particular crop for the convenience of the landlord'. While I was ready to accept the proposals placed before the Council and afterwards withdrawn by the Hon'ble Mr. Evans, I cannot say the same with regard to the new provisions. They are open to objections which I have above explained. By letting in oral evidence, we are upsetting one of the main principles of the Bill."

The Hon'ble Mr. REYNOLDS said:—"I do not wish to detain the Council after the long discussion which took place yesterday, but I regret that the hon'ble member in charge of the Bill has surrendered the principle that enhanced rent should only be enforced under a registered agreement. The importance of that principle is very great, and even under the circumstances which were so forcibly put before the Council by the Hon'ble Mr. Evans, I still think that the security of a registered agreement is so great that some inconvenience ought to have been risked in order to obtain it. The Behar Rent Committee decided that there should be no enhancement out of Court, except under the form of a registered agreement, and that was the opinion of practical men, both official and non-official. We know the procedure under which enhancements are obtained in that province, and that there are not many enhancement cases in Behar, because they are not wanted. The landlord simply gets the patwari to put down the enhanced rent in the jamabandi and he sues on the jamabandi. There is evidence before the Council to show that that is the common way in which it is done. It is true that under this section enhancement cannot take place till after three years, but even with that limit there is great danger in allowing this if we have not the security of a registered instrument. I referred to the precedent of the North-Western Provinces Rent Act, and I was told that the cases were not parallel, because in the North-Western Provinces the agreement may be registered before a kanungo, and we have not that facility in Bengal. I do not admit that does away entirely with the parallel. We have quite as many registering officers in Bengal as there are

kanungos in the North-Western Provinces, but I admit that we have not got these village officers at present, and the people are not accustomed to the registration system. But this objection will no longer apply when we have, as I hope before long we shall have, a survey and record-of-rights, and the means of maintaining it in Behar. I trust the hon'ble member in charge of the Bill will not object to put in words in the section which will exclude from the objection of that clause any local area in which arrangements have been completed for a survey and record-of-rights. There will then be no excuse that there is no village-officer before whom the registration can be made. If the hon'ble member will agree to that clause it will remove a good deal of the objection I feel to this proposal. In regard to clause (iii), as to specially low rates of rent in consideration of cultivating particular crops, I should have been better satisfied if it were confined to contracts already existing. I cannot see the necessity for future contracts under this special provision. In future it will be in the power of the landlord to make an agreement at a higher rate, with a condition that the tenant shall hold at a lower rate as long as he grows certain crops. The provision as it stands is calculated to lead to a good deal of litigation owing to its indefiniteness."

The Hon'ble MR. HUNTER said:—"My Lord, this amendment has been attacked both as to the form and as to its principle. The form of the amendment may, I think, be safely left to the hon'ble member in charge of the Bill and to the hon'ble the Law Member. But with regard to the principle embodied in the amendment, I feel bound to say that it seems to me to be both fair and wise. Hon'ble members of the Select Committee will be aware that I agreed to the section as it stands in the Bill with great reluctance, and I felt that reluctance afresh as I listened to the speech of the Hon'ble Mr. Evans yesterday. No one could have followed that speech without perceiving that the Bill as it stands attempts to legislate in the teeth of the established custom in Bengal. I therefore accept my Hon'ble friend's amendment as the best compromise which has been presented to us. It embodies a principle which the majority of the Select Committee desire to retain, and at the same time it removes certain defects from the section as it now stands in the Bill."

The Hon'ble MR. AMÍR ALÍ said:—"I am very loth to trespass on the time of the Council, but as I spoke against the amendment as it was proposed by the Hon'ble Mr. Evans I wish to say a few words on its present form. I desire to endorse what fell from the Hon'ble Rao Saheb Mandlik. We have introduced a most indeterminate element where there was something determinate before. We have by proviso (i) done away entirely with the beneficial effect of the preceding clause; and with reference to clauses (ii) and (iii) I am bound to say that they appear to me so complicated, involving so many difficult considerations, that the judicial officers trying cases under these clauses may well be required to pass an examination before they are entrusted with the adjudication of those questions."

The Hon'ble MR. GIBBON said:—"I beg to record my approval of the amendment in preference to what is in the Bill. But I regret the Council did not see their way to accept the proposal of the Behar Committee, which met with the approval of the Hon'ble Mr. Reynolds. That proposal was that it should be left to landlord and tenant to come to a mutual understanding provided such agreements are in writing and registered, without determining by law the terms and conditions of the agreement."

His Honour THE LIEUTENANT-GOVERNOR said:—"I accept the compromise as a solution of the difficulty."

The Hon'ble SIR STEUART BAYLEY said:—"I think I should offer some reply to the objections which have been made. I did not altogether follow some of the severe criticisms of the Hon'ble Rao Saheb Mandlik. In regard to the first point, the vague and indeterminate drafting of the third clause, I am in the hands of the Council. I can only say that it has satisfied the Hon'ble Mr. Evans

and the Hon'ble the Law Member of the Government. I think I may place their approval against the criticism of the hon'ble member, and I think the Council may safely trust to their guidance as far as the matter of drafting is concerned.

"Then we come to the criticism of the principle involved in the amendment. The Hon'ble Mr. Reynolds objects that I have surrendered the valuable principle of enhancement by registered contract, and especially in regard to Behar. I think I value the principle of registered contracts as much as anybody can. I have always said that I look on this as a most important section of the Bill, not only from the good effect of registration in reducing and simplifying legislation, but also from its indirect educational effect on the raiyat's knowledge of his rights; but I yielded to the strong case made out by the Hon'ble Mr. Evans showing how great a change the law involves in the actual facts of everyday life, and what inextricable confusion may take place unless we take these facts into consideration, and I waited with great anxiety and earnestness to hear what reply would be made to him. I can only ask the Council whether my critics gave or attempted to give anything like a sufficient answer to these arguments, and whether it is not my duty to accept a compromise which gives distinct and definite point to our wish and anxiety that contracts should be registered in every case possible, but at the same time does not enable the raiyat to repudiate an agreement which he had carried out for 10 or 15 years, because at some long antecedent period the rent was low and no subsequent contract could be produced. Defence of such a position was absolutely impossible, and I do not think the Council will be wrong in accepting this compromise. Then I come to the suggestion which the Hon'ble Mr. Reynolds made with regard to the example of the North-Western Provinces Rent Act. He said rightly that the parallel was not exact. Granted that we have a number of registering officers equal in number to the kanungos of the North-Western Provinces, yet the actual difficulty was not in the number of officers but with regard to a record-of-rights being prepared and maintained. In the North-Western Provinces you have such a record, in Bengal you have not, nor have you a registration of rents or the machinery to maintain it. The hon'ble gentleman asked whether I could not see my way to provide that, when Chapter X of the Bill comes into force in any place, this proviso should cease to have effect; that is, that we should insist on the contract being registered before a Revenue-officer. Chapter X refers to the preparation of a record-of-rights; it does not provide either for the maintenance of that record, or for the correction of it or for the control of the officers who have to keep it up. Consequently, Chapter X alone will not give the facility or the security which the North-Western Provinces system now gives. These matters are, however, within the competence of the Lieutenant-Governor's Council to legislate for, and I will point out that the last section of the Act gives the Lieutenant-Governor power to legislate for the amendment of the Act; and should the time ever come when the system in Bengal is in this respect on all fours with the North-Western Provinces, then it will be quite in the power of the Lieutenant-Governor to assimilate the system in Bengal to the system in the North-Western Provinces, because then the two systems would be on entirely the same basis."

The amendment was put and agreed to.

The Hon'ble BĀBŪ PRĀRĪ MOHAN MURKHWĪ moved, on his own part and on behalf of the Hon'ble the Mahārājā of Durbhunga, that section 48 be omitted. He said:—"The institution of payment in kind is one of the oldest institutions in the country. It has always worked very satisfactorily. It is free from those sources of dispute and litigation which are inseparable from money-rents. It involves no suits for enhancement or abatement of rent. The benefits of a rise in the price of produce are shared both by the landholder and his tenant without the interference of Courts. The tenants are not driven into debt, and if they have to borrow they borrow from their landlord, whom experience has shown to be a much less exacting creditor than the village-usurer. The landholder participates in the profits and losses of the cultivation, and in districts like Patna and Gya, where the *bhaoli* system obtains, the landholder

co-operates with his tenants in the cultivation. It is the landholder who clears the water-channels and maintains the embankments. If the works were left to individual raiyats, they would be wholly unable to maintain the works with the limited means at their disposal, and cultivation would come to a deadlock. It would be therefore very inexpedient to give either of the parties the right to make capricious claims for the conversion of produce-rents into money-rents, and I think it would be in the interests of both landholders and raiyats if this section were omitted."

The Hon'ble MR. QUINTON said:—"My hon'ble friend started by saying that payment of rent in kind was for the mutual advantage of the raiyat and the landlord. He thought the parties themselves were the best judges of their own advantage; and if they find it is for their mutual advantage, neither party will apply for commutation. I would point out that the rule we propose to apply is in force in the North-Western Provinces and the Central Provinces, in which large tracts are under the system of cultivation known as *bhaoli* tenures. I do not propose to detain the Council by a discussion on the advantages or disadvantages of the *bhaoli* system: on the one hand, it benefits the landlord in seasons of prosperity, on the other, it protects the raiyat from calamities of season. But we think the principle is a sound one that either party to whom it is an advantage should have the option of applying for a commutation of rent. On these grounds I oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"I cannot altogether agree that the doctrine which the hon'ble mover of the amendment has laid down, to the effect that the payment of rent in kind is free from dispute or litigation, is the correct doctrine on the subject, because I have spent a great part of my life in districts where such holdings are common, and my experience is directly to the contrary. I am not one of those who look on payment of rent in kind as in itself an evil which ought to be got rid of. That opinion is very commonly held, and at one time it was held strongly by the Board of Revenue, and it was then their policy to discourage it in every way. This perhaps accounts for the absence of all provisions for dealing with it from Act X of 1859. I have myself seen the great advantage of it. The system is one under which in a bad season the landlord shares the risk, and the raiyat never has to pay more than a certain share of what he reaps; it enables him to tide over a very bad year without being utterly broken down, as he would be if he had to pay a money-rent. In South Behar, where the system most prevails, the country depends very much on the rainfall; water is collected in reservoirs, which are prepared partly by the raiyats and partly at the expense of the landlord; that is, the raiyats supply ordinary labour and the landlord supplies skilled labour besides giving the raiyats a meal during the time they are at work; and the reservoir supplies the smaller channels, the whole cultivation depending upon it. I should be sorry to see a sudden stoppage put to that system. But there is no question that cultivation under the *bhaoli* system is careless and unprogressive; the raiyat knows that the full advantage of whatever better cultivation he may make will not go to himself. I think the hon'ble member's objection would have had great force if the Bill provided, as the original Bill did, that the raiyat or the landlord might demand absolutely and in every case to have a commutation in money; but we have now simply given the right to apply for commutation, and have also given the Revenue-officer a discretion to refuse. It is not possible to lay down definite rules to guide the Revenue-officers whether the application should be granted or not. The circumstances are so diverse that it will be impossible to do it. Speaking generally, I could easily decide in some cases whether it would be good or bad. Where the interests of a great number of raiyats are concerned, where the landlord supplies a number of homogeneous holdings with water, it is wrong to grant the application of an individual raiyat; but where the raiyat is connected with the holding of an individual raiyat, where this does not interfere with the general system of irrigation, I do not see why he should not be allowed to commute. Again in regard to the landlord, the *bhaoli* system is a good one for a small landholder, who can look after the proceeding himself,

but for a large landholder, who has to trust to agents, it is a bad one. It allows an enormous amount of simple cheating by the landlord's agents and against the landlord's agents by the raiyats. We must leave it in each individual case to the Revenue-officer, who goes to the spot to decide. I am told that no hardship or injury to the raiyats under this system is made out. This I must absolutely contradict. I would refer you to the opinion of the Commissioner of Patna who succeeded me. He defends the system on the whole on the same grounds as I do, but says it leaves the raiyat at the mercy of the landlord's agents.

"Similar but much stronger remarks are made by the experienced Deputy Collector whose words are quoted by the Behar Rent Committee, and are brought forward by them as the foundation of their recommendation. The proposal that commutation should be allowed was originally made by that Committee and adopted by the Rent Commission, and I find it in every subsequent proposal in regard to legislation for Behar."

The amendment was put and negatived.

The Hon'ble MR. AMIR ALI by leave withdrew the amendment that in line 3 of section 48, for the word "exceeding" to the end of the section, the following be submitted:—

"exceeding one-fifth of the gross produce of the land in staple food crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble BĀBŪ PEĀRĪ MOHAN MUKERJĪ, on behalf of the Hon'ble the Mahārājā of Durbhunga, by leave withdrew the following amendments:—

That in the event of his last preceding amendment not being carried, in clause (a) of section 48, line 2, for the word "registered" the word "written" be substituted.

That in clause (a) of section 48, line 3, for the word "fifty" the words "one hundred" be substituted.

That in clause (b) of section 48, for the word "twenty-five" the word "fifty" be substituted.

That in lines 4 to 7 of section 49, the words from "and after", &c., to the end of the section, be omitted.

That in the event of his last preceding amendment not being agreed to, in line 4 of section 49, the word "written" be omitted.

That in line 6 of section 49, for the word "six" the word "one" be substituted.

The Hon'ble MR. GIBBON moved that for section 49 the following be substituted:—

"An under-raiyat shall not be liable to be ejected by his landlord, except—

"(a) on the expiry of the term of a written lease;

"(b) when holding otherwise than under the terms of a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord."

He said:—"The subject of sub-letting by an occupancy-raiyat to another person was found to be a difficult one in Committee. I contended we should give the under-tenant as much protection as it is possible to give him; that it is necessary when sub-letting that the agreement should be by written lease, not necessarily a registered one; that when an occupancy-raiyat sub-lets his lands on a verbal agreement the sub-tenant should, in the case of his landlord wishing to eject him, be entitled to hold at a judicial rent for three or five years, or that the sub-tenant should receive the same protection as is to be provided for the non-occupancy-raiyat under the Bill. But the Committee did not

see their way to this; the only suggestion they adopted was that, when a sub-raiyat was let in on a registered lease, it should be for a term of years. I admit with reference to a sub-lessee that the Committee have given a sub-lessee on a registered lease every protection possible short of making him an occupancy-raiyat; he is to be let in for a term not exceeding nine years; the lease is also to be treated as an incumbrance on the holding. Under the present law sub-letting is not controlled and a sub-lessee receives no protection. If the tenant acts in collusion with the landlord, it is in the power of the occupancy-raiyat to dispute the sub-lease and avoid all liability; the occupancy-raiyat may surrender or abandon his holding, and the sub-lessee receives no protection. There are two kinds of sub-lessees; one is the capitalist, the other the poor raiyat; the capitalist has had every protection given him under the Bill, and the defects of the present law are as regards the capitalist sub-tenant to be remedied under the Bill; but the poor raiyat, who is let in on a verbal lease, except that he can only be ejected after six months' notice, receives no further protection. Section 48 provides that the landlord can only sue for a rent not exceeding 50 per cent. over his own rent if on a registered lease, and 25 per cent. if on a registered agreement; it is to this extent only that he gets protection. Occupancy-raiyats who sub-let on bhaoli agreements give no written leases and may eject their tenants at pleasure under the Bill; if they hold their lands at a money rental they might have to forfeit a portion of the outturn crop, but the hardship to the sub-tenant is the same. I propose that he shall only be liable to ejectment on the expiry of a written lease, or when holding on a verbal engagement, or on notice to quit served in the year previous to the one at the end of which he is to be ejected. This will in all instances insure him one year and a half's possession of the land. That is the least protection we can give him, for the poor raiyat is entirely dependent for his living on the property he holds, and we give him no protection except that of six months' notice; he should receive at least a year and a half's notice."

The Hon'ble MR. HUNTER supported the amendment:—He said:—"One of the acknowledged defects of the Bill as it stands is the scant protection which it gives to the under-tenant. The Select Committee clearly perceived this defect; but they did not so clearly see their way to remedy it. I regard my hon'ble friend's amendment as a fair and very moderate attempt to supply what I have always felt to be an omission in the Bill. Its effect will only be to render the eviction of an under-tenant a somewhat more difficult and tardy process. I would press on those who have not hitherto seen their way to agree with my hon'ble friend and with myself in this matter, that the under-tenant is the tenant of the future throughout large areas of Bengal, that already his numbers have become a most serious problem, and that he is the only class of tenant for whom the Bill has failed to make any adequate provision."

The Hon'ble MR. AMIR ALI also supported the amendment. He said:—"I think the reasons which have been advanced by the hon'ble mover of the amendment are very cogent, and it is unnecessary for me to add anything further."

The Hon'ble SIR STEUART BAYLEY said:—"I am very sorry I do not see my way to accept this proposal; the first part of the amendment, I think, unnecessary, as it is a part of the present law; if you hold under a lease you can only be ejected on the expiry of the lease. With regard to those who hold without written leases, the law provides for a notice of six months, and I do not think it is shown to be really necessary that we should give him 18 months' notice; on a notice of six months he should be able to move elsewhere and take up another holding."

The Hon'ble MR. GIBBON said in reply:—"With reference to a written lease, my reason is that that may be an inducement to holders to give written leases, so that they may at the end of the lease eject without notice, whereas without a lease they are bound to give notice. The giving of written leases should be encouraged as much as possible."

The amendment being put, the Council divided:—

<i>Ayes.</i>	<i>Noes.</i>
The Hon'ble G. H. P. Evans.	The Hon'ble J. W. Quinton.
The Hon'ble H. St. A. Goodrich.	The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. J. Reynolds.	The Hon'ble Rao Saheb Vishvanath
The Hon'ble W. W. Hunter.	Narayan Mandlik.
The Hon'ble Amir Ali.	The Hon'ble Sir A. Colvin.
The Hon'ble R. Miller.	The Hon'ble Sir S. C. Bayley.
The Hon'ble T. C. Hope.	The Hon'ble C. P. Ilbert.
His Excellency the Commander-in-Chief.	Lieutenant-General the Hon'ble T. F. Wilson.
His Honour the Lieutenant-Governor of Bengal.	The Hon'ble J. Gibbs.

So the amendment was agreed to.

The Council adjourned to Monday, the 9th March, 1885.

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

SIMLA;
The 28th April, 1885. }



EXTRA SUPPLEMENT TO The Gazette of India.

CALCUTTA, SATURDAY, DECEMBER 19, 1885.

GOVERNMENT OF INDIA. REVENUE AND AGRICULTURAL DEPARTMENT.

REPORTS ON THE STATE OF THE SEASON AND PROSPECTS OF THE CROPS FOR THE WEEK ENDING 16th DECEMBER 1885.

GENERAL REMARKS.—During the week under report rain has fallen generally throughout the Madras Presidency, the Berars, the Central Provinces, and the North-Western Provinces and Oudh.

Slight rain has also fallen in Mysore and in a few districts in the Punjab, Bombay, Bengal and Assam. From one or two places in Central India and Rajputana slight showers are also reported. The standing crops are generally in good condition in Madras, and those which are being harvested promise an average outturn. In Bellary and Anantapur prospects continue favourable. In Mysore and Coorg crops are good.

In parts of the Bombay Presidency more rain is wanted for the *rabi* crops, the sowing of which has been nearly completed in most districts. The *khari* harvest is nearly over. In the Berars and Hyderabad the *rabi* promises well, and in Central India and Rajputana agricultural prospects are generally good.

In the Central Provinces the *rabi* crops have been improved by the recent rain; the *khari* is being threshed in Jubbulpore and Seoni. More rain is still wanted in the Punjab for the *rabi* crops. In the North-Western Provinces and Oudh the *rabi* crops have been much benefited by the recent rains, and prospects are good.

In Bengal the recent rain has greatly benefited the *rabi* and poppy crops in Behar and Hazareebagh; the *am* harvest is yielding a good outturn except in the inundated tracts. In Assam the prospects of the season continue good.

In British Burma the rice crop is being reaped and promises well in all districts except Tharawaddy, Prome, and Thayetmyo.

The public health is generally good.

Prices are fluctuating in the Punjab and are falling in Coorg. In Bengal the price of rice is lower than last year. Elsewhere prices are fairly stationary.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
Madras—(Dec. 16th) Bellary.	(Average) 0·18	Early dry crops much improved; later sowings thriving, but white cholera suffering from disease in two taluks, and pulses from insects in one; wet crops good; harvest wet and dry grains, yield, paddy average; dry grains about average.
Kurnool	" 0·54	Paddy crops under canal suffering from want of water owing to breach of <i>anicut</i> . Harvest paddy and early cereals, yield below average. Smallpox in one and cattle-disease in three taluks.
Ganjam	Nil	Harvest paddy. Fever, and smallpox slight in three and cattle-disease in two taluks; 45 deaths from cholera.
Kistna	(Average) 0·58	Standing crops generally good. River 3·35 feet over <i>anicut</i> . Fever exists; smallpox slight; deaths from cholera unreported last week 1.
Chingleput (Madras)	" 2·92	Standing crops fair; harvest paddy in parts, yield below average. Fever and smallpox in one taluk; cattle-disease in two taluks.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
Madras—contd		
Coimbatore.	(Average) 0.97	More rain wanted in two taluks. Standing crops generally good, but paddy withering for want of water in one taluk, and dry crops damaged by insects in parts of another; harvest wet and dry grains, outturn about average. Slight smallpox in one and fever in four taluks.
Tanjore.	1.61	Standing crops generally good; harvest paddy and <i>varagu</i> , outturn below average. Two deaths from cholera; cattle-disease in one taluk. Fever prevalent. Water supply sufficient.
Madura.	1.0	Second crop cultivation fair; harvest later first crop paddy in one taluk, outturn above average. Fever in two and slight smallpox in four taluks; 35 deaths from cholera; cattle-disease in one taluk.
Malabar.	0.35	Paddy good; harvest first crop, yield average. Fever in parts.
Travancore.	1.03	<i>General Remarks.</i> —General prospects fair; continue favourable in Bellary and Anantapur.
Bombay—(Dec. 16th)		
Karachi.	Nil	River at Kotri on 14th 4 feet 5 inches against 5 feet 10 inches on same date last year. <i>Kharif</i> harvesting mostly completed; <i>rabi</i> sowing continues. Fever in ten and cattle-disease in three taluks. Prices—wheat, red rice, and <i>bajri</i> in Karachi 26, 30, and 34, in Sakro nil, 36, and 46, in Jati 25, 42, and 42, and in Sehwan 32, 42, and 42 pounds per rupee respectively.
Hyderabad.	Nil	<i>Rabi</i> cultivation good. Weather seasonably cold. River at Kotri on 14th 4 feet 5 inches against 5 feet 10 inches on same date last year. Fever in 12 and cattle-disease in 8 taluks. Wheat 28, <i>jowari</i> 40, <i>bajri</i> 38, white rice 19 and red rice 26 pounds per rupee.
Ahmedabad.	Nil	<i>Rabi</i> sowings nearly over. Fever in Gogo, Viramgaum, and Samund taluks. Wheat 36 and <i>bajri</i> 33 pounds per rupee.
Paroda.	Nil	Public health generally good; cattle-disease in Songad and Kol taluks. Standing crops in good condition; sowing of <i>rabi</i> and harvesting of <i>kharif</i> almost completed; opium sowing continued in Kadi division. Prices— <i>bajri</i> 27, wheat 23, and rice 16 pounds per rupee.
Surat.	Nil	Standing crops healthy; <i>kharif</i> crops except <i>jowari</i> and cotton almost harvested; <i>rabi</i> sowing completed. Cattle-disease in Bulsar taluk; fever in all taluks, except Chorasi and Jalapar. <i>Jowari</i> 38 and <i>ragi</i> 45 pounds per rupee.
Nasik.	34 Baglan 20	<i>Kharif</i> crops harvesting in progress, and <i>rabi</i> crops in good condition in all the taluks, except Yeola and Malegaon; in Yeola taluk <i>rabi</i> crops promise well wherever it rained; in many places want of rain seriously felt; growth of <i>kharif</i> crops stunted owing to want of rain in 22 villages of the Malegaon taluk; <i>rabi</i> crops much in want of rain. Fever and ague prevail; fever, cough and inflammation of the eyes prevalent in Peint; public health in the rest of the talukas generally good. Wheat 31½, <i>bajri</i> 33½, and rice 20½ pounds per rupee.
Colaba (Bombay).	Nil	Abnormal temperature nil on 9th and 10th, fell to 5° cool on 13th, rose to 4° cool on 14th, and was still 4° cool on 15th. Vapour in air excessive on 9th and 10th, normal on 11th and 12th, and defective from 13th to 15th. Wind normal from 9th to 12th, abnormal wind northerly on 13th and southerly on 14th and 15th. Distant lightning on 9th.
Poona.	73 at Saewad and light showers in other talukas except Bhimthadi.	<i>Rabi</i> crops doing well. Fourteen cholera cases in the city of Poona. 9 deaths; cattle-disease in Junnar taluka. Prices of <i>bajri</i> 32 and <i>jowari</i> 39, in Poona <i>bajri</i> 32 and <i>jowari</i> 35 pounds per rupee.
Ahmednagar.	Slight rain in all talukas except in north-west.	Crops good in south, but more rain wanted in other parts. Health good. <i>Bajri</i> average 42 and <i>jowari</i> 50 pounds per rupee.
Bidhar.	Sholapur, 75; Barshi, 118; Madha, 96; Karmala, 138; Pandharpur, 114; Bangola, 25; Malasiras, 97.	<i>Kharif</i> harvest almost completed; <i>rabi</i> crops good. <i>Jowari</i> 47 pounds 23 tolas, and <i>bajri</i> 42 pounds 15 tolas. Cholera 49 cases, 21 deaths.
Dharwar.	Nil	Reaping of rice and early <i>jowari</i> nearly completed; cotton blighted in Gadag taluka; other crops good. Cattle-disease in Belkapur and Hangal; fever in Mugud, Hangal, and Kalghatgi. Rice 19 to 30 and <i>jowari</i> 42 to 64 pounds per rupee.
Kanara.	Nil	Preparing ground for second crop in some parts; rice and <i>bajri</i> harvest continues above Ghat. Measles in Karwar; slight fever in two talukas; cattle-disease in Karwar, Yellapur, Mundgod, and subsiding in Sirsi. Common rice in Karwar 18; district average 19½ pounds per rupee.
Bijapur.	Nil	Fever prevalent in some talukas. Weather cold. <i>Bajri</i> 34, <i>jowari</i> 32, and wheat 34 pounds per rupee.
		<i>General Remarks.</i> —River still low in Sind. Slight rain in most districts of the Deccan and in parts of Bijapur, Belgaum and Upper Sind Frontier; more wanted for <i>rabi</i> crops in parts of Nasik, Ahmednagar, and Khandesh. Reaping of <i>kharif</i> and sowing of <i>rabi</i> crops nearly completed in most districts; standing crops damaged by drought in two talukas of Khandesh, by blight in one taluka of Dharwar, and by blight and insects in parts of Bijapur. Cholera and smallpox in parts of three, cattle-disease in parts of twelve, and fever in parts of fifteen districts.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
Bengal—(Dec. 15th)		
Chattagram (Dec. 15th).	Nil	Weather seasonable. Prospects of crops fair. Lands being prepared for cold weather crops; harvesting of <i>aman</i> continues. Prices steady. Public health good.
Dacca.	Nil	Paddy being harvested, outturn good; winter crops doing well. Cholera in town and other parts of district.
24 Pargannas.	Nil	Harvesting of <i>aman</i> going on, yield estimated at about 12 annas; winter crops doing well. Cholera has broken out to a small extent in Diamond Harbour and Baraset sub-divisions; public health generally good.
24 Pargannas.	Nil	Weather cloudy. Harvesting of <i>aman</i> paddy begun, prospects good; winter crops doing well. Price of rice falling. Some cholera; public health fair.
Murshidabad.	Nil	Weather seasonable. <i>Aman</i> rice still being harvested; <i>kharif</i> almost ready to be harvested; prospects of all other crops good. Public health good.
Patna.	Nil	Weather occasionally cloudy. <i>Aman</i> being harvested with favourable outturn; winter crops promise well. Public health good.
Dinapore.	Slight rain on 12th.	Weather fair and cold. Crops in good condition. Cholera still reported.
Rangpore.	0.18 0.20	<i>Aman</i> being harvested; tobacco and other winter crops thriving. Cholera in the interior.
Midnapore.	Nil	<i>Aman</i> harvest yielding very well where floods did not extend; prospects of <i>rabi</i> crops and <i>boro</i> rice generally good. Public health good.
Burdwan.	0.01	<i>Aman</i> harvest excellent; <i>rabi</i> prospects good. Public health good.
24 Pargannas.	Nil	Rice being harvested; <i>rabi</i> prospects good, but rain wanted. Public health good. Price of rice stationary.
Monghyr.	Good rain on 14th.	The rain has much benefited poppy crop. Measurement in progress. Prospects of crops good; cutting of paddy continues, yield good; new rice 21 annas per rupee. Fever and cholera decreasing.
Purneah.	0.21	Harvesting of paddy progressing; cold weather crops, including tobacco and poppy look very promising; a little more rain still wanted. Prices stationary. Public health generally good.
Darbhanga.	0.64	Poppy sowings completed; plants looking healthy; prospects good. Poppy promising; the late rain has been very beneficial. Weather favourable.
Muzafferpore.	Nil	Prospects of <i>aghar</i> and poppy crops continue good; sowing of poppy seeds almost completed. Prices fallen slightly. Public health good.
Saran.	0.12	<i>Aman</i> harvest going on; poppy and other cold weather crops doing well. Rain has been very beneficial. Public health generally good.
Chumpran.	0.12	Rain will benefit greatly <i>rabi</i> crops and also poppy with exception perhaps of late sowings. Prices fallen slightly. Public health good.
Gya.	2.06	Weather favourable. Poppy crop looking healthy and good.
Shahabad.	Nil	Weather cold and latterly cloudy. Harvesting of paddy finished in certain parts of district; prospects of <i>rabi</i> crops much improved by rain; poppy generally promising. Public health good.
Hazaribagh.	2.60	Weather cloudy; damp cold evenings. Reaping of late rice continues, outturn fair. Price of rice unchanged. Cholera reported from Japora and other parts affected by cyclone. Fever in town and Japora sub-division.
Orissa.	Nil	<i>General Remarks.</i> —Rain reported from almost all districts of Behar, and from Dinapore, Rangpore, Murshidabad, and Hazareebagh. In Behar and Hazareebagh it has greatly benefited the <i>rabi</i> and poppy crops. <i>Aman</i> harvest is generally yielding a good outturn, except in the parts of South-West Bengal deeply inundated in August, and September. Price of rice is generally lower than last year and it has further fallen in several places during the week with the appearance of new rice in the market. Public health continues generally fair.
N.W. Provinces and Oudh—(Dec. 15th)		
Allahabad.	Nil	The rain has greatly benefited <i>rabi</i> crops, and increased the cold weather crops. Weather cloudy since rainfall. Supplies ample, and prices steady. Health of men and cattle good.
Benares.	Nil	Weather cloudy; slight drizzle on 13th. Poppy and <i>rabi</i> sowing in good condition; their irrigation in progress. Prices rising. Cholera abating.
Gorakhpur.	Nil	Weather cloudy. Poppy sowing nearly completed. Market well supplied. Cholera still prevails in part of district.
Jaunpur.	Nil	The rain has benefited much the young <i>rabi</i> and poppy crops; much healthy gathered; sugarcane being pressed. Markets well supplied, but prices rose slightly; fodder very dear. Health of people good as well as the condition of cattle.
Lucknow.	Nil	Weather cloudy; young <i>rabi</i> crops look well; supplies ample; prices steady. General health fair.
Meerut.	Nil	Weather still very cloudy; prospects of <i>rabi</i> and opium crops favourable. Prices falling. Cholera still lingering in tehsil Kanda.
Partabgarh.	Nil	Rain has done much good. Prices show a tendency to fall. Markets well supplied. Health generally good.
Shahabad.	Nil	

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
N. W. P. & Oudh—contd.		
Cawnpore (Dec. 15th)	Rain from sprinkling to 20.	Rabi sowings including poppy completed, and promise well. Prices firm. Some fever in two parganas; cattle-disease disappearing.
Banda (" ")		Weather cloudy; slight rain during week in two parganas. Ravages of grasshoppers continue. Prices still rising. Public health good; cattle-disease in five villages.
Ballia (" 14th)	Good rain on the 12th and 13th instants.	Weather cold. Rain beneficial to sugarcane and rabi crops. Sky still cloudy. Market well stocked. Public health and condition of cattle good.
Farakhabad (" 15th)	30 average fall of rain reported in 4 tehsils.	Rain very favourable to rabi crops which are coming on well; slight fall of hail in one tehsil; no damage. Prices steady. Very little fever; no cattle-disease.
Sitapur (" ")	Very favourable showers of rain fell on the 12th.	Crops are doing well; poppy seed is reported as having freely germinated everywhere.
Bareilly (" ")	Excellent rain everywhere.	It has benefited all crops. Prices slightly falling. Cholera ceased except in one village. General health good.
Kumaon (" ")	Good falls of rain on 11th and 12th with snow on high ranges.	Weather since clear. Prices stationary. General health good; cattle-disease decreasing.
Agra (" 14th)	Rain 0.30 in one pargana on 12th and slight showers in two others.	Weather still cloudy. Prices rising. Fever abating.
Jhansi (" ")	Nil	Weather cloudy. Rabi crops suffering from want of rain; poppy sowings completed and the seed has germinated well. Health good.
Meerut (Dec. 15th)	Rain general	Weather still cloudy. Rabi crops getting on well. Supplies ample. Prices stationary. Health good.
Punjab—(Dec. 16th)		
Delhi (Dec. 15th)	1.30	Fever abating. Rabi sowings completed. Prices stationary.
Hissar	Nil	Health good. Kharif being winnowed; rabi sowing. Prices stationary.
Unahia	0.40	Health good. Rabi sowing and germinating. Prices stationary.
Jullundur	Nil	Health good. Rain wanted. Kharif crops being irrigated. Prices rising.
Amritsar	Nil	Health good. Prices rising.
Sialkot	Nil	Health good. Crops suffering. Prices stationary.
Ferozepore	0.10 at city	Health good. More rain wanted. Rabi sowing. Prices falling.
Lahore	Slight rain	Health good. Prospects uncertain. Rain wanted. Prices rising.
Rawalpindi	Slight rain	More rain wanted. Health good with the exception of a few cases of fever in the Fatehjung tahsil. Prices rising.
Mooltan	0.20	Health good. Rabi sowings nearly finished. Prices falling.
Shahpur	Nil	Health good. Prices almost stationary.
Bera Hazrat Khan	Nil	Cholera in parts of the district chiefly among Powindahs; fever in city. Crop prospects fair. Prices stationary.
Peshawar	0.30	More rain wanted. Health fair. Prices fluctuating.
Central Provinces—(Dec. 16th)		
Nagpur	2.40	Rain has slightly injured jwar but improved rabi crops. Fever continues. Prices stationary.
Jubbulpore	2.24	Weather cloudy. Rabi crops slightly benefited. Prices stationary.
Bhopal (Dec. 15th)	Light showers.	Weather cloudy and chilly. Slight cholera. Prices stationary.
Seoni	Hail storm on the morning of the 15th.	Weather cloudy. Rabi improved by rain; kharif threshing progressing. Fever prevalent. Prices stationary.
Hoshangabad	Light showers.	Weather cloudy. Prospects good. Fever and cattle-disease in parts.
Khandwa	0.06	Weather cloudy. Rabi crops fair. Health good. Prices stationary.
Raipur	0.06	Weather cloudy and showery. Reaping of rice completed. Rabi prospects good. Fever in parts. Prices stationary.
Sambalpur (Dec. 12th)	0.09	Weather cold and clear. Threshing and reaping in progress. Health good. Trade brisk. Prices stationary.
British Burma—(Dec. 16th)		
Akyah (Dec. 12th)	Nil	General Remarks.—Rain has fallen and cloudy weather prevails in all districts except Sambalpur. Rabi crops improved, but slightly damaged in Nagpur. Fever in parts. Prices steady.
Bassora	Nil	Slight cholera prevalent; cattle-disease in one circle. Rabi crops being reaped.
Rangoon	Nil	Slight cholera in one township; cattle-disease continues in two and four townships. Reaping commenced.
Amherst (Moulmein)	Nil	Public health and health of cattle good.

Presidency or Province and District.	Rainfall for week under report.	State of agricultural prospects.
British Burma—contd.		
Tavoy	Nil	Public health and health of cattle good. About one-third of the general crops reaped.
Pegu	Nil	Public health good. Crop prospects good; reaping commenced.
Henzada	Nil	Cholera in three townships; cattle healthy. Reaping progressing.
Prome	Nil	Public health and health of cattle good. Reaping progressing; crops bad in two townships.
Toungoo	Nil	Public health and health of cattle good. Crops promising.
Thayetmyo	Nil	Public health good; cattle-disease in one sub-division. Reaping going on.
Assam—(Dec. 16th)		
Gauhati	0.40 rain during the week ending the 15th instant.	General Remarks.—Cholera slight in five districts, elsewhere public health good; cattle-disease slight in eight districts, elsewhere health of cattle good. Crop prospects good in all districts except in Tharawaddy and Prome where the crop is fair, and in Thayetmyo where it is poor.
Sylhet		Weather seasonable. Public health fair; cattle-disease in some mouzabs. Reaping of <i>sali</i> being continued; gathering of <i>matikalai</i> and <i>mugh</i> in some villages commenced. Prospects good.
Cachar	0.05	Crop prospects very fair. Cholera reported in some parts of the district.
Dibrugarh	0.10	Weather seasonable. Reaping of <i>sali</i> crops continues; common rice 16 seers per rupee; tea season closed. Health good.
Mysore and Coorg—(Dec. 6th)		
Bangalore	Light rain in Bangalore, Tumkur, Mysore, Kadur, and Shimoga.	Weather cloudy. Public health good; fever prevalent in parts of Shimoga and Kolar. Standing crops in good condition. No material change in prices.
Mysore	0.12	Crops in good condition. Slight fall in prices of food grains. Prospects of season and public health good.
Mercara		
Berar and Hyderabad—(Dec. 18th)		
Amraoti	3.27	Weather rainy. Rainfall has somewhat injured cotton and <i>jowari</i> crops; <i>rabi</i> in good condition; wheat 22 and <i>jowari</i> 26 seers per rupee.
Akola	1.35	Weather cloudy. Rainfall beneficial to <i>rabi</i> crops, but will damage cotton and <i>jowari</i> .
Hyderabad	(Average.) 1.75	<i>Abi</i> crops prospering; harvesting of <i>kharif</i> crops continues in some places. General health of taluks fair; fever has disappeared. Prices—wheat 14½, coarse rice 12½, white <i>juar</i> 20½, yellow <i>juar</i> 27½, and <i>tur</i> 15½ seers per current sicca rupee.
Central India States—(Dec. 16th)		
Indore	A few drops of rain during week.	Heavy clouds and signs of approaching rain.
Morar (Gwalior)	Nil	Health and prospects good. Weather cloudy.
Sutna	1.40	Prospects of crops much improved. Health good.
Neemuch	Nil	Agricultural prospects good. Weather cold and somewhat cloudy.
Goona	Nil	Health good.
Agar	Nil	Weather seasonable. Health and prospects good.
Sehore	Nil	Health good. Opium prospects fair.
Nowgong	Nil	Weather fair. Crops and health good.
Bhopawar (Mauipur)	Nil	Weather cold. Prices steady. Health good.
Rajputana—(Dec. 16th)		
Abu (Dec. 16th)	Nil	Prospects good. Weather cloudy and rainy. Health good. Prices steady.
Meywar (" 14th)	Nil	Weather very cloudy; nights frosty. Fever still prevalent.
Sirohi (" 14th)	Nil	Tanks and wells low. Crops average. Small-pox slightly prevalent.
Marwar (" 12th)	Nil	Prices stationary. Weather cloudy and windy.
Kherwara (" 14th)	Nil	Tanks nearly dry. Health and crop prospects good. Weather clear.
Pertabgurh (" 13th)	Nil	Tanks all full. General health good, but fever still prevails. <i>Kharif</i> crops being gathered. Weather cloudy during the week; cold increasing. Temperature falling. Prices stationary.
Haroti (Tonk) (" 14th)	Nil	Tanks and wells fair. Rabi sowings nearly completed. Health good. Prices stationary. Weather normal.
Jhallawar (" 11th)	Nil	Tanks and wells decreasing. Health and crops good. Prices—wheat 20½, <i>mukka</i> 3½, and gram 37 seers per rupee. Weather clear.
Kotah (" 12th)	Nil	Weather cloudy. Health good. Prices stationary.
Ajmere (" 15th)	Nil	Tanks and wells amply supplied. Weather cloudy. Prices stationary.
Jaypore (" 15th)	001	Outturn of <i>kharif</i> much below average. Health good. Prices fluctuating. Weather warm, occasionally cloudy.
Dholepur (" 12th)	Nil	Weather cloudy. Fever and slight smallpox prevalent. Prices of food grains slightly risen.
Kerowli (" 12th)	Nil	Easterly dry wind. Prospects favourable. Prices steady. Health generally good.
Bhurtpur (" 12th)	0.05	Fever continues. Prices steady.
Ulwur (" 14th)	0.32	Tanks dry and wells drying. Rabi sowings nearly completed. Prices stationary.
Bikanir (" 12th)	Few drops of rain.	Tanks and wells full. Crops germinating. Prices steady.

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