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

The Council met at Agra, on Monday, the 24th November 1873.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of the North-Western Provinces.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble B. H. Ellis.
Major General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble J. F. D. Inglis, C. S. I.
The Hon'ble R. A. Dalyell.

NORTH-WESTERN PROVINCES RENT BILL.

The Hon'ble MR. INGLIS moved that the Final and Supplementary Reports of the Select Committee on the Bill to consolidate and amend the law relating to the recovery of Rent in the North-Western Provinces be taken into consideration.

The Hon'ble MR. HOBHOUSE said:—"The subjects embraced by these Bills (for the two Bills for Rent and Revenue have so gone hand in hand that it is impossible to avoid speaking of both at the same time) are very foreign to the ordinary subjects of an English lawyer's study; their principles are in some respects antagonistic to those with which he is familiar, and much of their matter is of great complexity, and of great obscurity and uncertainty in itself. I doubt whether anybody could understand them by study alone, or without long practice in the actual administration of Settlements or of the Law of Settlement. It is therefore with great diffidence that I venture to open my lips in this Council, even to say what has struck me with reference to those parts of the Bills which relate most closely to my professional province. Some points of great importance and interest have been very earnestly discussed in Committee and in public, though not much in this Council, and perhaps by reason of that discussion the importance of these Bills as measures of consolidation has not

been much dwelt upon. A large part of them is nothing but a re-arrangement, in a more convenient form, and with some alterations of expression and detail which experience has suggested, of provisions which are already on the statute-book, though in a scattered and fragmentary condition. When these Bills pass into law they will supersede, and, so far at least as the North-Western Provinces are concerned, will entirely remove from the statute-book no less than forty-five Regulations and eight Acts of Council, and will partially repeal five more Regulations and one Act of Council. This, it is hoped, will be a boon to those who have to administer the law, or who wish to understand it. I do not mean to say that those who come to administer the new law will have no trouble, for they will have a good deal. The Bills contain some 450 sections, and they embrace a vast quantity of detail, and travel over a great field of matter. All this will require some study to master, so as apply it with ease and promptitude. Moreover, it is impossible to suppose that mistakes have not been made. Nobody can bear better witness than myself to the extraordinary knowledge of his subject displayed by my friend Mr. Inglis, or to the amount of patient unremitting labour with which he has endeavoured to make every minute detail of his Bills clear and accurate. Nevertheless miracles no longer abound, and it would be a miracle if, in a work of such magnitude, some oversight did not occur; some error did not creep in, notwithstanding every effort to avoid them. But after discounting all drawbacks of this kind inseparable from new legislation, I feel sure that even those who are familiar with the present law will find the advantage of a more concentrated and simple arrangement, and that the younger men who come fresh to the subject will find their work very considerably lightened.

"Now, of the alterations which these Bills propose to effect in point of principle, I conceive that to be by far the most important which consists of provisions for ascertaining rents as between landlord and tenant, and for fixing its amount for a term of years. The arrangement now proposed appears to me to be advantageous in every point of view, whether we regard the relations of landlords and tenants between themselves, or the relations of the Government to the land. With our predecessors in the empire, rent was the same thing as revenue, and we are told on high authority that the traditions of that state of things still prevail, and that it is in accordance with the feelings and expectations of the people that rent and revenue should be fixed by one and the same authority, at one and the same time. With us, rent and revenue are not the same thing, for we leave a large margin for the zamíndár; but without rent, revenue cannot exist, and the two must bear a close relation to one another. A sailor speaks of freight as the 'mother of wages'. We may perhaps

aptly speak of rent as the 'mother of revenue'. Now, if I understand rightly the present state of things, the Settlement Officer does not frame his assessment of any particular estate upon the basis of rents actually received by the owner, but he may do so upon the basis of rents paid in other neighbouring estates; and he is not at that time charged with the responsibility of settling actual rents between landlord and tenant. Under such an arrangement, there certainly is considerable danger, lest the knowledge gained by calculations and comparison should not be sufficiently corrected by the test of hard fact, and lest the officer, however skilful he may be, should either put the assessment too low, and so cause a loss to the revenue, or too high, and so throw the affairs of the zamíndár into confusion, and cause him to put the screw unduly on his tenants. The best safeguard against such errors would seem to be that the Settlement Officer should at the time of settlement be charged with the duty of ascertaining and fixing rents. This is only a restoration of the power which he had previously to the Act of 1859. Having both classes of operations in his hands at the same time, being compelled to hear what both sides have to say in the disputes about rent, he will have before him the best and most trustworthy evidence of the actual value of the lands in each locality. The only criterion of price is the higgling of the market; the only true value of a thing is what it will fetch; and the amount to be assigned as the rent of land cannot be higher than that which the tenant finds it worth his while to give to the landlord. The State, therefore, is likely to benefit by the greater accuracy of assessments. The landlord will benefit by obtaining a cheap, ready, and comprehensive mode of adjusting his rents at the time of settlement, when his obligation to the state is adjusted. The tenant will benefit by being relieved from the pressure which, under the present system, may be constantly brought to bear on him. And both will benefit by having their disputes decided by an umpire, who of all men has the greatest amount of knowledge of all those things that bear upon the questions of the value of land and its produce in the place where the dispute arises. It has indeed been said that we are benefiting the tenant too much and injuring the landlord by fixing an enhanced rent for a term of ten years. But I shall not believe that the landlords are injured until I see it. In the first place, there never yet was any law framed under which a rich man did not gain considerable advantages over a poor one by his superior power of working it. In the second place, we are only ordering, by a general rule, that which may be done now in any particular case. The law I am alluding to is an apt illustration of what I have just said about the indestructible advantages of the rich under a legal system. Act X of 1859 was intended to be the great charter of the ryot. It has been worked so as to become

a powerful machine for increasing rents. The enhancement clauses have been most extensively used. The provision I refer to is one for the protection of the ryots. It provides that, if an occupancy ryot institutes a suit for delivery of a pattá, and the parties do not agree as to the term, the Collector shall fix such term as he may think just and proper, only not exceeding ten years. Well, then, any occupancy tenant may at this moment ask for a lease for ten years, and the Court may give it to him. But I am told that this apparently very important provision has never been called into use, has remained a dead letter, insomuch that persons skilled in Revenue Law have actually forgotten its existence and are surprised when they are questioned about it. Why is this, except that the zamíndárs have been able to pay for skilled advice, and the ryots have not?

"I do not mean to say that, because the provision I have quoted already exists, we are not altering the law. I think we are making a substantial—I believe a very beneficial—alteration. But we are acting on a principle laid down by our predecessors, which has only failed of effect, because the parties who might benefit by it have been too ignorant or too weak to take advantage of it. Considering the intimate interest which the state has in all questions of rent, by reason of its position as sovereign landlord, or at least as co-owner with other proprietors, no one can contend that it has not a good right to interfere in such matters as these. And considering the old identity of rent and revenue, to which the general sentiment is still alive—considering the close connection now subsisting between them, and the great advantages to all parties, of avoiding litigation and of giving stability to the position of cultivators—I think no one could have complained if we had gone farther, and made the term for which the rent is settled more nearly commensurate with the term for which the revenue is settled. I am not now intimating any opinion at variance with the conclusion arrived at. The Bill probably does as much as is prudent or beneficial under all the circumstances; but as the question has been argued on grounds of right and justice, it seems to me that, consistently with right and justice, rents once enhanced might have been fixed for a longer term. Intimately connected with this question of fixing rents, which applies only to occupancy tenants, is the question of the effect of a lease in preventing the acquisition of occupancy rights. It will be remembered that under Act X of 1859 a twelve-year occupant is not to acquire a right of occupancy if he holds under a written contract containing an express stipulation contrary thereto. For some time after the passing of the Act, it was held by the High Court of Calcutta that a demise for a definite term of years was of itself an express stipulation contrary to the acquisition of occu-

pancy rights. But first the High Court of the North-Western Provinces, and afterwards that of Calcutta, took a different view, and held that, whatever might be implied by such a demise, it was not the express stipulation required by the Act. The Courts are probably quite right in their present construction of the Act, but the very discussion shows a strong sense that acquisition of occupancy rights by holding under an express demise is contrary to the true intention of the parties. We therefore have altered the wording of Act X of 1859 by providing that, when a tenant-at-will holds under a written lease, the time for acquisition of occupancy rights shall begin to run from the expiry of the lease. This seems to me to place the law on a more simple and more natural footing. It brings it back to that state in which the High Court of Calcutta originally decided it to be. If incidentally it should lead to a more general system of granting leases, it is calculated to benefit all parties alike, and to give a more stable status to tenants-at-will, independently of their acquisition of occupancy rights. At present, unless a zamíndár enters into an agreement of a very special character with his tenant, his only way of preventing the acquisition of occupancy rights is by turning him out of his occupation. And this, I am told, is done very generally, and a great evil it is. In future, he will at all events have the alternative of giving his tenant a simple lease for years.

"The alteration which I am disposed to class next in importance, is one of procedure, and that is the change effected with respect to the Courts of Appeal in several of the rent suits, particularly those which relate to enhancement and abatement. The present system certainly seems most unsatisfactory. I take an enhancement suit as being about the most important class of rent suit. At present, any Deputy Collector may hear such a suit in the first instance. From him an appeal goes to the District Judge, whose Court is stationary, so that parties have to resort to the sadr station, which may be at a great distance from their abodes. And what is that Judge to do? For any one suit that raises a question of law, or is soluble by legal methods, there must be fifty which turn solely on questions of value more or less general, but which would mostly require a knowledge of the locality, and, at all events, require rather a skilled arbitrator than a legal tribunal. Without knowing, or even seeing, the land in dispute or the surrounding localities, merely on reading the evidence recorded by the Deputy Collector, who probably has imported his personal knowledge into the case, they decide whether the rent is to be enhanced and by how much. There ends the dispute about fact; there is a special appeal to the High Court, but that can only be presented on points of law. Now it is proposed to substitute for this system a decision on the spot by an

officer selected for his skill and ability, with an appeal to the Commissioner of the Division, who moves about and will take appeals in the neighbourhood of the place in dispute.

"If he affirms the decision, there is to be no further appeal. If not, there may be a further appeal to the Board of Revenue. I must say that the proposed alteration seems to me to bid fair to substitute a readier, simpler, more harmonious, and in all respects more satisfactory, process than the present one for the disposal of suits of the class I have mentioned. It is said that the Revenue Courts, or some of them, do their business in a somewhat rough fashion. It may be true as to some. But one of the alterations effected by this Rent Bill is the classification of suits according to their difficulty and importance, and the classification of officials according to the duties they will have to perform. At present, the same man hears the most trivial applications and the most important ones. If these Bills pass, enhancement suits will be heard in the first instance only by an Assistant Collector of the first class, specially empowered by Government for that purpose, or by some superior officer, such as a Collector or an officer in charge of a Settlement, and the appeal will lie to one in all respects on a par with the District Judge. We lose, it is true, the special appeal to the High Court; but the whole system of special appeals, which it would be out of place to discuss here, is open to so many objections, that, independently of other reasons, it would be difficult to regret the destruction of a portion of it. We have, moreover, inserted a clause into the Bill by which we hope to get the advantage of the superior knowledge and authority of the Civil Courts in matters of law. We have provided that, whenever the Revenue Court finds that a question of law arises, which it is more proper for the Civil Courts to decide, it may state a case for their opinion, and shall be bound by it when given. No doubt the Local Government will have to make careful arrangements respecting the appointment of officers, the distribution of their duties, the times and places of their judicial sittings, and the procedure to be observed by them. But I will not enlarge on these subjects, as I hope that His Honour the Lieutenant-Governor will sketch out far better than I could do his proposed plan of operations.

"Another alteration in the law, which we hope will prove useful, though, as it depends entirely on the voluntary action of the tenants, it may prove a mere nullity, is that which relates to improvements of land by tenants. We propose that tenants restoring the land improved by permanent works, shall receive compensation from the landlord whom they have enriched. Considerable controversy has been raised about the justice

and propriety of these provisions—a controversy with which we are not wholly unfamiliar in England. Again, we hear of the enterprising tenant who will improve the landlord out of his property, and are told that no improvements made without the express consent of the landlord ought to be the subjects of compensation. I confess that I never have been able to persuade myself of the substantiality of any such fears, and I do not suppose that the risk of undue activity or enterprise is greater in India than in England. It is the interest of the State, that is, of the public at large, that land should be improved, and that which has to be done by two people independently is practically never done at all. It seems to me that if the outlay of the tenant results in his restoring to the landlord a property of greater permanent value than he received, it is quite just that the landlord should pay something for his gain, and both just and expedient that such a principle should be a constant element in the bargains between the two parties. I confess to being very much afraid that our legislation will be a dead letter owing to the apathy or ignorance of tenants. I cannot entertain for the moment the fear that tenants will unduly avail themselves of their legal rights and oppress the landlord. I treat that as a mere paper argument, well enough in the abstract, though not difficult to answer there, but disappearing altogether from any practical view of affairs. I believe that precisely the same arguments were used in opposition to the compensation clauses in the Oudh Rent Act and the Panjáb Tenancy Act. Well, I do not mean to say that five years is time enough to supply any conclusive test, but I believe that nothing has been yet heard of the ill effects of the change in those Provinces. Now, the language of this Bill differs from that of the Oudh and Panjáb Acts in this, that they give to the tenant compensation for his outlay in certain works, whatever that may be, whereas we deny that anything is an improvement which does not increase the letting value of the land at the time when compensation is claimed. Supposing the value to be so increased, I ask confidently on which side is the injustice or the danger? Is it in the chance of the landlord taking the increase without payment, or is it in the chance of the tenant overcharging the landlord? I ought perhaps to notice what has been done in the matter of resumption suits. By a Regulation of 1793, grants for holding land exempt from payment of rent have been declared null and void. Certain directions have also, by divers Regulations, been given to proprietors of land of their own authority to collect the rents of such lands and to dispossess the grantees. Upon this state of the law supervened Act X of 1859, the 28th section of which runs as follows:—

"'So much of section X, Regulation XIX, 1793, section X, Regulation XLI, 1795, section VI, Regulation XXXI, 1803, section XXI, Regulation VIII, 1805, and section XXIV,

Regulation XII, 1805, as authorizes and requires proprietors and farmers of estates and dependent taluqs, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said sections, of their own authority to collect the rents of such land, and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or taluq in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.'

"Now, it will be observed that this enactment leaves entirely untouched the law which declares rent-free grants to be null and void; it only makes an undisturbed adverse possession of rent-free land for twelve years a bar to a suit for its recovery. But this is said on all hands to be a mistake. The State reasons for objecting to revenue-free grants are the same as ever they were. With us, rent is not revenue, but it is the 'Mother of Revenue,' and a man like King Lear may so impoverish himself by rent-free grants as to be unable to pay his revenue. Moreover, the law is contrary to the intention of the people of this country in making rent-free grants. It is their habit to make such grants, usually I believe oral ones, with the full understanding on both sides that they may be resumed at pleasure. It is a great surprise to such a grantor to find that his grantee has acquired a prescriptive title by twelve years' possession. For these reasons, the Rent Bill does away with the limitations now placed by law on Resumption suits, but it excepts land held rent-free under judicial decisions; it excepts land purchased for value on the faith of the abolished limitations; and it confers the proprietary right on those who have held land rent-free for fifty years, and in the third generation from the original grantee.

"I have hitherto said nothing of that portion of the Bills which has attracted the greatest amount of remark, if indeed it were not the most important portion of them; I mean that which relates to the exproprietary tenants. On this point, the alteration of the law which is now made by the Bills is considerably less important than it was when we reported on them in Calcutta; because the retention of exproprietors as privileged tenants, or even as occupancy tenants, is now confined to those who become such in the future. I think it right to say that the amount of encroachment on existing titles which was effected by the Bills as they formerly stood seems to me but a small one. It was some drawback on future expectancies, and that drawback would

have been shared with the zamíndárs by the State; it was, according to the best opinions of the day, a reversion to national sentiments and traditions; and the principle has been applied in Oudh and in the Panjáb without producing, so far as we know, any ill effects. It seems to me, therefore, doubtful whether something more might not have justly been done to give a steadier foothold in the land to that which is an uneasy class. The Bills, however, have taken the more cautious line of not making any change except in the future. It may fairly be hoped that, as the ex-proprietary class of persons who are tenants-at-will or are landless will not receive any recruits, it will gradually be absorbed into the general community. In the meantime it is something to have an express statutory recognition of such a class as entitled by law to favourable rents wherever the practice has been so to favour them; and it must be that, to a considerable extent, the sentiment of the people will be met by this provision. And it certainly seems of great importance to have an express statutory recognition of the principle, which it is difficult for Englishmen to grasp, and which appears to pervade large parts of India, that there is a substantial difference between a right of ownership and a right to occupy for the purpose of cultivation and subsistence, and that the latter is not alienable as the former is.

"Before I conclude I ought to mention that, at the latest moment, we received some valuable suggestions from Mr. Justice Turner, who would have sent them earlier had he not been in England. We have made several alterations, and have added some clauses relating to matters with which his judicial experience has made him familiar. There is now a provision for settling difficulties which are sure to arise respecting the boundaries of jurisdictions; another provision that an objection for want of jurisdiction shall not be taken in any Court of Appeal common to the Revenue and the Civil Courts, and some others of a technical character, but calculated to make the measure work more smoothly.

"I do not think it necessary to make observations on any other portions of the Bills, and will conclude by supporting the motion before the Council."

His Honour THE LIEUTENANT-GOVERNOR said that at this stage of the proceedings it seemed proper that, having been the promoter of these Bills in the shape in which they now appeared before the Council, he should state briefly the course taken by the Government of the North-West Provinces, in respect of them. The Bills had their origin in a design for the consolidation of the Revenue Law

of these Provinces. Mr. Cust had some years ago, after his return to England, prepared a careful Digest of the Revenue Law. This Digest had been sent by the Government of India to His Honour about the time that Mr. Stephen was engaged in consolidating the laws and regulations on various subjects. In pursuance of this object, Mr. Stephen himself had prepared a Bill, condensing into one Code the entire Revenue Law of the North-West Provinces, and that Bill was about three years ago sent by the Government of India to SIR WILLIAM MUIR for careful revision. Having received so important a charge, the first step taken by His Honour was the appointment of a committee of the most experienced revenue officers, which sat at Naini Tál in the summer of 1872. Their deliberations, conducted in constant communication with himself, resulted in the two Bills which his hon'ble friend Mr. Inglis had introduced at Calcutta, and which were discussed there during the Session of 1872-73.

These Bills were mainly the repetition, in a combined and convenient form, of the existing law; but the opportunity was taken advantage of to propose certain reforms and improvements. The main changes were the following:—*first*, the recognition of ex-proprietary cultivators as possessed of a beneficial right of occupancy; *second*, barring the right to bring fresh suit for enhancement of rent within a certain term after decree given on a similar suit; *third*, enlarging the powers of settlement officers in suits for enhancement of rent; and *lastly*, transfer of the jurisdiction in appeal, in certain classes of cases, from the civil to the revenue courts. The Bills, thus drawn, were the subject of much discussion in Committee during the last season at Calcutta. The changes just mentioned were supported by the Committee, which indeed went in one respect considerably further than he (SIR WILLIAM MUIR) had himself contemplated; for they proposed to bar all claim for enhancement of rent during the term of a settlement, and in the permanently settled districts, for a period of thirty years. The Bills were freely discussed in Council, but their final passing was reserved by His Excellency the President for the sitting of the Council in these Provinces. This postponement was fortunate, for it afforded the opportunity of a deliberate and careful reconsideration of the alterations made by the Select Committee, as well as of the general principles on which the contemplated changes in the law were based, and he might add that these points had formed the subject of prolonged and anxious discussion during the past summer of 1873.

In noticing the changes in the Bill as now brought up by the Select Committee in their Supplementary Report—which as a member of that Committee he had had the honour of signing, and in the purport of which he might say he fully concurred—he would mention, first of all, the position that

had been taken up in respect of the ex-proprietary body. As had been clearly and ably stated by his hon'ble friend, Mr. Inglis, last Friday, the maintenance of the great body of ex-proprietary cultivators with a beneficial interest in their ancestral holdings was an object of the first importance. The views held by him (SIR WILLIAM MUIR) on this subject had been quoted at length by his hon'ble friend, Mr. Inglis, in the Council at Calcutta, and to those opinions His Honour strongly and steadfastly adhered. He could regard nothing as more unfortunate and disastrous than the course which, from the beginning of our administration, had been taken with these ex-proprietors, and the system by which they had been sold up by the application of a strange and uncongenial law, and reduced to the dead level of cultivators without rights of any kind. The result had been that the body to which we should have looked as the stay and backbone of our agricultural prosperity had been reduced to a state in which they were liable to be ejected from their lands, or to have the last rupee demanded from them. They were thus, on the one hand, ground down to be what he might call a depressed and emasculated tenantry; and on the other, the body to which we might have been able to look as our stay in the time of trouble and danger had too often proved itself a disloyal and dangerous yeomanry—a tenantry powerless for good, but strong for evil. He felt confident that, if the great statesman, who, in the "*Revenue Directions*," had given authority to the principle that sale reduced proprietors to mere tenants at will—if he had had the opportunity of reconsidering the matter in the light of the Mutiny and of the Oudh investigation, he would have come to a very different conclusion. It had been clearly brought out in the Oudh inquiry that the proprietors had a peculiar interest in their own special lands, different from that which they had over the whole estate for which they were responsible. This was their 'sír,' which was invariably left in their hands when the management of their estate was temporarily resumed; and even when the proprietary right was parted with, this *peculium*, or proper holding, remained at beneficial rates in their possession. The relations of the quasi-proprietors to the soil were no doubt of a similar nature when we entered on the administration of these Provinces, and remnants of the same rights still survived in the *do biswái* or proprietary tenth of the land ordinarily left by 'muáfídárs' in the hands of the old proprietors. In Oudh this distinction had been happily preserved, and to a considerable extent the old proprietors, where ousted from management, had been maintained in the beneficial occupancy of their 'sír' possessions. Now, the mistake we introduced in our early administration was to ignore this distinction. We recognised no condition midway between the absolute proprietor of an estate and a common unprotected cultivator; and as properties were yearly sold up for arrears or for debt, the old proprietors

were reduced to the hopeless condition of the unprotected ryot. Had the principle of the Oudh Settlement been followed from the first, the ruin of the ex-proprietors would have been avoided; and we should have been saved from a vast amount of the agrarian dangers which threatened us in the Mutiny and the troublous times that followed.

It was these considerations which weighed with the Government of the North-West Provinces in drawing the Bills as they were first presented. It was felt incumbent to do all in our power to remedy this great evil. Ex-proprietors were to be maintained in their proper holdings with a beneficial interest; and the same advantages were provided equally for all who had lost their proprietary rights from the commencement of our rule, as for those who should hereafter lose them.

Against this provision a strong contention had been raised. If the usage in favour of the exproprietor was really such as just described, why was it discovered only now at so advanced a period of our administration? If the custom was so strong and universal, why had it been ignored by so high an authority as Mr. Thomason? Again, it had been urged that rights had been acquired with which this Bill unjustly interfered; purchasers had entered on their estates, bought at sales conducted by the Government itself, and on the faith of the official declaration that the parties whose interests they purchased were by the sale reduced to tenants-at-will, liable to ejection and subject to any enhancement, and that the only title which could possibly accrue in their favour was one to be created by a fresh prescription. It might indeed be replied (as had been stated by the Hon'ble Mr. Hobhouse) that the injury, if any, was but a slight one; no reduction was to be made in existing rents; the benefit to be secured was purely prospective and potential; it amounted simply to this that when rents rose the exproprietors should be enhanced, only in a lower degree than others. But this reply, again, was open to the answer that the evil to be remedied by so small and distant a concession could hardly be so serious as was contended: in short it might be objected, "either the political danger is great, and then your remedy is inadequate; or if your treatment meets the case, its very slightness disproves the alleged depth and gravity of the evil. Now, looking at what had been thus contended, he felt it was impossible to give a satisfactory reply to the objection that by an *ex post facto* law we were interfering with a title based upon an official declaration of the Government. He had been appealed to in Committee to say whether, as representing the Government of the North-Western Provinces and responsible for its tranquillity, he regarded the political danger arising from this class as

sufficiently urgent to override the objection; and he had felt bound to reply that it was not.

From what had been said, it was evident that there were powerful contending considerations to be weighed on either side. On the one hand, there were strong reasons for remedying a corroding, if not a dangerous, evil; on the other, we should expose ourselves to the imputation of injustice in reversing retrospectively a policy for long deliberately followed by the Government, and in interfering with rights founded upon it. Now, the course that had eventually been resolved upon approved itself to him (SIR WILLIAM MUIR) as one which practically took advantage of all that we could, with justice and propriety, and avoided altogether anything which should compromise the faith of Government. The beneficial provisions of the Bill were made prospective, and confined to proprietors who should hereafter lose their estates.

The only possible objection to the provisions of the Bill, as it now stood, was that existing liens on property would be subject to them; these liens might have been acquired on the expectation that the property was hypothecated absolutely for them, whereas it would now be sold with the reservation of a beneficial interest in the *sir* lands. Still, in respect of all such transactions and of sales for existing debts, he thought that the recognized custom of the country should prevail, and that the purchasers should be held to come into possession subject to such usage.

On the other hand, it might be complained that we were abandoning the ex-proprietors of the past, and allowing them to go from bad to worse. But that was not the case, for, as his hon'ble friend Mr. Hobhouse had just stated, there were certain ameliorating provisions in the Rent Bill even with respect to them. In the first place, it was distinctly enunciated that they constituted a class—that is, wherever the old proprietors in any neighbourhood had been able, in virtue of the usage of the country, to maintain their position at privileged rates, the rates so prevailing would be held to be those of a class, and therefore the standard for enhancement. It was no small benefit that this body should thus have statutory recognition as a class of tenants that might, by prevailing custom, be in the enjoyment of recognized privileges; and that wherever ex-proprietary classes had been able to keep alive the usage of the country in their own favour, there, for the future, that usage would be enforceable at law. Next, the ex-proprietor shared in the advantage gained by all occupancy tenants in the additional fixity resulting from extending the period within which renewed suit for enhancement was barred: this point would be referred to afterwards with special reference to his hon'ble friend's remarks.

Upon the whole, then, he might say that, in respect of this class, we had gone as far as we had practically found ourselves able to go. For the past we were not responsible; errors had been committed in the administration of the country, and the results of these errors it was now beyond our power fully to redress. But we were answerable for the future; and in recognizing prospectively the privileged position of the ex-proprietor, SIR WILLIAM MUIR was sure that a material boon had been gained, such as would contribute to the peace and prosperity of the land. The measures now proposed would prevent ousted communities from becoming a source of danger and disloyalty, and would enable that class which of all others had the greatest interest in the improvement of the soil, to accumulate the means and capital necessary for that end.

The second change of the law in the present Bill was the determination of a period within which a fresh suit for enhancement was barred. In the original Bill, the period was ten years. As before stated, this had been extended by the Select Committee at Calcutta to the whole period of settlement, and in permanently-settled tracts to thirty years. The Bills, as now presented, went back to the original period of ten years. The tenor of Mr. Hobhouse's remarks would seem to indicate that, in his hon'ble friend's opinion, it would have been more expedient had the Calcutta amendment been allowed to stand. On this he (SIR WILLIAM MUIR) must distinctly state his belief that such a radical change in the long subsisting relations of landlords and tenants was not justifiable; and indeed would have been obnoxious to far stronger and more valid objections than the conferment of ex-proprietary privileges retrospectively. It would have been open to the British Government, on its first accession, to have laid down the principle that rent and revenue were to be fixed for coterminous periods. Nay, at a much later period, while the relative rights of landlord and tenant were as yet hardly settled by the administration of a fixed and uniform system, this might have been possible. Forty years ago, the proposal was urged by Mr. Robert Merttins Bird, and was then fully discussed by the Government of India and its chief officers; and the conclusion was then deliberately come to, that such a course was inconsistent with the rights of the zamíndár and the prevailing condition of the cultivator. That decision might have been right, or it might have been wrong; the question was no longer open to discussion. On the decision that rent was liable to enhancement, was based the whole revenue system of these provinces. To have now declared rent and revenue to be equally fixed for the same term, would not only have uprooted the revenue system of more than half a century, and created new and unexpected rights, but it would have injured and abated the landed title which had grown

up under that system. Properties had passed from hand to hand; estates had been sold both for Government balances and for decrees of court; rights and expectations had grown up and become matured under the system of a modified power of enhancement to the level of prevailing rates of rent. For a great and imperious political object, indeed, it might have been open to the Government, even at the expense of these expectations, to have altered the system. No legislative enactment had expressly defined the rights of the zamíndár in this respect, or limited the power of Government to interfere for the protection of the ryot. But he (SIR WILLIAM MUIR) submitted that no such emergency now existed; and that it would have been in the last degree inexpedient and unwise to have reversed the policy on which the relations of proprietor and tenant had now for so long a time adjusted themselves.

The term now adopted was that which, as shown by the preceding speakers, was also in accord with the existing law, under which the revenue courts could grant a pattá to the cultivator for a term of ten years.

HIS HONOUR did not quite concur with the reason assigned by the Hon'ble Mr. Hobhouse why this provision had not been more taken advantage of—namely, that the cultivator was ignorant, while the zamíndár was skilled in the law. He attributed it more to the aversion of the ryots to take pattás; they were suspicious of them, and trusted rather to rest their rights upon prescription. The same indisposition had been experienced in Oudh. For this reason also, while he entirely concurred in the provision that possession under a pattá should not count (apart from any previous prescription) towards the term for acquiring an occupancy right, still he did not think that this provision would materially improve the zamíndár's position.

HIS HONOUR would now pass on to the subject of enhancement of rent. Here, the powers of the settlement officers were enlarged, but the principles of adjustment, and even the procedure, as practically pursued by settlement officers, was not affected. The principle upon which suits for raising rents were decided was to take the prevailing rates of rent as the standard of enhancement. Now, at the time of revising the land-revenue, the settlement officer had a peculiar advantage possessed at no other time; for the revenue being assessed in a direct reference to the assets of an estate, and in order to ascertain the assets the settlement officer must previously, by a wide inquiry, ascertain what was the prevailing and customary rate for each kind of soil. Now, the application of this prevailing rate was nothing more than the application, on a wider scale, of the rule by which suits for raising rent were now adjusted. The settlement officer could proceed with greater certainty and on a larger induction. Our desire

as to assess revenue in direct reference to rent, according as rent found its own level in the ordinary transactions between man and man. But at the time of settlement there were certain exceptions, which he might thus explain. The settlement officer first ascertained what were the average rates of rent prevailing in a pargana or circle of villages: this, when duly sanctioned by the Board, formed one of the standards by which the land-revenue was fixed. But it might happen that in one locality or village the rate of rent was much lower than in an adjacent locality or village, notwithstanding that the advantages and productive powers of the soil were precisely the same in both. Now we held that there was no reason why the tracts or villages in which the rate was unduly low should not be assessed to land-revenue at the same standard as the tracts or villages in which rent had by natural process reached a higher level, and it frequently happened that the revenue was, in point of fact, so raised. The proprietor then was justified in laying his suit to raise the rents of his tenants to a standard corresponding with that by which his revenue had been fixed; and here the special provision of clause 72 of the Revenue Bill would come into force. But these average rates were used with discrimination and with a due advertence to the varying capacities of the several fields; and when so employed with a careful discretion, they were eminently useful as a standard of comparison, and they would indeed be always so used, even at times other than of the revision of settlement.

There was also a further power involved in the provisions of clause 72 which was peculiar to the time of settlement,—and that was the power of abating rent. On some occasions it had been brought to His Honour's notice that rack-renting prevailed to a degree which unduly depressed the cultivator, and injured agricultural prosperity. Now, at present the settlement officer had no power to step in and say that such rents should be lowered. He might, indeed, make a compact with the zamíndár, and say that, if the land-revenue were fixed at such a moderate amount, it would be incumbent on the zamíndár to assess his rent-roll on the cultivators with corresponding moderation; but there were no means of imposing such a condition on the proprietor, or, if he agreed, of seeing to its enforcement. It would now be possible for the settlement officer to step in and say that the rates of rent being in excess of the prevailing standard, to a degree that ground down the ryot, these rates should be reduced; and then the revenue might safely follow the rent-roll so adjusted. This, however, was a very exceptional process, and would only be adopted in case of clear necessity.

Generally, he might say that every care and caution was adopted by the Board, to ensure that the scale of average rates of rent was fixed with moder-

ation and with a direct reference to the rents found actually to be prevailing. Nothing could be more disastrous than the application by settlement officers of scales of rent based on theoretical considerations of what, in their opinion, particular soils should be rated at. It was uniformly impressed upon all settlement officers that the existing customary rate of rent was the only safe guide, both for the assessment of the land-revenue and also for the adjustment of disputed rents between the proprietor and his tenant.

In reference to the peculiar powers taken for officers engaged on the revision of settlement, SIR WILLIAM MUIR might add that he hoped to see the time when these revisions of the land-revenue would not occur with the same frequency as they now did; but that existing settlements might be prolonged, or, if some enhancement of revenue were deemed to be justified and necessary, that at any rate it might be assessed upon some other procedure, involving less of inquisition and interference with the agricultural classes than was inherent in the present system.

The Hon'ble Mr. Hobhouse had requested him to mention the agency by which the important duties connected with rent suits would be disposed of. His hon'ble friend had, in his own remarks, anticipated almost all that it was necessary for him to say upon this head. There would be no new agency for the determination of these suits. We had already in every district the same classes of officers who would perform the duty under the new law. But the new law had introduced a distinction, and it was a most valuable one, classifying the various kinds of suits according to their difficulty and importance, and also the corresponding classes of officers empowered to decide them. The higher and more difficult kind of cases—those, consequently, which required for their investigation and decision special experience and judgment, knowledge of the people and the country, and acquaintance with the productive powers of the land, would be limited to the first class of assistants. These assistants would be carefully selected with reference to their experience, ability, and standing, the remaining class of less difficult and important cases being left to the younger assistants.

Again, as regarded the alterations made in these Bills of the jurisdictions in appeal, what had fallen from his hon'ble friend was eminently to the point. The same reasons which had led the legislature to bar the jurisdiction of the civil courts in taking up appeals against the assessment of the land-revenue, applied, in a great measure, to the question of rent. In all matters of rights and title, as between man and man, the civil courts were undoubtedly the proper tribunal before which to bring the appeal; but in regard to such questions

as the rates of rent, the revenue authorities were far better qualified than the civil courts to arrive at a sound decision, and the superior revenue authorities, also, to dispose of appeals, than the superior civil courts. The matter was as much administrative as judical, and turned upon questions of fact—which, as a rule, would be determined on the spot. Under the rules which the Executive Government would, under these Bills, be empowered to frame, it was intended to direct that the assistants of the first class should take such applications as those for enhancement along with them into camp, and having visited the spot, and made local investigation in immediate communication with the parties concerned, they would then be in the best possible position to come to sound and just conclusions. With this view it had been provided in the Bill that all suits for enhancement should be laid before the 31st December for the coming agricultural year. The Collector would then be able to arrange with his various assistants so to lay out their several circuits, that the above procedure might be carried out with convenience, both to the people and to the officers of Government.

The only other matter to which SIR WILLIAM MUIR would refer, was a provision recently entered in the Rent Bill for the protection of cultivators suffering loss from season or other such calamity. No provision existed in the present law by which Government could grant relief to these; for the Government dealt only with the zamíndár, and had no power to enforce a remission or suspension of rent. When, therefore, a cultivator lost his crop from drought, hail-storm, flood, or other such cause, and the proprietor chose to press him hard, such cultivator might be utterly ruined; and thus all the privileges we were endeavoring to secure to him be lost. All that Government could now do, was to say to the zamíndár—"We remit so much of your revenue, to enable you to carry on successfully, and we look to you to remit a corresponding share of rent in favour of the cultivators who have suffered." But there was no means of compelling the zamíndárs to agree to such condition, or, if agreeing, to enforce fulfilment. To remedy this defect, the Bill empowered the Collector to interpose wherever the ryot might have suffered from any agricultural calamity beyond his power to prevent, and to remit, or suspend, the whole or part of his rent. Having done so, the obligation would then devolve on Government of remitting a corresponding portion of the Government revenue in favour of the zamíndár, and this also had been provided for in the Bill.

These, then, were the only changes of importance on which he felt called upon to speak. In conclusion, he must express the great satisfaction with which he regarded both these Bills in the form in which, as he trusted, they

were about to be passed. SIR WILLIAM MUIR was sure that, whatever changes had been made, were sound and substantial improvements in the law. If he was unable to say that this satisfaction was unmixed, it was simply for the reasons that, in former stages of these Bills, he had, as before explained, expected to have done more for the ex-proprietors of the past. Still, looking at all the circumstances, he was sure that the Select Committee had exercised a wise discretion in limiting the law as they had done; for material advantages had been secured thereby to every class of cultivators, even to the ex-proprietary, and that without any detriment to the proprietor, or any thing resembling breach of faith upon the part of Government.

The Hon'ble MR. BAYLEY said that he did not wish to trouble the Council with many remarks after the very full exposition of the principles and details of the Bill which we had heard at the last meeting from the hon'ble mover, and at the present meeting from the two hon'ble members who had last spoken. MR. BAYLEY could add very little to what these hon'ble members had said, but he might say, generally, that he hailed with extreme satisfaction the arrival of the Bill at its present stage. He believed that it was not only a very useful consolidation, but was in many respects a great improvement of the law, and he felt sure that the gratitude of the country was due to those who had been the principal originators and framers of the Bill. Of course, in a matter of so great importance, and of so wide extent, there must be some diversity of opinion as to special details, and he admitted that, individually, he had perhaps held on minor points different views from those at which the Committee had arrived. Nevertheless, he was quite willing now to say that he thought, on the whole, that the decisions which had been arrived at were wise, and that the Bill as it stood was a nearly perfect and very useful measure—quite as perfect as could be expected from its large and comprehensive nature. There was only one point upon which MR. BAYLEY wished to say a few words, and he should refer to it with the less hesitation, because the speeches of the two hon'ble members who had preceded him had gone a great way in the same direction as that which he should wish to indicate. He referred to those clauses of the Bill, as originally framed, which created a special class of so-called "privileged tenants," and which had been struck out of the Bill during its final reconsideration by the Select Committee. These clauses maintained their place throughout all previous discussions, and he confessed that it seemed to him that they were not only justified by the necessities of the case, but that the arguments by which they were supported had not yet been sufficiently met by counter-arguments. His Honour the Lieutenant-Governor had very clearly pointed out the circumstances which first drew general attention to the condition of the ex-pro-

prietary body. He said—and said very truly—that we found during the Mutiny that they constituted a very large and important class, and one which the Lieutenant-Governor had described—and no doubt justly described—as "a discontented and disloyal yeomanry." Now he (MR. BAYLEY) could not conceive any political danger greater than the existence, in the heart of the community, of a large body of persons who answered this description. Even in times of profound peace they were undoubtedly felt to be an embarrassment to the administration of the country. MR. BAYLEY'S own experience testified, and he believed that he could appeal with confidence on this point to other officers of similar experience, that if you met anywhere a notorious offender—a man who had made himself conspicuous in crime, and who had with him, as was very often the case, the sympathy of a large body of the community—and if you investigated the history of this man you would find, in the majority of instances, that he was originally an ousted proprietor. Of course, in times of difficulty, the existence of such a class would be of far graver importance still. We might indeed be told that we need not anticipate a return of times like the days of the Mutiny, but it was impossible for any one to look forward to the future government of this country with any hope that there would not be at least periods of very considerable political difficulty; and MR. BAYLEY thought it was a matter of the most serious importance that we should render the administration of the country in these times as free from danger as possible. Since attention had first been drawn to this class of persons, MR. BAYLEY would ask what had been done to meet the acknowledged danger arising out of their position? He thought he might safely say that nothing had as yet been done; on the contrary, for a period of sixteen years, forced sales had been going on just as before, and the numbers of the class had largely increased. So far, therefore, as any alteration had been made, the danger had become greater than it was before the Mutiny. Nor did MR. BAYLEY share in the opinion of an hon'ble member, expressed to-day, that it was a class that might eventually die out. He thought that the experience of similar classes in other countries proved that they did not die out; that, on the contrary, so to speak, their enmities were perpetuated from generation to generation; that not only themselves, but their descendants, remained, to distant centuries, a "discontented and disloyal" body.

He believed he was scarcely exaggerating when he said that, during the Mutiny, almost every person of this class repossessed himself of his ancestral possession; in fact, so wide was the mischief, that it necessitated a special law for its reparation. But he might be told that this argument went further than the contention which he would wish to put forward, and in one sense no

doubt it did. The mere provision which the Bill, as originally drafted, proposed might seem to go a very small way to meet the evils described; he might be told that his argument would justify the entire rehabilitation of the whole body of ousted proprietors, and, no doubt, if such a heroic remedy were either necessary or possible, it might be wise to consider it; but he (MR. BAYLEY) was certain that no one in possession of his senses for a moment could consider such a course possible, and he might say with equal confidence that it was not necessary in order to remove all urgent political danger. A large—probably the largest—proportion of the existing ill-feeling arose, not so much from the sale of lands, as from the condition to which some exproprietors were reduced. No doubt the system of forced sales of land, and especially of sales forced under the circumstances of which he would speak presently, found little favour in Native eyes; but it was a mistake to suppose that transfers of proprietary rights, or even forced transfers, were totally unknown under the Native systems, or entirely opposed to Native practice.

Still, if it be admitted that a portion of the discontent which was known to exist arose from the extent and manner of forced sales under our rules, he (MR. BAYLEY) believed a far greater proportion of it arose from the treatment to which the exproprietors, when ousted, were exposed. The hon'ble member in charge of the Bill showed very clearly, not only from old authorities, but from recent inquiries, how very strong and how universal all over India was the feeling of the Native community against leaving the unfortunate exproprietors wholly without provision of any kind, and against the practice of stripping them at once of not only their proprietary, but of their cultivating, rights. He had shown that this feeling extended so far as to induce the actual extension to them, even as cultivators, of special considerations, as the hon'ble gentleman had proved; that in fact, even under our law, which was hostile to it, the practice of conceding such favourable terms to them had very widely grown up, and had become in some localities such a confirmed usage that it had been again and again recognised by the highest legal authority as binding and a valid custom.

Now the Bill, as it at present stood, seemed to MR. BAYLEY to do no more than this. It prevented, no doubt, the further extension of this evil in the future, and so far it was clearly a great reform, but for the rest it appeared only to give a formal sanction to any remedy, only so far as that remedy was already sufficiently applied and had already the sanction of legal authority. He thought, therefore, that it could hardly be denied that the measure still left a very large class untouched, the very class among whom discontent was most prevalent, and whom it was of the greatest importance in some degree to

soothe and satisfy. MR. BAYLEY spoke, of course, with very great deference to those whose especial duty it was to speak as to the political danger, and whose position enabled them to speak with more confidence than he did; but, nevertheless, knowing something himself of the feelings of the people, he thought it right, so far as was in his power, to place the Council in a position to understand at least the arguments in support of the original provisions of that Bill. He believed that those provisions would apply an adequate remedy —a remedy that was sufficient in a great measure to alleviate, if not wholly remove, the apparent political danger. He believed that it was almost beyond comprehension how a small concession of this kind would satisfy people who once had an interest in the land and found that interest to a certain degree recognised and their future secured by some measure of consideration. MR. BAYLEY had himself spoken to landlords who had granted similar concessions, and their experience told him that a very small concession indeed went very far to content the demands which these people at present felt themselves justified in making. To these remarks, he (MR. BAYLEY) would wish to add a few in regard to the counter-arguments which had been urged against giving any privileges retrospectively. The one argument which was derived from the great authority by whom the present practice had been to some extent acknowledged had, he thought, been sufficiently disposed of by the Lieutenant-Governor. MR. BAYLEY believed that the present issue was not raised when Mr. Thomason gave his opinion; but, if it had been, and if the evidence which they now had, had been before him, there could be little doubt, from the general policy which Mr. Thomason was known to hold, that he would have pronounced a very different opinion. The real arguments against the proposed measure, as it seemed to MR. BAYLEY, were that the practice had been prevalent for a long period of years; that a prescription had grown up; that men had purchased estates on the faith of that prescription, and with a view to the future enhancement of rents from this class of proprietors. There could be no doubt that there was a force in those arguments, but MR. BAYLEY believed that the force was greater in theory than it would prove in practice. He believed, as a matter of fact, that, of all the estates that had been brought to a forced sale in India, not the hundredth part had brought their real market-value. Moreover, he believed it was the custom, at least among the Native community, in making bargains of this kind, to look rather to the present value of estates than to any possibility of future returns. The immediate assets of the estate formed the consideration that regulated its purchaseable value. MR. BAYLEY did not believe, therefore, that either of these arguments ought to be admitted as largely influencing the equity of the matter. There were, no doubt, a few cases in which purchasers had purchased at the full value of estates with the view to

the possibility of future enhancement, but he thought that these were usually those of European purchasers, and constituted a very small minority of the whole, and should not be allowed to count for much in determining the general policy to be observed. With regard to the length of prescription, no doubt that was a matter of some importance to notice, but he thought it hardly constituted any valid argument. In the Panjáb a prescription of very considerable length had arisen; and if it was not of so long standing as in the North-Western Provinces, the facts otherwise were rather stronger in favour of prescription, and against any Government interference in the Panjáb, for no land sale had ever taken place there without careful examination and approval by one of the highest functionaries of Government. Nevertheless, years ago privileges such as those which the present Bill proposed were given retrospectively to exproprietary tenants, and hitherto they had evoked no complaints, and had apparently worked no injustice. In a similar case also, nearer home, under the Irish Land Act, prescription of an infinitely longer duration was overthrown on grounds wholly of political and economical expediency. He thought, therefore, that, upon a full view of the matter, the whole of the counter-arguments deserved small consideration, and ought not to be allowed weight in comparison with the enormous importance of satisfying what he believed to be the just and equitable demands of the old proprietors. No doubt we had been told that these very exproprietors were a class not worthy even of comparison, that they were worthless or improvident men, who had ruined themselves by their own extravagance. It had been urged that they must suffer for that extravagance, and that no exceptions could be made to the ordinary course of law in their case. But whether or not this might be true of the future, it was certainly not true of the past. There was no question that a very considerable number of these men, if not the large majority of them, had been ruined, not by their own faults, but by the faults of others. MR. BAYLEY was, he believed, within the mark when he said that in the three-quarters of a century during which our Government had held the North-Western Provinces, there was scarcely a district in those Provinces which had not suffered wholly or partially from over-assessment. There was nothing surprising in this. We were strangers and foreigners, working in the dark and ignorant of the resources and customs of the people. But while, in modern days, the effect of over-assessment was very closely watched, it was not so in earlier days; and the effects of over-assessment were rarely perceived until extensive defaults occurred and till the settlements we effected had broken down. But extensive defaults never occurred until credit had been exhausted and till a large number, perhaps the bulk, of the landholders had been hopelessly

involved in debt. The proprietary body in these cases were clearly ruined, not by their own faults, but by the mistakes of our own officers. No doubt, too, there were other mistakes in our administration, many of which contributed to the same result. There was another class of cases, also, of which MR. BAYLEY was somewhat more loath to speak, because they seemed less excusable. He alluded to those which arose from the action of our early civil courts. There was no question that it was a wise and politic measure to give the original jurisdiction in all suits, as was done during Lord William Bentinck's time, to subordinate courts presided over by Natives of the country. But we constituted those courts at once; gave them a very difficult law to administer, a law strange and foreign; encumbered them with a complicated and tedious procedure, which gave enormous opportunities of fraud and corruption; and we placed over these courts, necessarily at the first, men not only wholly untrained, but very often incompetent, and in many instances untrustworthy and venal. It was not to be wondered at, therefore, that (as MR. BAYLEY believed to be the fact), in the early days of our civil courts, their action resulted in a very large amount of error, fraud, corruption and injustice, and he was afraid there could be little doubt that a very large number of those landholders whose cases we were considering had been ruined through their instrumentality. There was, therefore, a good deal to be said for this class of people, and he had no doubt that the sympathy which was shown towards them, not only during the Mutiny, but at all times, by the general community, was in great measure attributable to the feeling that they had been ruined, not by their own fault, but in a large degree by causes over which they had no control, and which were set down with some justice to the errors and failures of the British Government. MR. BAYLEY thought, apart from any question of policy, therefore, that the equity of the case was not wholly on one side, and that much might be said in favour of extending greater protection to the class of ex-proprietors than had been done by the present Bill; such, for example, as would have been done in a sufficient degree by the Bill in its original form. As had been pointed out by his hon'ble friend, Mr. Hobhouse, the burden of that remedy would have fallen, not on the zamíndár alone, but in a great measure on Government—that is, it would in practice have been equally shared by both. MR. BAYLEY believed the remedy would have given a real relief, not only to an important class, but to substantial grievances, and would have effected this with a minimum of disturbance. He might be wrong, and he hoped he was so; but he felt that some similiar measure would in all probability be forced hereafter upon the Government, and he was quite sure, whatever remedy was then adopted, that it would be less effective, and that it would be more difficult to apply than it would be now. He regretted, therefore, that the present oppor-

tunity should be lost, and that the original clauses had been struck out of the Bill at the final meeting of the Committee.

Major General the Hon'ble SIR H. W. NORMAN said, that in the case of a Bill like the present, which dealt with questions of a very complicated and technical nature, it was almost inevitable that one like himself, who never had the opportunity of personally dealing with such questions, must take the details of the Bill a good deal upon trust. That being so, he could only say that he had no hesitation in accepting the Bill in its present shape; for he was aware how carefully all its provisions had been considered by the eminent authorities who had been consulted outside the Council, as well as by the Committee of the Council, the members of which possessed the largest possible experience of such matters, and whose sympathies were all on the side of broad justice. He was therefore prepared with confidence to vote in favour of the Bill.

The Hon'ble MR. ELLIS said that he would not weary the Council by going again over the ground already traversed by his hon'ble friends who had preceded him, but if he omitted reference to many points discussed by previous speakers, he must beg that it would not be supposed that it was from any indifference to those points, or from a failure to appreciate their great importance, but simply because he had nothing to add to the very clear expositions already given to the Council.

There were, however, one or two important points which appeared to him to call for remark, because he did not wholly agree in what had fallen from hon'ble members who had spoken.

The first of these questions referred to exproprietors. As had been stated, a change had been made in the original proposals of the Select Committee, and the privilege which was to have been conceded to these exproprietors was not, according to the Bill as it now stood, to have a retrospective effect. He had accepted the original clause on the assurances of those whom he considered best able to judge, that there was a strong and grave political necessity for the provisions as then framed. He did not, however, regret that the clause had been modified. If, as had been urged by his hon'ble freind Mr. Bayley, the former representations were well founded, then more ought to have been done than had been originally suggested; in fact, if those representations were well founded, the modicum of relief that the Bill at first proposed to give the exproprietors fell far short of what ought to have been given them. Nor could he conceive that proposals of the limited scope of those then before them, would have had the effect of averting any grave political danger, such as had been dilated upon by his hon'ble friend to the right (Mr. Bayley). But now that it was admitted by

His Honour the Lieutenant-Governor of the North-Western Provinces that there was not sufficient weight in those political reasons on which His Honour had relied in putting forward the original proposal, to counterbalance the objections which he (MR. ELLIS) thought had not unreasonably been taken to it in its former shape, he had much satisfaction in voting for the adoption of the clauses as amended. The ground upon which he had supported the sections in their former form had been cut from under his feet, and he considered that it was much better that it should be as it was. We could not remedy what had occurred in the past, and we were fully doing our duty in taking precautions for the future.

There was another important question dealt with in the Select Committee, in which also a change had been made in the proposals first adopted; but in this case MR. ELLIS did not think that the change was for the better. He referred to the relations between tenants and landholders. His hon'ble friend, Mr. Hobhouse, had reminded the Council how legal enactments generally worked for the benefit of the rich rather than to the advantage of the poor. MR. ELLIS would also ask the Council to bear in mind that, when a change in the law was under discussion, very much was heard from the higher classes, but very little from the lower. The zamíndárs presented valuable papers and put forth their views, which had full consideration, but the cultivators were never heard. The Council heard everything that was to be said of the rights of zamíndárs, and of any supposed encroachments upon those rights; but we never heard anything on the other side, and he submitted that there was another side. His hon'ble friend, Mr. Inglis, a few days ago stated, with much truth, that Act X of 1859 went too far, and not far enough. It went too far, inasmuch as it opened a door for the creation of a new class of occupancy-tenants out of those who were mere tenants-at-will; but it did not go far enough, for it failed to give protection to those occupancy-tenants who long before the date of the passing of that Act had, according to the custom of the country, rights which under the present law no longer existed.

MR. ELLIS would ask the Council to bear with him for a few minutes while he read some extracts from recent reviews by His Honour the Lieutenant-Governor of the North-Western Provinces, of reports on districts in which settlements had been revised. He read from these particular reports, not because they were the only reports recorded, but because they were the most recent; and from these it would be seen that, in all the districts to which they referred, there was a class of persons who had rights far beyond those acquired under Act X, but which now were no longer recognised under the revenue system which prevailed in those Provinces.

Three of those reports referred to the Jhánsí Division. In reference to Jhánsí, His Honour wrote:—"Excepting the case of some Thákur communities of a quasi-proprietary character, the occupants held each man on his separate footing of possession, and without the common bond of village partnership known in other parts of the country."

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"Speaking broadly, there was no distinction between revenue and rent: what each man paid for his land, he paid to the Government through the headman, not to a superior holder."

And in reference to the district of Lalatpur His Honour wrote:—

"It may perhaps be doubted whether a settlement such as has been recently made in South Mirzápur, under which the cultivators are recognised as proprietors of their holdings, and the headman constituted a 'patel' with certain rights of management and perquisites, but with no proprietary power over the other cultivators, would not have better suited the circumstances of Lalatpur; but it is needless to speculate on this point now, as the proprietary title, as understood in the North-Western Provinces, has long since been universally recognised and confirmed."

In reporting on Jalaun, the Board of Revenue had exemplified the tenacity with which cultivating rights in that district were kept alive, by the following description.

"These men, as Mr. Jenkinson remarked, would be more correctly styled 'cultivating proprietors' than 'cultivators,' though, in the particular village in question, others advancing a superior claim succeeded in obtaining the proprietary title. Here is a right of occupancy in the soil, saleable and transferable; which absence does not extinguish; which survives the exactions of one of the most exacting Governments that India has ever known, and which presents a complete analogy to the tenures existing in the Dehli territories when they first came under our rule."

In the Dhún, again, the same thing was reported, and His Honour the Lieutenant-Governor said that "the amalgamation of the different classes of old cultivators under the one head of 'maurúsís' is an error greatly to be regretted; for the pledge given to the oldest class of ryot-proprietors does not appear to have been fulfilled; and now that Act X of 1859 has become the Rent Law of the District, they are only protected from its enhancement clauses

by the stipulation in the record-of-rights, a stipulation which (even if no flaw be found in it) may be overlooked by the Courts of Law."

MR. ELLIS had read these extracts in no way from a desire to advocate a change in the general system of the North-Western Provinces, but because they showed, by direct evidence, in respect to the Jhánsí Division in the south, and the Dhún in the north, and by reference to other similar tenures in Dehli on the west, and Mirzápur on the east, that there had been all round the North-West Provinces, if not in the centre of them, a very considerable number of tenants possessing a much higher right than that which was accorded to them under the existing system. He thought he might argue that, when new privileges were being conferred (and he did not hesitate to say that under this Bill many new privileges would be conferred) on proprietors and zamíndárs, it would have been a good opportunity to cede to the tenants a full measure of justice. In advocating this, he was advocating no new principle. It was that which a gentleman, whose name was a household word in those Provinces, who was the father, in fact, of the revenue system in the North-West, Mr. Bird, also advocated. Just as MR. ELLIS would now do, Mr. Bird would have then given to tenants a settlement of their rent for the full period of the settlement of the revenue accorded to proprietors. His Honour had stated that this might have been possible in those days, but that the time had passed, and that it was now too late to alter a system which had been in force for so many years, and under which rights had been enjoyed and acquired. MR. ELLIS could not agree in this view. If it was possible in those days to make this change, it was clear that the zamíndárs had no inherent right to bar it, and although a decision was then come to by the Government of India adverse to the proposals of Mr. Bird, he saw no reason why a decision found, after the lapse of time, to have been wrong, should not now be altered. We must remember that the revenue paid by the zamíndárs was a fixed proportion of the assets of their estates, and no change could be proposed so as to affect that proportion during the currency of a settlement; but the term of future settlements might be made twenty or ten years instead of thirty, and the Government, if it allowed the zamíndár the benefit of security against increase of payment for the longer period, might insist on the cultivator with occupancy-rights having a similar benefit. Surely His Honour's argument, if admitted, would apply, not only to this change, but to his own proposal fixing the rents for ten years, and indeed any change in the principles of revenue settlements; and we should be barred from making any improvement not in precise accordance with the principles of former settlements. But His Honour finally admitted that the zamíndárs could not

claim, as a matter of right, that we should not fix the cultivators' rents for the period of settlement; he only urged that it would be inexpedient to do so. This being the case, MR. ELLIS would not hesitate, being convinced of the propriety of the change, to revert to Mr. Bird's proposal, especially when we were conferring on the zamíndárs very considerable boons.

There were also, it seemed to MR. ELLIS, strong administrative reasons why a period of ten years should not be taken in preference to the period of settlement. Much had been said on the special knowledge acquired by settlement officers at the time of introducing a settlement, and on the opportunities they had for judging correctly between the proprietor and his tenants as to the rent; and for this reason it had been provided that claims to enhancement of rent should be disposed of at the time of settlement by the settlement officers. But if after ten years the rents were liable to enhancement, any such benefits would be lost. It was true that, ten years hence, we might hope that all our valuable settlement officers would have become Collectors, and bring to bear upon their work the special knowledge which they had now acquired; but they would not have the leisure or the opportunity of acquiring the knowledge of the circumstances of the time which would render their decisions of the same value as the decisions they were now giving during the revision of the settlement. Moreover, he conceived that, on broad principles of public policy, it would have been wise to have given the tenant the full benefit of the term of settlement. MR. ELLIS could hardly suppose that any one would argue that, as a rule, a zamíndár expended much capital on land held by occupancy-tenants, and if the zamíndár would not expend capital, the tenants must be looked to to make improvements, and very strong inducement would be offered to tenants to improve their land if they were protected against enhancement for the whole period of the settlement.

MR. ELLIS conceived, therefore, that it would have been wiser had the Council taken the full period of settlement rather than the shorter term of ten years; but as the ten years period was certainly an instalment of what he (MR. ELLIS) considered right, and as the measure was a step in the right direction, he had no hesitation in voting in support of the Bill as it at present stood.

He would not, however, have made changes exclusively for the benefit of the cultivating classes. There was one great boon which, if conferred coincidently with the protection of the tenant against enhancement, would, MR. ELLIS believed, have reconciled the landholder to any concession to the occupancy-tenant. He (MR. ELLIS) would have completely repealed that section

of Act X of 1859 which sanctioned the accrual of an occupancy-right after twelve years' possession. He conceived that a test of a right of occupancy by a tenancy of so many years was wholly foreign to the feelings of all classes of people in all parts of India; and he believed it might be asserted without fear of contradiction that the existence of this law had been the cause of severe friction between the ryot on the one hand, and the proprietor on the other, and that it had caused, was causing, and would continue to cause, a very serious amount of ill-feeling. Believing, as he did, that good feeling between the ryot and the proprietor would be promoted by the abolition of this clause, and that this provision of Act X had been at the bottom of much mischief in the North-West, and perhaps also in the Lower Provinces, he would have been prepared to vote for its repeal.

Then it would be asked, on behalf of the non-occupancy cultivator, if all prospect of his emerging from a state of tenancy-at-will was thus cut off, what could he do to better his condition? MR. ELLIS would provide that occupancy-rights already acquired should be, not only heritable but also transferrible, on a nazrána being paid to the zamíndár in acknowledgment of his superior right. At the same time he would limit the power of transfer, so that none but resident cultivators of the same village should be put in possession of the transferred lands. This measure, he believed, would be of great importance to the occupancy class. It would enable an occupancy-tenant, whose means failed, to get rid of his holding with a little money to set up for himself in some other way. It would, on the other hand, give the tenant-at-will the chance of freeing himself from that position to which he was now probably tied for ever, and if he by some means had acquired a little money, he might establish himself as a tenant with rights of occupancy.

In both these cases the Bill made some progress towards the greater reforms which MR. ELLIS advocated. It went some short way in repealing the obnoxious section of Act X of 1859, in providing that a lease given by a proprietor to a tenant should be an absolute bar to the accrual of occupancy-rights by the lessee during the currency of the lease, and so far it was an improvement. There was also a provision that occupancy-tenants who had a heritable right might transfer their rights *inter se*. This was a good provision. In both these respects, as also in that a tenant's rent would be confirmed for ten years after it had been enhanced, and would be secured against further enhancement during that period; in all these respects the Bill went in the right direction, and MR. ELLIS did not feel justified, in the face of the greater experience and better judgment of His Honour the Lieutenant-Governor and of those

experts of the North-West Provinces who framed this Bill, in proposing any change in the Bill as it stood. He (MR. ELLIS) would say, in conclusion, that he willingly voted for the Bill, because he believed it to be itself an important improvement on the present system, and because it took a considerable step in the direction of the further reforms which he, individually, would be glad to see carried out.

The Hon'ble MR. DALYELL said that, as his personal experience of these Provinces had commenced only a week ago, he had very considerable diffidence in offering any observations on the very important measures now before the Council, the more so as he had not had the advantage of being on the Committee to which they were referred in Calcutta, and had no opportunity of joining in the recent discussions in regard to them. At the same time, as the Bills dealt in a great measure with questions in which, probably, at some period of his career, every Indian official was deeply interested, namely, the land-tenures of the country, he hoped he might be excused for taking up a few minutes of the time of the Council in making a very few brief remarks.

The consolidation of the law which would be effected by the Land Revenue Bill, and the definition of the powers and duties of revenue officers, were both of them matters for congratulation; and so far as the Rent Act was a measure of consolidation, it would doubtless be an acceptable addition to the statute-book. How far, however, the provisions which affected the landlords and tenants of these Provinces would be agreeable to the parties concerned, or suitable to the several districts of the Province, was to him somewhat more doubtful. He had always held that, unless there was some very grave necessity to legislate upon land-tenures, it was better to leave such matters to be dealt with by local usage and custom, as it would usually be found that such usage was so elastic in its character that it would adapt itself to the change of circumstances which the lands of different parts of a Province had undergone. Then, again, MR. DALYELL must say that he did not think that the experience we had had in legislation upon land-tenures hitherto was of so satisfactory a nature as to make it at all certain that it was desirable to take further steps in that direction. Probably no measure had been more severely criticised than the permanent settlement, carried out at the end of the last century, not so much because it limited the demand of the State in regard to what must always be its main source of revenue, but because it interfered with the private rights of the people in a manner which, no doubt, was never intended by its framers, but was the result of certain ambiguities in the Regulations under which it was established. Then, again, probably no enactment ever created such dissatisfaction, or evoked such bitter complaint, as Act X of 1859 when it first passed

into law. In fact, as a rule, with hardly an exception, MR. DALYELL thought that all legislation in regard to land-tenures, of which there had been any lengthened experience, had resulted in some dissatisfaction in some quarter or other, and occasionally, he could not but fear, in some injustice.

The reason, probably, of this was that the circumstances through which the land in different districts of the same Province had passed were not by any means necessarily the same. The territorial divisions of India were altogether arbitrary, and consequently the people of any particular Province must often consist of divers races, with different traditions and distinct histories. However careful, therefore, the framers of an enactment upon land-tenures might be—however wide might be the scope of their enquiries—however patient their investigations—it was almost impossible for them to frame an enactment which would not in some part of the Province fail to meet the precise circumstances of the people. Certainly, in the presidency to which MR. DALYELL had the honour to be attached, this had been found to be the case. There, the permanent settlement was introduced a few years after the permanent settlement of Bengal, and the Regulations under which it was established were, if possible, still more ambiguous in their terms. Some attempts had been made to rectify matters in 1822, but, virtually, for a long series of years, the rights of the landed interest in that presidency had been entirely in the hands of the officials upon whom it might devolve to interpret the somewhat conflicting laws on the subject.

So recently as 1865, after very patient enquiry and careful consideration, the Madras Act was passed into law, and it was hoped that it would meet all the requirements of the case. Instead, however, of this being the case, it had now been ascertained that, in some parts of the country, the tenants had been given rights which they had never previously claimed, and in others, that the landlords had obtained privileges which they had never before possessed.

Holding those opinions it was to MR. DALYELL a matter of some regret to find, when he was appointed to the Legislative Council in January last, that it was proposed to pass the Bills now under consideration during the Calcutta Session, as it seemed to him that anything like precipitation in dealing with so delicate a matter as land-tenures should certainly be avoided. It was, therefore, with much satisfaction that he subsequently learned that it was intended to defer final action in regard to the Bills until the present Session, and thus to give all the persons affected by them a full opportunity of ascertaining the bearings of their several provisions. Since the time to which MR. DALYELL had referred, the Bills had been very carefully considered by the Members of the Select

Committee, some of whom were gentlemen of large experience in the Provinces to which they would apply; and he was glad to think that some of the provisions which would have had the effect of altering the existing law had been either omitted or considerably modified, and after the very full exposition which the Council had received from His Honour the Lieutenant-Governor on the real necessity for legislation on the present occasion, he could only express a hope that, when the Bills become law, they might prove an exception to the hitherto experience in regard to enactments affecting land-tenures.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS then moved that the Bill as re-amended be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND REVENUE BILL.

The Hon'ble MR. INGLIS moved that the Final and Supplementary Reports of the Select Committee on the Bill to consolidate and amend the law relating to Land Revenue in the North-Western Provinces be taken into consideration. He said this Bill was first brought forward by the Hon'ble Mr. Stephen in 1872 as part of the general scheme of consolidation which had been for sometime in progress. When introduced, the Bill was confined to the consolidation of the revenue law of these Provinces; but after it was referred to the Government of the North-Western Provinces for consideration, it was thought advisable to take advantage of the opportunity to make some alterations in the existing law, which experience had shown to be necessary; to add twenty-one Regulations and Acts to the number included in the repealing schedule by embodying their provisions in the Bill, and to bring the sections relating to the determination of rent by settlement officers into accordance with the corresponding provisions of the Rent Bill then before the Council.

The Bill was divided into nine chapters, and embraced the following subjects:—The powers of revenue officers. The assessment of the land-tenures, and the preparation of the record-of-rights in land. The maintenance of the records prepared at settlement. The collection of the land-revenue. The administration of the court of wards. The procedure of the revenue courts, and the disposal of appeals from orders passed by revenue officers.

The second chapter related to the constitution and powers of all revenue officers, from the Board of Revenue to the village patwári. The position held by the Collector of the district and by Assistant Collectors placed in

charge of sub-divisions was defined, and the power which they must necessarily exercise, of distributing the business of a district among their subordinates, was distinctly conferred upon them. This power had always been exercised, but as it had been doubted whether it was one which could be properly exercised unless expressly given by law, it had been thought advisable to lay down clearly that the Collector of a district, or an Assistant Collector of the first class, when in charge of a sub-division, might make over any case or class of cases to, or might withdraw any such case or class of cases from, any revenue officer subordinate to him, whether arising under the provisions of this Act or of any other Act, and might deal with it himself, or might refer it to any other such revenue officer for disposal or inquiry. The sections relating to the appointment and dismissal of village patwárís, and the levy of a cess for their payment, embodied the provisions of the existing law and of the rules that had been from time to time issued on the subject by the Local Government. By sections 29 and 30, the levy of a cess, not exceeding three per cent. on the annual value of each mahál, for the payment of the village patwárí and of any additional establishments required for the proper supervision, maintenance, and correction of patwárís' records, was legalized. This cess was now levied under an order of the executive Government issued in 1856, when the settlement of the district of Saháranpur came under revision. By the rule then issued, the cess was limited to three per cent. on the jamábandi, and the same limit was retained; engagements for the payment of the cess had been taken from the landholders in all districts in which the assessments made under Regulation IX of 1833 had come under revision since 1856; consequently these sections merely legalized what had been already done for twenty years past under the order of the executive Government.

Chapter III related to the assessment of the land-revenue and the preparation of the record-of-rights in land at the time of settlement. In sections 36 to 60, the provisions of Regulation VII of 1822, relating to the assessment of the land-revenue, had been embodied in a more concise and clear form. The maximum allowance which might be granted to a proprietor, who might refuse to accept the assessment on his estate proposed by the settlement officer, had, however, been raised to fifteen per cent. on the proposed jamá from ten per cent., the limit fixed by Regulation VII of 1822; and the right of any such proprietor to remain in the occupation of his 'sír' land as an exproprietary tenant was recognized, with this proviso, that the difference between the rent paid by him as an exproprietary tenant and that which he would have to pay were he a tenant-at-will, should be deducted from the allowance granted to him on the jamá, so that in no case would the aggregate allowance enjoyed by an excluded proprietor exceed fifteen per cent. on the proposed

assessment. Sections 60 to 91 related to the preparation of the record-of-rights in land at time of settlement, and it was in this part of the Bill that the more important changes proposed to be made in the existing law would be found. Section 64 provided that all entries in the record-of-rights, relating to persons having any heritable or transferable proprietary rights in any mahál, and to persons holding lands as tenants, whether rent-free or otherwise, should be made, subject to the provisions of section 69, on the basis of actual possession; all persons not in possession, but claiming a right to be so, being referred by the settlement officer to the proper court for the establishment of their claims—thus differing from the provisions of section 14, Regulation VII of 1822, under which a settlement officer was empowered to inquire into the title of any person who might complain to him that he had been wrongfully dispossessed within the year immediately preceding that in which the complaint was made, and empowered him to restore the complainant to possession if the assessment was proved. It might have been necessary to give settlement officers this power when Regulation VII of 1822 was passed, but it was no longer required, and had been found to cause much unnecessary litigation and expense. The settlement officers' decision might be appealed through the Commissioner to the Board of Revenue, and a suit might then be instituted in the munsif's court to reverse the decision of the Board, and the whole case fought over again, while it might be carried in appeal through the court of the District Judge up to the High Court. No object was gained by allowing all this useless litigation, while it was evidently better that, if any question was to be eventually decided by the civil courts, it should be made over to them at once, instead of being first tried in the revenue courts. It was therefore provided that the settlement officer, when framing the record-of-rights, should confine his inquiries into the actual and present possession of the parties, leaving all question of right and title to be decided by the civil courts.

Section 66 referred to the cesses paid by tenants and others to landholders. All cesses paid on account of the occupation of land would be in future consolidated with the rent paid by the tenant, and a list of all other cesses, by whomsoever paid in accordance with village-custom, if generally or specially sanctioned by the Local Government, would be framed by the settlement officer; no cess not so recorded could be enforced by any civil or revenue courts. The provision which barred the enforcement in any court of any cess not recorded by the settlement officer, was taken from Regulation VII of 1822; but the power which had been given to the Local Government to lay down conditions under which any cess might be levied on account of a bázár or fair was new; it was evidently very necessary that Government should have

this power, and should be able to lay down rules regarding conservancy and sanitary arranagements generally, whenever large bodies of people were collected in any place.

Sections 70 and 77, which related to the rent to be paid by an exproprietary tenant, and fixed the terms for which rent determined by order of a settlement officer should remain unaltered, had been introduced in order to bring this part of the Bill into accordance with the provisions contained in the corresponding part of the Rent Act. MR. INGLIS had explained fully, on Friday last, the reasons which had led the Select Committee to recommend the adoption of the proposed clauses regarding exproprietary tenants, and the grounds on which they proposed to bar a fresh suit for enhancement for ten years after the rent of a tenant had been fixed by order of a competent court. These questions had been again discussed to-day very fully by the hon'ble members who had just now spoken on the Rent Bill: it was therefore unnecessary for him to occupy the time of the Council by enlarging on these points now.

Section 72 enabled a settement officer, on the application either of a landholder or of a tenant, to determine the rent to be paid by the latter, and thus restored the power settlement officers exercised under Regulation VII of 1822, before Act X of 1859 became law. Act X of 1859 laid down the same procedure in cases relating to the determination of rent at all times, whether the district in which the claim was brought was under revision of settlement or not. An alteration in the procedure to be followed when a district was under settlement, was afterwards made by Act XIV of 1863, which dispensed at such times with the notice required to be issued under section 13, Act X of 1859, and allowed the landholder to sue directly for enhancement; the grounds on which he claimed enhancement being stated in his plaint. Still, however, the rent of a tenant at time of settlement of a district could, under the present law, only be determined after a regular suit had been filed: this had been found to be both inconvenient and inequitable, it being obviously desirable that, when the Government demand on the landholder was re-adjusted, every facility should be given to him to re-adjust the rents paid by his tenants. The revised assessment on an estate was, however, not based on the actual rental then received from it by the landholder, which might be, and frequently was, below the fair value of the land, but on an estimate framed by the settlement officer of what the rental would be, were the rates of rent prevailing in the neighbourhood for similar land applied. Consequently, it frequently happened that the revised jamá finally determined by the settlement officer was more than fifty per cent. of the actual rental then received by the landholder; but as a settlement officer had no power, under

the present law, to enforce the rates on which he had assessed at the time he declared his proposed assessment, the whole task and cost of bringing the rental up to that on which the revised assessment had been based, was thrown upon the landholder. This took time, and frequently entailed a very considerable outlay upon him, as the demand might be contested through the district civil courts to the High Court. The landholder had thus to bear all the cost of instituting these suits, while if, as generally happened, the ultimate decision was against the tenants, they were burdened, not only with the payment of the enhanced rent, but with all the expenses incurred in the original and appellate courts. It seemed to him impossible to advocate the maintenance of this state of things; the mere statement of the results brought about by the present procedure seemed sufficient to condemn it, and to justify the proposal of the Select Committee to return to the old procedure, under which a settlement officer would, when he declared the revised assessment he proposed for an estate, if the landholder applied for it, make over to him a revised rent-roll. This change would benefit both landholders and tenants, saving them from the litigation and expense they were now put to, and preventing the ill-will and ill-feeling now engendered between them in the settlement of their rents. Almost every landholder he had spoken to readily acknowledged the boon conferred upon him by this change of procedure.

Chapter IV related to the maintenance by the Collector of the records prepared at settlement, to the partition and union of estates, and to the maintenance of boundary-marks. The section relating to the maintenance of the records re-enacted the existing law on the subject, except that, in section 100, a provision had been adopted from the draft Revenue Code framed by Mr. Thomason many years ago. These records were intended to show possession merely, and were not meant to be records of title; consequently, in making alterations in them, the Collector had merely to ascertain whether the transfer alleged to have been made had actually taken place, and if he found that it had, he must make the necessary alteration in his records without any inquiry into the merits of the case; but it not unfrequently happened, in cases of succession for instance, that it was impossible to ascertain who was the party in possession. In such cases the Collector would, by summary inquiry, ascertain the person best entitled to the property, and put him in possession, making the necessary entry in the record accordingly, subject to any orders that might be subsequently passed by the civil court.

The next sections related to the partition and union of estates, and re-enacted, in a clearer and more concise form, the provisions of the present law. By section 120 it was enacted that, while each estate should be made as compact as

possible, no partition should be disallowed solely on the ground of incompactness, except with the sanction of the Board. In section 122 it was provided that the 'sír' of any co-sharer should not be included in the estate assigned to another co-sharer, unless with the consent of the co-sharer who cultivated it, or unless the partition could not be otherwise carried out; and further that, if such land was so included, and if after the partition the former owner continued to cultivate it, he should hold it as a tenant with a right of occupancy, his rent to be fixed by the Collector; thus remedying an omission of the present law, in which no mention was made of the 'sír' holdings of the co-sharers, in consequence of which it had been ruled that, in cases such as those contemplated by this section, if the co-sharer continued to cultivate his 'sír' land, he held it as a mere tenant-at-will. This had been strongly objected to by the people, and had been found one of the chief difficulties in carrying a partition case to completion. Section 129 extended the period of appeal to one year from the date on which the partition took effect. The remaining sections of this chapter provided for the maintenance of boundary-marks and made no alteration in the present law.

Chapter V related to the collection of the land-revenue and embodied the provision of the present law on this subject, the only change made being in section 186, which provided that the proprietor of any mahál sold for an arrear of revenue should remain in possession of his 'sír' land as an ex-proprietary tenant. Under the present law, if an estate was sold for an arrear of revenue due on it, the proprietor retained possession of his 'sír'; while if it was sold on account of an arrear due on another estate, he lost all his rights and became a mere tenant-at-will. There seemed to be no reason why this distinction had been made, and accordingly the present opportunity had been taken to remove it.

Chapter VI related to the court of wards, and re-enacted the present law on the subject, except that power was given to the court to take under its charge the property of any landed proprietor, whether his estates were assessed to revenue or not, there being no apparent reason for the distinction made by the present law, between estates assessed to revenue and those held revenue free. Persons disqualified, on their own application, had been added to the list of persons whose estates might be taken under the charge of the court; this was intended to meet the cases of proprietors involved in debt and unable to extricate themselves, and who might apply to Government for assistance. And a new section, No. 204, defining the duties and responsibilities of managers of estates appointed by the court of wards, had been added.

Chapter VII laid down the procedure to be followed by the revenue courts in the trial of cases, and in the reference of cases to arbitration, and defined the

powers of collectors, assistant collectors, settlement officers and their assistants, and did not appear to require any particular notice.

Chapter VIII dealt with appeals. The only change made by this chapter in the present law, requiring notice, was that by which appeals from the order of settlement officers, determining the rent or tenure of a tenant, would in future lie to the Commissioner of the Division, instead of, as at present, to the District Judge. On this point MR. INGLIS would read an extract from the Statement of Objects and Reasons sent up with this Bill last year by the Government of the North-Western Provinces:—"It is proposed to bar the civil courts from cognizance of all rent suits adjudicated at time of settlement. The grounds for this proposal are, briefly, that the data on which settlement officers fix rents are mainly identical with those on which they fix the Government revenue rates based on those rents; that the superior revenue authorities are the recognized judges of the adequacy or otherwise of the proposed Government revenue rates; and that the authority which decides on the one has the best means of deciding on both. The standard of rent for purposes of comparison has been declared to be, either the current rate, or the rates assumed for assessment by the settlement officer, and it is believed that the revenue courts are in a far better position than courts of civil jurisdiction to pronounce on the applicability of these rates where the settlement officer's decision is disputed, the issue being one, not of law, but of fact, and resting upon considerations within the daily observation of Commissioners and of the Revenue Board, but little familiar to civil courts." MR. INGLIS had nothing to add to this; except to say that another year's experience had confirmed the correctness of the opinion therein expressed.

MR. INGLIS thought, that he had now noticed all the more important points in which changes had been made in the existing law. It would be seen that these changes were not many in number, and that the Bill had, in fact, retained its original character of a consolidation measure: but regarding it in this light alone he thought it might fairly claim to be one of the most important and useful measures that had been under the consideration of Council for some time. The law relating to the land-revenue of these Provinces was now contained in fifty-four Regulations and Acts passed at various times, from 1803 to 1863, many of the earlier Regulations extending, either in whole or in part, Regulations previously passed for Bengal in 1793. Now it must be at once evident that to trace the law forward through all these Regulations, many of them passed originally for Bengal seventy years ago, then extended in whole or part to these Provinces, subsequently partly repealed or modified, and sometimes re-enacted, was a task

of great difficulty—so difficult was it that few people felt inclined to attempt it, most persons being content to take their revenue law from the *Directions to Collectors and Settlement Officers*, framed by Mr. Thomason nearly thirty years ago. When, however, questions of revenue law came before the courts, it was impossible to adopt this easy way out of the difficulty, and the provisions of the Regulations themselves must be studied. The consolidation, therefore, of all these old Regulations into one short Act, and the re-arrangement of their provisions under their appropriate headings, must confer a great boon, not only on the officers of Government who had to administer the law, but also on all those whose interests were affected by it, and to whom it was a matter of extreme importance that the law relating to the land-revenue should be clearly expressed and easily accessible, instead of being buried in upwards of fifty old Regulations and Acts as it now was.

The Hon'ble MR. HOBHOUSE said that whatever observations he had to make on this motion were included in his remarks on the Rent Bill. He would therefore support the motion of his hon'ble friend Mr. Inglis.

His Honour THE LIEUTENANT-GOVERNOR said that, as he had already spoken at length on the Rent Bill, and his remarks had a common reference to both Bills, he had nothing further now to say, except, indeed, to express his entire concurrence with what had fallen from his hon'ble friend, Mr Inglis, in respect of the great benefit to the administration in these Provinces from the consolidation of the law effected in the Revenue Bill. The inconvenience and waste of time and labour were very considerable when an officer had to refer from Regulation to Regulation and from Act to Act, in order to pick out the law upon any particular point, and HIS HONOUR therefore felt bound to express the high satisfaction with which he contemplated the prospect of having what was now scattered through fifty or sixty separate laws consolidated into one compact and well arranged Act. The work of consolidation might not at the first sight strike one as great, but it really was a most laborious and anxious task to make the various parts of the digest dovetail together, for the slightest change, not only in matter but in arrangement, involved corresponding changes throughout the whole Bill, the neglect of any one of which might produce serious inconvenience, and even defect of justice hereafter. The Bill appeared to him to be perfect in this respect, so far as labour and assiduity could obviate the chance of error. And he felt bound on this occasion to express his sincere obligations to those who had, during the past two summers, assisted in the deliberations at Naini Tál, and chiefly to his hon'ble friend Mr. Inglis, to whom, he might say, that the whole North-West owed a debt of gratitude for his labours in bringing these two Bills to their present state. HIS HONOUR

likewise acknowledged the obligations of the North-Western Provinces Government to his hon'ble friend Mr. Hobhouse, whose endeavours in perfecting the Bill had been unremitting, and HIS HONOUR also thanked the Select Committee for their readiness on all occasions to give a considerate attention to the opinion and suggestions of the Government of the North-Western Provinces.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS then moved that the Bill as re-amended be passed.

His Excellency THE PRESIDENT said:—"Before these two important Bills are passed, I wish to say that the Government desired to defer their final consideration until the Legislative Council could assemble in the North-Western Provinces, and have the great advantage of the presence and assistance of Sir William Muir, at whose instance the Bills were first introduced.

"I quite agree with the observation of my hon'ble friend Mr. Inglis made on the last occasion on which the Council met, that no measure has, at any rate of late, received greater consideration by the Government of India, by the Legislative Council through the Select Committee,—an institution admirably adapted for dealing with long and intricate measures of this kind,—and by the Lieutenant-Governor of the North-Western Provinces, who, as well as the Committee, has considered the suggestions and objections which have been raised to several parts of these Bills upon their publication.

"It is a great satisfaction to me that the Committee have come to an almost unanimous conclusion, and the wisdom of their conclusion must, I think, be clear to all the Members of the Council from the discussion that has taken place to-day.

"The only two points upon which it appears there was any difference of opinion are points of much difficulty, and upon which much may be said on either side. My opinion is, after a very careful study of the subject, that the decision of the Committee has been sound in limiting the alteration of the present law as they have done in the Bill now before us. I believe that, upon both questions—first, the limitation of the term for which the rent is to be fixed at settlement, and in suits subsequently raised to ten years, and secondly, the abandonment of the retrospective effect of the provisions which relate to ex-proprietary tenants—the conclusions to which the Committee have come are wise.

"I would say, with reference to the argument which has been used that the position of the ex-proprietary tenants is one which, for political reasons, is undesirable, that those who hold that opinion do not desire to carry it to its complete and legitimate conclusion, that is to say, to overturn the present condition of a great part of the landed property in these Provinces. We are all agreed that we must deal with the question as it is now practicably before us, and to my mind the alterations that have been made leave very substantial benefits for the future to ex-proprietary tenants. The clause, as it originally stood in the Bill, certainly would have interfered to some extent with existing rights. In my opinion such interference would only be justifiable upon the strongest political grounds, and in view of the expression of opinion on the part of my hon'ble friend, the Lieutenant-Governor, that he could not say that such political reasons existed in the present case, it appears to me that the operation of the clause must be limited to the future.

"In saying this I admit that the retrospective provision would have caused but a very slight interference with the rights of property. At the same time, the principle is a grave one, and I could not agree with any interference with rights of property, unless the strongest political reasons were established as the ground of such interference.

"I have only to say, in conclusion, that I heartily agree with the recognition which the Lieutenant-Governor has given to the pains which my hon'ble friend, Mr. Inglis, has taken in the preparation and conduct of these Bills, and also to the great care bestowed by my hon'ble friend Mr. Hobhouse in going through the Bills in Committee, and in explaining so clearly the changes that have been made during their progress. I quite agree with the Lieutenant-Governor in thinking that the North-Western Provinces are greatly indebted to those gentlemen. I may add the same on behalf of the Government of India, for we are deeply interested in the prosperity of these Provinces, which form so important a part of British India.

"The policy, as is well known, of the Government of India is that, while we do not desire to give up the fair right of the State to the land-revenue, we think it essential to the prosperity of the country that, in settlements of land-revenue, moderation should be exercised, and that those settlements should leave the proprietors of the land as well as the cultivators, as far as possible, in a condition of prosperity and independence. We rely upon settlement officers to carry out these principles. This Bill in no respect interferes with them. On the contrary, in some most important respects it will, I believe,

be of great benefit to all concerned in future settlements of the land-revenue, as well as in the determination of some questions that may arise under existing settlements."

The Motion was put and agreed to.

NAWÁB NÁZIM'S DEBTS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to provide for the liquidation of the debts of the Nawáb Názim of Bengal, and for his protection against legal process, be taken into consideration.

He said that, when he presented the report of the Select Committee upon this Bill at the last meeting of the Council, he took the opportunity of fully explaining the alterations that had been made in the Bill by the Committee, and also such alterations as had been suggested, but which the Committee had abstained from making.

Nothing had since occurred of which he had to inform the Council, and on a reconsideration of the matter, he had nothing to add to what he had said at the last meeting. He must therefore beg the Council to take the speech he then made as being in support of his motion.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council then adjourned *sine die*.

AGRA;
The 24th November 1873.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

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