COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 12

APRIL - DEC.

BOOK NO 2

1873

P. L.

C.371)

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 Friday, the 21st 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.

MUNICIPALITIES (N.-W. PROVINCES AND OUDH) BILL.

The Hon'ble MR. HOBHOUSE moved that the Bill to make better provision for the appointment of Municipal Committees in the North-Western Provinces and Oudh, and for other purposes, as amended by the Select Committee and by Council, be passed. He said that he had made a motion of exactly the same tenor as this in the month of August last, and had spoken to it, though it happened that, on that same morning, intelligence had been received that the Bill had not been duly published in one of the local gazettes, and therefore he had to ask that his motion might be postponed for the purpose of allowing due publication to take place. What MR. HOBHOUSE had to say on the subject of the Bill he had said on that occasion, and though there were some small amendments since introduced into the measure, they did not afford any fresh matter upon which to address the Council.

The Hon'ble MR. DALYELL said that, when last he had the honour to assist in the deliberations of the Council in regard to the measure now under consideration, he had expressed an opinion that it should not be passed into law without very careful criticism and enquiry, and he had reminded the Council that, so far as regarded the Province of Oudh, the law under which the municipalities had their present existence, was entirely of a temporarily and tentative character, and that, at the time of its enactment, several hon'ble members had

expressed considerable doubts as to the eventual results. He had also brought to the notice of the Council that, both in these Provinces and in Oudh, it seemed highly probable that, as was the case in most of the other administrations, the system of Provincial Finance had had the effect of giving a very strong impetus to local taxation of all descriptions, and that, therefore, it was highly necessary that any measure having for its object the augmentation of imposts of that description, or even the continuance of existing imposts, should be carefully scrutinised, and he had expressed a hope that the Council might be supplied with any papers calculated to show what had been the working and results of the municipalities then in existence in the Provinces to which the Bill would apply.

Since the time to which MR. DALYELL referred, he had been favoured—thanks to the consideration of His Excellency the President—with copies of several reports on municipal taxation in many of the provinces of the Empire, and he was bound to say that their perusal had been to him a most agreeable surprise; for he had not been prepared to learn that so large a measure of success had, on the whole, attended the working of the existing laws in regard to municipalities. It appeared that, in the year 1871-72, there were in the North-West Provinces no less than sixty-seven municipalities with a gross population of about two millions, and a gross income of about £150,000, of which £130,000 was raised by taxation, at an average incidence of eleven annas eight pie per head, and which cost about 10 per cent. to collect and manage; that about one-fifth of the whole income was devoted to the maintenance of the town police. Imperial expenditure being thus relieved to this extent, about one-third was expended on "New Works and Repairs;" one-seventh on Conservancy; and the remainder on Miscellaneous objects, including about Rs. 30,000 on Education. These Municipal Revenues were administered by 904 Commissioners, of whom only one-third were official; and, of the non-official Commissioners, no less than four-fifths were elected by the people. In the same year, in Oudh, there were fourteen municipalities with a population of about 400,000, and a gross income of about £45,000, of which £35,000 was raised by taxation, at an incidence of from two annas six pies to fourteen annas per head, and which cost about 11 per cent. to collect and manage. As in these Provinces about one-fifth of the whole municipal income was expended on the Police; one-fourth on "New Works and Repairs;" one-sixth on Conservancy, and the remainder for other purposes, including, however, only Rs. 3,752 for Education. It would seem, too, that the people of the municipalities in both Provinces were beginning to realize the distinction between Local and Imperial taxation, and that, at any rate in the North-West Provinces, a very decided step had been taken in the

direction of local self-Government. In fact, the only features in these reports which were at all disappointing, were the comparatively insignificant expenditure on Education in Oudh, and the small extent to which the privilege of election to the Municipal Committees had been taken advantage of in that Province. These were, however, matters in which we could not expect any very rapid progress, and, as observed by His Excellency the President, at the debate to which Mr. Hobhouse had alluded, but at which he (MR. DALYELL) was not present, it must depend upon the wealth of the municipalities and the funds at their disposal how far they could deal with the optional object of expenditure; and among these were included all grants for educational purposes.

On the whole, then, it could not be doubted that the experience gained, during the past few years, in regard to the municipalities in the two Provinces affected by the Bill, had been fairly satisfactory, and gave fair promise of eventual success. Under these circumstances, it was in the highest degree desirable that permanent legislations should take the place of the present temporary enactment in Oudh, and that the municipalities of the North-Western Provinces should be continued and developed still further. The present Bill apparently made little change in the existing law, the alterations being mainly such as would ensure greater deliberation in regard to new taxes, and greater certainty that the fund would be expended on works of general utility only.

His Honour THE LIEUTENANT-GOVERNOR said that after the remarks which had fallen from his hon'ble friend, Mr. Dalyell, he felt bound to express the gratification with which he had heard them, and he took the opportunity of also thanking His Excellency the President for the favourable notice taken of the working of this Bill in the debate at Simla.

What had just been said by Mr. Dalyell to the effect, that the incidence of taxation under this Act had not been in any way affected or enhanced by the decentralization scheme, was strictly correct; in fact, the taxation under Act VI of 1868 had commenced, on its present footing, long before that measure had been decided upon. The municipal system and Revenues had extended, no doubt, considerably since then, but this was the result of a natural extension and development which would have taken place under any circumstances, whether the decentralizaton scheme had taken effect or not.

HIS HONOUR wished also to corroborate what his hon'ble friend had said of a growing disposition on the part of the people to take advantage of the

powers which, by the Municipal Act, the legislature had placed in their hands. It had been his constant endeavour everywhere to extend the practice of election, wherever any interest was shown by the people or desire to exercise the power.

But where they are indifferent and careless of the privilege, there to force the system of election and press it unduly and precipitately was likely to do more harm than good, and, in fact, to make the matter more a farce than otherwise; but this ignorance and indifference would gradually wear away, and, generally, when it was possible to induce the people to elect their own Municipal Councils, it was found that a new interest was gradually created and the result could not but be most beneficial.

Mr. Dalyell was quite right in saying that education was an object specially deserving the support of the municipalities; and there was every disposition on their part to recognize this obligation, especially in respect of the primary teaching of the lower classes. Indeed, there was a growing desire to contribute liberally to all institutions and objects, such as dispensaries and hospitals, vaccination, and sanitation, which tended to the prosperity, health and comfort of the people, who thus saw that their funds were expended for their benefit, and must recognize the advantages accruing from the application of the Municipal Law.

The Motion was put and agreed to.

VILLAGE POLICE (N.-W. P.) BILL.

The Hon'ble MR. INGLIS moved that the Bill to consolidate and amend the law relating to Village Police in the North-Western Provinces, as re-amended, be passed.

His Honour the LIEUTENANT-GOVERNOR desired to make a few remarks upon this Bill and the necessity for the measure. As had been fully explained by his hon'ble friend, Mr. Inglis, in a former debate, the law regarding Village Police was extremely imperfect, and there was no legislative sanction enforcing the responsibilities and duties of Village Police.

These Village chaukidars were really the backbone of the Police administration as regarded the five and twenty millions of the agricultural population in the North-Western Provinces. The regular Police, including every department, municipalities, cantonments, &c., numbered only about eighteen thousand men while the rural Police amounted to no less than sixty thousand men, paid at an annual cost of above twenty lakhs of rupees. Formerly, the chaukidars were remunerated variously; in some districts, in money, but mostly by small

jagirs of land, and they had consequently no proper inducement to continue at their post or efficiently to discharge their duties. Now, they are all paid at the rate of three rupees per month each; that might not seem a large sum, yet to the Village Policeman it was a matter of considerable moment, made him unwilling to lose his position, and so the better enabled the Government to enforce a strict and careful discharge of their duties.

The gradual extension of the local cess, which was imposed *pari passu* with the new settlements, had enabled the Government to extend this system throughout all the districts of those Provinces; and there were, taking it at an average, some 2,000 Village Police in each district. Upon these men devolved the duty of protecting the whole agricultural population, the detection and prevention of crime, arrest of bad characters, &c., so that it was really a matter of the highest importance to have their functions and responsibilities defined; and the conditions of their service, appointment, dismissal and punishment all settled by legislative enactment. Upon this force also devolved primarily the enforcement of the extensive measures undertaken by the Government of the North-Western Provinces for the suppression of infanticide. Altogether, then, a real improvement in the position of the Village Police, and a material progress in the efficient discharge of their duties, might, with confidence, be looked for from the measure now under consideration.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT BILL.

The Hon'ble MR. INGLIS, in presenting the final report of the Select Committee on the Bill to consolidate and amend the law relating to the recovery of rent in the North-Western Provinces, said:—"I brought this Bill forward at the desire of the Government of these provinces about ten months ago. It was then referred to a Select Committee, whose report, together with the amended Bill, was published in the Gazette of March last. At the same time, the Government of the North-West sent copies of the amended Bill to all the European landholders in these provinces, to a very large number of the Native landholders, to most of the officers of Government, and to many other persons interested in the questions to which the Bill relates. During the summer, many very valuable criticisms on the Bill have been received, and have been carefully considered by the Committee, many of the suggestions made in these replies having been adopted. I think that I may safely say that no Bill has ever been before this Council which has received more careful consideration, or more general criticism

not only by the officers of Government, but by the general public, than this Bill. I do not think it necessary to go through the history of the discussions on many of the provisions of the Bill while it has been before the Select Committee. I propose to notice those points only in which the Bill, as finally amended by the Select Committee, and as now laid before this Council, differs from the law as contained in Acts X of 1859 and XIV of 1863. These will be found, first, in sections seven and fourteen, in which the distinction between the cultivating right belonging to a proprietor in his 'sir' land and his proprietary right in the whole estate is recognised, and any proprietor, who may hereafter lose his right of ownership in any mahal, is allowed to retain his 'sir' land, with a right of occupancy in it, at favourable rates.

"*2ndly.*—In section thirteen, which provides that a landholder who may wish to enhance the rent paid by any of his tenants having a right of occupancy, must sue directly for such enhancement, instead of merely issuing a notice on the tenant informing him of his intention to claim an enhancement of rent, the burden of contesting the claim being thrown on the tenant.

"*3rdly.*—In sections sixteen and seventeen, where it is provided that, if the rent payable by any exproprietary or occupancy-tenant has been fixed by an order of any competent Court, it shall not be liable, subject to certain specified exceptions, to enhancement for ten years.

"*4thly.*—In section twenty, where it is laid down that, in determining the rent to be paid by any tenant, his class shall be taken into consideration, if it is proved that, by local custom, the class of a tenant is taken into account in fixing his rent.

"*5thly.*—In section twenty-three, where power is given to the Local Government, wherever the crops on any land have been damaged by any cause beyond the tenant's control, to step in and grant a remission or suspension of the rent paid by the tenant, a corresponding remission or suspension of revenue being granted to the landlord.

"*6thly.*—In section forty-two, where it is provided that, whenever rent is paid in kind, if either the landholder or the tenant refuse or neglect to attend at the proper time, either party may enforce a division or appraisement of the crop by application to the Collector of the District.

"*7thly.*—In sections forty-four to forty-seven, the right of a tenant, who may have improved the land in his occupation to receive compensation for such improvement if ejected by his landlord, is recognized.

"*8thly.*—In sections forty-nine to fifty-three, in which permission is given to tenants to deposit their rent in the Government treasury, if the landlord refuse to receive it.

"And lastly, in chapter V, in which the jurisdiction of the Civil and Revenue Courts is separated and defined.

"Other minor alterations have been made, but not of sufficient importance to call for special mention. Indeed, of those I have just enumerated, some may be passed over with a very brief notice; for instance, the alteration made by section thirteen, which requires the landlord to sue for enhancement instead of serving notices of enhancement on his tenants, is merely a change in procedure, though it is a change which our experience of the working of Act X of 1859 has shown to be very necessary. For the power which a landholder possesses under that Act of serving notices of enhancement broadcast among his tenants, leaving it to them to contest the claim, either by bringing a suit, or in reply to a demand for rent at the enhanced rate, has been found to encourage vexatious and groun less demands for enhanced rent, and to be productive of much ill-feeling between the parties. Again, the provision entertained in section twenty, directing that the class of a tenant shall be taken into consideration in determining the rent to be paid by him, if this is found to be the local custom, is in accordance with recent decisions of the High Court laying down the meaning to be given to the words 'the same class of tenants' in section 17, Act X of 1859. These words were at first understood to mean the whole class of occupancy-tenants, as distinguished from the whole class of tenants-at-will; but in the following decisions of the High Court of these Provinces, the principle is clearly admitted that, by the custom of the country, there are different classes of occupancy-tenants, some holding at favourable rates and that, in fixing the rent of a tenant, the Courts must bear this in mind:—

"'(1) A person who has been adjudged to have a right of occupancy merely because he has cultivated or held for twelve years or more is not *primâ facie* a ryot entitled to any peculiar privilege or indulgence in respect of the rate of rent payable by him such as is sometimes found to have been accorded to ryots whose forefathers have held for many generations, or whose holdings are the relics of a former proprietary title.—*H. C., N.-W. P., 1744 of 1867, January 31st, 1868.*

"'(2) The capability of the soil is the main consideration which should govern the rates of rents; but the status and social position of the ryots should also be borne in mind, for in this country that is regarded in fixing the rent.—*S. D. A., N.-W. P., 19 of 1851, December 24th, 1861.*

" ' (3) The words ' the same class of ryots' warrant a reference to the caste of the ryots.—*H. C., N.-W. P., 1660 of 1867, January 18th, 1868.*

" ' (4) In a suit to contest enhancement, it was found that there were no cultivators of the same class in the village; nor were there any such in the vicinity. A comparison was therefore made with fields belonging to cultivators of a different class, and suitable allowance made in the rates in consideration of the superiority of the class to which plaintiff belonged. The course followed is not open to objection.—*H. C., N.-W. P, 193, June 25th, 1866 ; H. C., N.-W. P., 1025, July 26th, 1867.*'

" Thus, what is done by this section is to lay down clearly that the interpretation put upon the existing law by the highest judicial authority in these Provinces, shall be the law for the future; and, in order to prevent any discussions or disputes on the subject arising hereafter, it is provided that—

' whenever it was found by local custom or practice any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.'

" The next section in which a change has been made, is in section twenty-three. In this section, power is given to the Local Government, whenever the crops on any land have been damaged or destroyed by any cause beyond the tenant's control, to step in and grant a remission or suspension of the rent paid by the tenant, a corresponding remission or suspension of revenue being granted to the landlord. It was not intended that the power given to the Local Government by this section should be put in force, except under exceptional circumstances; but it is considered only just and right in cases such as those referred to that, if the Local Government grant relief to the landlord, it should have the power of saying that similar relief should also be extended to the cultivator. All, therefore, that is provided by this section is that, in the exceptional cases contemplated when relief is granted by a remission of revenue, the benefit should be shared in equally by the landlord and by the tenant whose crops have been destroyed, and who, without this remission or suspension of rent, would be ruined. Again, the power given by section forty-two to either the landholder or the tenant to apply to the collector for assistance in the division or appraisement of the crops when rent is paid in kind, is one that has long been wanted; in fact, although there is no law for it, the practice has always been, in disputed cases, to follow the procedure here laid down. All that we propose to do is to legalize the present custom.

" Then, sections forty-four to forty-seven, in which the right of a tenant who may have improved the land in his occupation to receive compensation for the present value of such improvement, if ejected by the landlord, are obviously

required as a corollary to the Land Improvement Act, XXVI of 1871, and have been adopted, in a modified form, from the Oudh and Punjab Rent Bills.

"Lastly, the provisions in sections forty-nine to fifty-three, in which permission is given to tenants to deposit their rent in the Government treasury, are merely a legalization of the present practice in these provinces, one that the necessity of the case has forced the Revenue authorities to adopt, and which had already been legalized in Bengal by Act VI of 1862.

"There remain, therefore, three main points only in which changes have been made in the existing law, and which appear to require lengthy explanation. The first is the change made by sections seven and fourteen. Section seven provides that—

'Every person who may hereafter lose or part with his proprietary rights in any mahal, shall have a right of occupancy in the land held by him as 'sir' in such mahal, at the date of such loss of parting, and shall be styled an exproprietary tenant.

"And Section fourteen provides that—

'if a landlord apply to enhance or determine the rent of any exproprietary tenant, the rent to be paid by such tenant shall be fixed at four annas in the rupee, or 25 per cent. below the prevailing rents paid by tenants-at-will for similar land in the neighbourhood.'

"I think I shall be able to show that the proposal to maintain an exproprietary tenant in the occupation of his 'sir' land at a favourable rate of rent is neither revolutionary, nor even novel in its character, and that it is, in fact, no more than a recognition of the ancient custom of the country, which has maintained its footing, notwithstanding it has never yet been distinctly recognized by the law of these Provinces. It must be remembered that, hitherto, we have had no rent law specially adapted to the peculiar customs and tenures of these Provinces,—Act X of 1859 being essentially a Bengal Act. In recognizing the acquisition of a right of occupancy by the holding of land for twelve years, it undoubtedly went far beyond the custom and common law of these Provinces; while, in another direction, it did not go far enough. It gave no more to men who had long held prescriptive rights, and who, in many cases, had a beneficial interest in the soil, than it did to the tenant-at-will who had happened to retain the same field for a dozen years, that is, it did not recognize the distinction between the rights possessed by tenants who had been the former proprietors of the land they cultivated, and tenants who had acquired a right of occupancy by the mere lapse of time. There has never been any systematic inquiry into the rights of tenants in these provinces, such as was carried on in Oudh under the direction of Lord Lawrence; consequently, there is no recorded evidence to which

I can refer relating to those rights. But it is a well-known fact, throughout the country, that exproprietors, who continue to cultivate land in their ancestral villages, customarily pay low rates of rent, and are considered by the custom and tradition of the country to have a right of occupancy in such land.

" Writing in 1832, Mr. Rickard said (Vol. II, p. 190 of his *History of India*) :—' We sometimes find the real owners of estates reduced to become its occupancy-ryots ; the latter in such cases are considered as possessing a right of permanent occupancy.' This is valuable evidence to the existence of the custom, the more so inasmuch as it was written long before any controversy on the subject had arisen. The right of the proprietor to remain in the occupation of his ' sir ' land in the case of estates sold for arrears of revenue, has always been recognized by the Government ; that the same right was not recognized in the case of other sales was a lamentable mistake, and is due, like many of our mistakes, to the application of English law to Indian subjects. Notwithstanding, however, that the effect of sales in these latter cases has been held to convey the proprietor's cultivating right as well as his ownership in the soil, and to leave the exproprietor a mere tenant-at-will, yet in numerous cases—in most cases I may say—the exproprietor has retained possession of his ' sir ' and generally at low rates of rent. Thus, notwithstanding the law, the custom has remained much as it was, and the question is whether, now that we are about to pass a rent law specially adapted to the customs and tenures of those Provinces, we ought not to recognize the custom. Those best qualified to judge were unanimous in favour of doing so. It had already been done in the Punjab, where, by Act XXVIII of 1868, the right of occupancy belonging to an exproprietor in his ' sir ' land has been recognized, the rent to be paid by him being fixed at 30 per cent. below the rent paid by tenants-at-will for similar land. A somewhat similar provision has been adopted in Oudh with the consent of the taluqdars. I am of course aware that it was adopted in Oudh as part of a compromise, and that the taluqdars, while consenting to it, denied that any tenants in Oudh, whether formerly proprietors or not, had any right of occupancy ; but it had been abundantly shown by the Oudh inquiry that, although no ordinary rights of occupancy actually existed at the time we obtained possession of the country, which was the point to which the investigation was restricted, yet that exproprietors and their descendants did enjoy a very favourable position under the Native Government in Oudh. No doubt they could not have enforced that position as a right. What right could they have enforced ; or in what Courts could they have sought redress ? But the fact remains that many exproprietors were found to have retained possession of their ' sir ' land, paying low rates of rent,

and that their position was protected by the Oudh rules long before the celebrated compromise was come to with the taluqdars when Sir John Strachey was Chief Commissioner of Oudh.

"Sir Charles Wingfield, in his minute summing up the result of the Oudh enquiry, strongly insists on the fact that former village proprietors and their descendants who had retained any beneficial interest in the soil were protected by the Oudh rules; and while arguing that no rights of occupancy were possessed by ordinary tenants in Oudh, goes so far as to suggest that the only tenants in India possessing a real right of occupancy in the land are the exproprietors cultivating their 'sir' land. Mr. Davies in paragraph 6 of his report, speaking of the privileged class of tenants, says—

'It is necessary to explain that one important class of ryots, namely, the descendants of former village zamindars, still retaining some beneficial interest in their holdings, are protected by the Oudh rules. It is provided that, where they omit to bring forward their claims spontaneously, lists of such tenures shall be brought before the Settlement Officer, who then summons the parties interested; and whenever the ex-zamindar proves a beneficial interest, decrees to him as 'under-proprietor' a transferable and heritable right in his holding, which is recorded in the village papers. Thus, if *A* can prove that he holds a certain number of bighas at lower rates, in virtue of former proprietary right, he and his heirs will henceforth hold at those rates for ever.'

"On the other hand, Mr. Davies shows that the rent paid by many exproprietary cultivators has been raised to the rent paid by tenants of the same caste, and he held that, in this latter case, they had no right of occupancy; they continued nevertheless to hold their 'sir' land, even when their rent had been raised.

"In a note on Tenant Right, written in 1864 by His Honour the Lieutenant-Governor of these Provinces, who was then Foreign Secretary to the Government of India, he said—

'Where village proprietorship prevailed, the rents were collected by the proprietor, and he was responsible for the entire sum to the Government. For special reasons, the proprietor might be temporarily set aside, and the rents collected by a Government nominee. In either case, the proprietor was entitled to hold a portion of the estate rent-free, or at a privileged rent in recognition of his proprietorship.'

"And again—

'He had the option of declining the terms of the contract if too severe; and in this event, whether the rent were collected by Government direct or through a contractor, the proprietor retained his privileged lands.'

"And in a footnote—

'So, also, when they mortgaged their estates, the proprietors ordinarily retained these beneficial holdings.'

"In another on on Tenant Right in Oudh, His Honour said :—

'Where the Raja of Benares sells up any of his proprietors, he confirms them, I believe, in the proprietary possession of all the lands they were before in occupation of. By our sale law (for arrears of revenue) the exproprietor is maintained as hereditary cultivator in occupation of his lands, at a rent which may be 'fixed by a jury of the vicinage.' But when the proprietor's rights are sold by auction in satisfaction of a decree for debt, &c., he becomes a tenant-at-will. The operation of this last process has created a violent and (to the Native idea) an unnatural change in the position of the old proprietors, and the evil effect was widely felt in 1856-57.'

"And, lastly, Sir John Strachey, in a note on Tenant Right in Oudh, said :—

'This class (that is, the class of privileged tenants) is that which consists of ancient proprietors and their descendants—men whose forefathers were the undoubted owners of the land, and who, although they have lost or become despoiled of their proprietory rights, still retain possession of their ancestral fields. Whatever be the legal position which these men now hold it will, I think, be generally allowed that their case is, in many respects, a very different one from that of other classes of cultivators. There is an almost universal feeling, that they have strong equitable claims to consideration, and the propriety is commonly admitted of doing for them anything which can fairly be done without undue interference with the rights of others. This was, in fact, admitted by Mr. Wingfield himself—the great upholder of the rights of the landlords—when, in the late demi-official negociations he agreed to advise the Taluqdars to grant, on certain conditions, favourable terms to these old proprietors. To a great extent, it is certainly true that this feeling is that of the landlords themselves.'

"No doubt, it was this fact, that exproprietors in Oudh formed a distinct class of cultivators, and, in many cases enjoyed very favourable rates, that made Lord Lawrence so tenacious of his proposal that rights of occupancy at favourable rates should be secured to them ; nor is it at all probable that the taluqdars would have consented to that proposal, even as a compromise, had it been otherwise than in accordance with the feelings and custom of the country. I think that I have said enough to show that the proposal to continue persons, who may hereafter lose their proprietary rights in any estate, in the occupation of their 'sir' land, is one that is in strict accordance with the general custom and feeling of the people. No doubt the section, as it was at first drawn, was open to the objection that, so far as it had retrospective effect, it was unjust, inasmuch as it conferred a benefit on these exproprietors at the expense of others

whose rights had grown up under our system of Government. I believe this objection to be more valid in appearance than in reality; but however this may be, the amendment which has been made since the Bill was last published in the Gazette, and which confines the provision of the section to the case of those persons only who may hereafter lose their proprietary rights, has removed this objection altogether; and it may be said with truth that, though the proposal now made is undoubtedly a change in, and an alteration of, the law, yet it is no alteration in the custom and practice of the country; and that, in proposing it, we were doing no more than following the example already set us by the Panjab and Oudh—the two provinces close to us, where the tenures under which land is held resemble ours most closely.

"Next, as to the change made by sections sixteen and seventeen, which provide that the rent of any occupancy-tenant having been once fixed by order of a competent Court, it shall not be liable to enhancement for a period of ten years. It has been ruled that, under the present law, the rent of a tenant, with a right of occupancy, may be enhanced every year; consequently, the very men on whom we depend for any improvement in cultivation, or any care that is taken of the soil are kept under constant apprehension of new demands. It may no doubt be said that the demand for increased rent, though made, may not be decreed; but the use of such an argument, in support of the present law, seems to me possible only to one ignorant of the condition of the parties concerned. If the demand is made, however groundless it may be, it must be contested, and, for all the tenant knows, it may be decreed; consequently, all feeling of security is taken from him, while the mere expense of contesting a perfectly groundless claim is sometimes enough to ruin him. It seems to me impossible to uphold the policy of leaving the question open. If a landlord comes to the Collector to raise the rents of his tenants for him, he ought to be compelled to give in return equitable conditions; and a lease for a reasonable term is such a condition. Even, under Act X of 1859, if the tenants knew how to work the Act, and sued for pattas instead of waiting to contest notices of enhancement served on them by their landlords, they might obtain some relief from these yearly demands, as section seventy-six of that Act provides that, in case of a dispute as to the term of a lease, the Collector may fix the term for any period not exceeding ten years. We propose to make this provision clearly applicable to all cases in which the rent of a tenant is fixed by the Courts. To the longer period at first proposed, some objections were made, but to the term now laid down, no reasonable opposition could be made, nor is it in fact, as I have explained, any vital alteration in the present law.

"The last point I have to notice is the change made in chapter V by the transfer to the Revenue Courts of appeals against decisions on claims brought for the enhancement or abatement of rent, or against decisions relating to the class or tenure of any tenant.

"It is obviously to the interest of all parties that, in all questions relating to rent or the determination of the class of tenant, there should be no clashing of jurisdiction and no double system of concurrent appeals. At the time of the settlement of a district, the Revenue authorities must have plenary authority in such matters; for, unless appeals lie from the orders of the Settlement Officers to the Commissioners and to the Board, it is obviously impossible for them to supervise the work as they ought to do. Naturally, therefore, and necessarily at the time of the settlement of a district, all these matters must be dealt with by the Revenue Courts, and by them alone. This being the case at the time of settlement, the question arises as to what is to be done after settlement? At first it was proposed to let appeals from the orders of the Revenue Courts in these matters lie, as heretofore, to the Civil Courts, but when the two proposals came to be considered together, the mistake which would be thus made became at once apparent. The great experience gained by the Revenue Courts during settlement was to be thrown away, and the business made over to Courts avowedly less experienced in such matters, and less competent from their training to decide them. Moreover, it might very possibly have happened that the law would be interpreted in one way by the Revenue Courts while a district was under settlement, and in another way by the Civil Courts after settlement. For these reasons, it has been thought advisable that appeals in all matters relating to rent should lie to the Revenue Courts, and not to the Civil Courts.

"I believe that I have now noted all the important points on which the Bill makes any changes in the existing law, and I hope that I have been able to show that, where changes have been proposed, they have been made in the direction of bringing the law more into conformity with the feelings and customs of the people, and that, in making these changes, no rights belonging to any class have been invaded or disregarded."

NORTH-WESTERN PROVINCES REVENUE BILL.

The Hon'ble MR. INGLIS then presented the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Land-Revenue in the North-Western Provinces.

NAWAB NAZIM'S DEBTS BILL.

The Hon'ble MR. HOBHOUSE in presenting the Report of the Select Committee on the Bill to provide for the liquidation of the debts of the Nawab Nazim of Bengal, and for his protection against legal process, said:—

"As our time is short, and I intend to move at the next meeting of the Council that this Bill be passed into law, it will probably be convenient that I should now call attention to the mode in which the Committee has dealt with it. Hon'ble Members will then be quite prepared to move any amendment they may think desirable, or to say whether the Bill should pass in its present shape.

"In the first place, we have received several communications from creditors, who, I am glad to find, are generally well satisfied that the Government should have taken the affair in hand. They make, however, several suggestions which I will mention, together with the mode in which we have treated them.

"It has been pointed out that, though the Commission may go into evidence, they were not bound to do so, but that section ten of the Bill merely said that they should determine each case 'by agreement with the claimant or otherwise.' We have therefore made an alteration in section ten and have directed a due and full enquiry in default of agreement. Then, it has been asked that the Commission should sit in Calcutta. It seems to us, however, that it would be very inconvenient to tie them down to any particular place. One claim may be most conveniently investigated in Calcutta and another in Murshidabad. The Commissioners may think fit to sit sometimes in one place, sometimes in another; or they may find it best to have one place of sitting and to choose that in which the majority of claims can be most conveniently dealt with. It is clearly a matter which they should decide, which they can best decide when they have seen what the claims are, and in which we should not attempt to fetter their discretion. We have therefore provided in section two that they shall hold their sittings at such place or places, and time or times, as they think fit.

"Another alteration suggested is that there shall be an appeal to the High Court from the decisions of the Commissioners. Now, I think the Council will feel that this case is from beginning to end one of an exceptional kind, requiring an exceptional tribunal and exceptional treatment. In a comprehensive settlement of this kind with creditors, many considerations come in besides strictly legal ones, and we have expressly provided that the Commissioners shall certify, not what is legally due, but what on consideration of al the circumstances they

may consider that each claimant ought in fairness and justice to receive. The creditors have not got a solvent debtor against whom they can enforce their legal claims. The Government steps in to pay them, and we expect to pay them more than they would ever get without our intervention; but we shall be astonished if it is not a great deal less than what is claimed. As men of the world, we perfectly well know that people lending their money in such cases as these make their bargains for much more than they ever expect to realize, because they run a risk of never being paid at all. When a solvent man steps in to pay such debts, and so to relieve the creditors of their risk, he pays rather with reference to the money actually advanced, and to a reasonable rate of interest on it, than to the actual terms of a written contract. And when we are told of loans at 48 per cent., and of frequent re-statements of account, we expect to find that the creditor will be very handsomely paid by something far short of the claim he can make on paper. Well, then, framing a Commission on these principles, to hold an even balance between the creditors and the Government, we should be stultifying ourselves by giving a general appeal to a Court of Law which must decide on wholly different principles. The Commission must act as masters of the position, much as a solvent father would deal with the creditors of his insolvent son. The High Court would find itself quite unable to import into the case those elements of discretion which must govern it, if the arrangement is to be a fair one at all. Otherwise, we shall merely be pouring so much money quite gratuitously into the pockets of the creditors.

"It is, however, possible that, in order to satisfy themselves about the fairness and justice of a particular claim, the Commission may find it necessary to decide a question of law, and may think it doubtful and difficult enough to require the best opinion that can be had. So far, therefore, we have met the suggestions of the creditors, and we have inserted a clause for the purpose of enabling the Commissioners to state a case for the opinion of the High Court whenever an adequate legal difficulty arises. A further objection to the Bill is rested on the circumstance that it did not mention any time within which the Government should be at liberty to make payments to the certified creditor and to extinguish his claim. To meet this, we have altered section ten, and inasmuch as delay in payment may arise for the conduct of the creditor, we have provided that a tender, as well as a payment within the specified time, shall operate to extinguish the debt. Section ten now runs thus:—

'The Commissioners shall certify in each case the amount so determined, and upon the Governor General in Council, within six months from the date of the certificate, paying or

tendering to any claimant the amount so certified, all claims of such claimant against the Nawab Nazim or his property shall be satisfied and extinguished.'

"There are two of the creditors who take rather a different line from the rest. Thy are persons who have already obtained judgments against the Nawab Nazim for very large sums of money, one for upwards of a lakh of rupees and the other for upwards of five lakhs. They say, that it is not clear on the face of the Bill that the judgments they have obtained shall be taken as conclusive evidence, so far as they go, of the amounts which the Commissioners ought to certify for them, and they desire that it should be made clear in their favour. Now, I certainly should have been somewhat mortified if, in a Bill carefully avoiding the use of legal technicalities, directing a consideration of all circumstances, and setting up the standard, not of law, but of fairness and justice, any tribunal had held itself bound by a judgment which only tells us what is the proper construction of the contract between the parties. If a needy and reckless man borrows money at 50 per cent. compound interest at short rests or acknowledges to the borrowing of money when he has received only pictures, or jewellery, or wine of questionable character, a Court of Law may have nothing to do but to give the creditor his pound of flesh : it is so written down in the bond. But that is only one element ; it may be a material, it may be a very immaterial, element, in the question between the creditors and the solvent man who steps forward to pay the debts they cannot otherwise get. One of the circumstances to consider in this case is that a judgment is one thing and the fruits of it another, and that these creditors cannot have what is decreed to them, nor can they have anything at all without much more litigation, expense and delay ; and other circumstances may be that the money claimed as principal does not represent the true value given, nor the money claimed as interest, the real or reasonable expectations of the lender. I feel that I should be underrating the intelligence of these gentlemen if I made no allowance by anticipation for the existence of such circumstances. Many other circumstances may enter into the consideration of the Commission which I cannot anticipate. I will only repeat the observation I made with respect to the proposed appeal, that it would be stultifying ourselves to enter upon such a transaction as this, and, at the same time, to take the legal measure of the Nawab Nazim's liabilities as the just measure of our own.

"As, however, the contention of these gentlemen has informed us that some who have read this Bill have been left in uncertainty, whether it was intended to recognize a judicial decision as conclusive for the purposes of this

settlement or for any but its own purposes, we have taken the precaution of inserting in section ten that the Commissioners are not to be bound by any previous agreement or proceedings.

"There is one other alteration to which I should draw attention. I explained on a previous occasion that certain jewels and certain lands were enjoyed by the Nawab Nazim for the time being, but were not his private property, being held as State property for the purpose of maintaining the dignity of the Nizamat from generation to generation; and that there were disputes what land and what jewels fall within that category, and that the Government was thus necessarily brought into the litigation. Well, as we are going to have a Commission which will enquire into a portion of the Nawab Nazim's affairs, it seemed to us desirable to take the opportunity of obtaining an authoritative declaration, ascertaining once for all the particulars of which the Nizamat property consists, and so facilitating future arrangements with the Nawab Nazim. No doubt the Government will thereby run a chance of losing some property to which it has repeatedly asserted its title, but the benefit of certainty appears to us to outweigh this chance of loss. We have provided in section twelve that—

'The Commissioners shall ascertain what jewels and immoveable property are held by the Government of India for the purpose of upholding the dignity of the Nawab Nazim for the time being, and shall certify the particulars of such jewels and property; and their finding thereon shall be binding and conclusive on all persons whomsoever.

"I think there is no other material alteration to which I need call the attention of the Council. It may, however, be proper to mention that a letter has been received from one of the sons of the Nawab Nazim who is managing his affairs in this country, in which he says, that it is impossible for him not to approve the general principles of this measure, or not to be sensible of the generosity and beneficence of the objects proposed to be secured by it. He, however, dwells much upon the evil of a public investigation of the Nawab Nazim's affairs, and begs that the Bill may be so modified as to enable himself to accomplish the purpose within twelve months. Now, I have no cause to speak of this young nobleman in any terms of respect; but I must frankly say that he has not the age or experience or knowledge of the world which would enable him to conduct a business of this kind to a successful issue; and that he has not hitherto in his dealings with the creditors displayed any such force of character as might compensate for the disadvantages of youth and inexperience. Seeing the distressing situation in which he is placed, I cannot help sympathizing with him or feeling that his request is a very natural one. At the same time, we are certain to make a mess of this case, unless we treat it as men of business; and I am sure that it will not

be for the benefit of anybody that the conduct of it should be committed to any but strong and skilful hands."

The Council then adjourned to Monday, the 24th November 1873.

AGRA;
The 21st Nov. 1873.

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

CALCUTTA: PRINTED BY SUPDT. GOVT. PRINTING, INDIA, 8, HASTINGS STREET.