Friday,
6th March, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

Jan.-Dec., 1885

ABSTRACT OF THE PROCEEDINGS

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1885

VOL. XXIV

Published by the Authority of the Governor General

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1884

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

The Council met at Government House on Friday, the 6th March, 1885.

PRESENT:

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

PETROLEUM BILL, 1885.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Petroleum Act, 1881. He said:—

"I must state that when the Act of 1881 was under consideration a Committee, on which were representatives of the Chamber of Commerce and the Trades Association, carefully considered the schedule which it was proposed to attach to the Act, and which had been taken from the English Act of 1871, and they reported in favour of it and Government adopted it. It must be remembered that the Act provided that petroleum must stand the test of 73° to

enable the Government to admit it into the country, and the method of testing the oil is laid down with great minuteness in the schedule. In spite, however, of all this care, shortly after the Act came into force, cargoes arrived here and in Bombay which had left America after it was known that 73° was the admission standard, which when sampled and tested on arrival flashed below the authorized standard, and in consequence came within the definition of dangerous petroleum and was refused import.

"This led to a very long correspondence between the shippers, the Governments of Bengal and India and the Secretary of State; and Mr. Redwood came out from England to test the oil on behalf of the shippers; after some months, on further testing, it gave the required results and the oil was allowed to import, but not until after the shippers had been put to very great expense. Very many and intricate experiments were carried out by Messrs. Warden and Pedler here, Dr. Lyon in Bombay, Sir F. Abel and Mr. Redwood at home, with the hopes of finding out a method which would ensure correct testing; and we have now received a new schedule prepared by Sir F. Abel, of the War Department, who is the highest authority on the point, and it is to insert this in the place of the former schedule which is one of the objects of the present Bill.

"The Government is greatly indebted to the gentlemen to whom I have just alluded for the great care and attention they have given to the subject. Dr. Lyon took privilege leave and went home, and worked with Sir F. Abel and Mr. Redwood; and the experiments carried out there, here and in Bombay have been almost beyond number. The matter was of the greatest importance, as the trade is one of great magnitude and the nature of the oil requires that only such as is ordinarily safe should be admitted into the country.

"In asking today for leave to introduce the measure I do so in order that the Bill may be before the public for sufficient time to enable the Trade to consider its provisions, especially the schedule, carefully, while there are some further details regarding which, though not of a nature to affect the commercial world, will require further consideration from Sir F. Abel and the experts; it is also advisable to have standard instruments at Calcutta, Bombay, and perhaps Rangoon, tested and approved, and registered before the Bill becomes law. Under these circumstances the measure will be introduced and allowed to lay over until the Council meets again in Calcutta next cold season.

"From the Statement of Objects and Reasons it will be found that the principal points for amendment are—

"(1) The alteration of the standard. 'Dangerous petroleum' is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3° and no one sample has a flashing point below 70°.

"(2) The nature of the vessels to hold dangerous petroleum. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in 'glass', among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels, and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of 'dangerous petroleum', bursting, even if 'securely stopped', when exposed to powerful sunlight for a brief period, the prudence of including *glass* vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word 'glass'.

"(3) The landing of petroleum at special places, and fees. The Government of India is of opinion that the restrictions at present placed on the importation of non-dangerous petroleum may be somewhat relaxed, and, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored.

"(4) The new schedule and instruments to be verified. It is proposed to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted. It seems desirable, for the convenience of the public to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall

be constructed. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus.

"The new schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay; and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. It is believed that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained."

The Motion was put and agreed to.

BENGAL TENANCY BILL.

The debate on this Bill was resumed this day.

The Hon'ble MR. AMÍR ALÍ said:—"Whatever I had to say on the subject of fixing a gross produce limit upon enhancements of rents I have already stated in the general observations I offered the other day on the Bill, and I do not therefore propose to take up the time of the Council by referring to those points again. But in view of the opinion entertained by the majority of the hon'ble members, as far as I have been able to gather them, I think it would be useless to bring forward the next amendment which stands against my name. I therefore desire leave to withdraw it. The amendment which I intended to have moved is to insert the following words in line 4 of clause (*a*) of sub-section (1) of section 24:—

'or so as to entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops calculated at the price at which raiyats sell at harvest-time.'"

Leave was granted.

1885.] [*The Mahárájá of Durbhunga; Bábú P. M. Mukerji; Sir S. Bayley; Bábú P. M. Mukerji; Mr. Quinton; Mr. Gibbon.*]

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that clause (*b*) of sub-section (1) of section 29 be omitted.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI said :—"I have already submitted to the Council with reference to section 9 the arguments bearing on this question, and do not wish to address the Council on the present occasion. I need hardly say that I support the amendment."

The Hon'ble SIR STEUART BAYLEY said :—"The reason why we cannot accept this proposal is obvious, that it will leave the raiyat liable to annual or quarterly enhancements by suit. It could scarcely be expected that the amendment could be accepted."

The amendment was put and negatived.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI moved that in clause (*b*) of sub-section (1) of section 29, for the word "fifteen" the word "ten" be substituted. He said :—"I have already submitted to this Council the arguments in support of my proposition that an enhancement of rent should obtain currency for 10 years and not 15. The rapid strides which the country is making in material progress make it desirable that the shorter minimum period should be adopted. If there is an actual rise in prices within 10 years, there is no reason why the landlord should not get enhanced rent on account of such rise of prices, and it would be a sufficient check against any oppressive suits if the landlord is restricted from bringing a suit after the rent has been once enhanced before the expiration of 10 years from the first enhancement."

The Hon'ble MR. QUINTON said :—"I oppose this amendment because it applies only to enhancement by contract and not to enhancement by suit. It appears to me that whatever term is fixed in the one case ought to be fixed in the other. As many enhancements will be by suit, I think it will be hard on the raiyat to fix a less period in such cases."

The Hon'ble MR. GIBBON said :—"As I am of opinion that all the terms and conditions of a voluntary contract should be left to the parties concerned, and that they should not be driven to Court, I am strongly of opinion that no term should be inserted in the Bill. Being of that opinion, I would prefer that all contracts, if there is to be a limit, should be for a shorter period even than 10 years. But as no such proposition is before the Council, I shall vote for the amendment."

[*Sir S. Bayley; Bábú P. M. Mukerji; Sir S. Bayley; The President; Sir S. Bayley.*] [6TH MARCH,

The Hon'ble SIR STEUART BAYLEY said:—"The question between 10 and 15 years in regard to contracts is of course a question of degree. Having once settled that the rents of enhanced contracts are to run for a fixed period, it is a question of the balance of advantage. I do hope my hon'ble friend will consent to the necessity of fixing the same term for enhancements by contracts as for enhancement by suit."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"My amendment upon section 9 was lost simply on the argument that the same rule should obtain in the case of a tenure-holder as in the case of a raiyat; and as the Bill contains a provision to the effect that 15 years should be the minimum period in regard to the enhancement of rents of raiyats, the same period should be maintained as regards tenure-holders. Hon'ble members do not meet any of the other arguments advanced by me. With reference to the present amendment, the only argument urged by the hon'ble member in charge of the Bill is that the period must be the same as the period fixed for tenure-holders. None of the other arguments adduced by me have been met by any hon'ble member either on the present or the previous occasion. I submit this is simply arguing in a circle. Of course, the amendment rests on the vote of the Council, but I think it is a very striking fact that the previous amendment was lost because there is this provision in reference to raiyats, and this motion is objected to because there is a previous provision with reference to tenure-holders."

The Hon'ble SIR STEUART BAYLEY asked permission to explain. He said:—"The hon'ble member has quite misunderstood what I intended to say. I said that the section as to enhancement by contract ought to be the same as that for enhancement by suit. The real vote would then be taken on the section relating to enhancements by suit. I did not in the smallest degree intimate that the provisions of this section would depend on the provision relating to enhancements of the rents of tenure-holders."

The amendment was put and negatived.

His Excellency THE PRESIDENT said:—"We have now reached that stage in the Bill when it will be convenient for the hon'ble member in charge to introduce the modification we have agreed to as to the result of the discussion which took place yesterday."

The Hon'ble SIR STEUART BAYLEY said:—"I will now move the amendment which was agreed on the motion of the Hon'ble Mr. Evans in reference to

section 29. I accordingly move that for section 29 the following be substituted :—

'29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

'(*a*) the contract must be in writing and registered;

'(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

'(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows :—

'(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

'(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.'"

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"I should wish, if it can be done, to consider this new section at the next meeting of the Council, or after the Council adjourns in the course of the day. I may perhaps have to propose a short amendment on one of the clauses of the proposed section."

The consideration of the proposed new section was postponed till after the adjournment for luncheon.

The Hon'ble MR. REYNOLDS moved that in section 30, for clause (*a*) the following clause be substituted :—

"(*a*) that the rate of rent paid by the raiyat is substantially below the prevailing rate, that is to say, substantially below the rate generally paid for not less than three

years by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no reason for his holding at so low a rate".

He said:—"It is not the object of the amendment to re-open the question of the abolition of the prevailing rate as a ground of enhancement. That question has been decided by the Select Committee, who have justly remarked in their report that this is the only means by which a landlord can remedy the effects of fraud or favoritism on the part of his agent or predecessor. I submitted to the Committee an amended form of the section, which would, in my opinion, have provided a sufficient remedy, while guarding against that misuse of this ground of enhancement, of which such strong and concurrent testimony has reached us from various parts of the country. My proposal, however, was not favourably received, and I do not now desire to revive the discussion on the question of abolishing this ground of enhancement altogether. If I refer at all to the general question, it is only because I imagine that the Council will expect me to offer some explanation in reference to what fell from the Hon'ble Mr. Evans in connection with the Malinagor enhancement cases. I understood the hon'ble member to contend that the Bengal Government could not consistently advocate the abolition of this ground of enhancement while at the same time it was pressing the Courts to enhance the rents of its own tenants on this very ground. Now, I think it right to state that these cases were instituted in 1876, at a time when attention had not been called, as it has been called of late years, to this matter of the enhancement of rents. I don't think the head of the Government can fairly be taxed with inconsistency for advocating in 1885 the repeal of a law which one of his subordinates put in force in 1876. This ground of enhancement was the law then; it is the law now; and while it continues to be the law the Government is as much entitled to have recourse to it as any private zamíndár. Moreover, when the facts are looked at, I think this case affords a strong support to the position which the Government of Bengal has taken up regarding this question. What the Government has said is, that it is wrong in principle to enhance one raiyat's rent on the ground, not that it is too low in itself, but that other raiyats have agreed to pay more; that such enhancements are often productive of hardship; that no real prevailing rate can be found; and that, therefore, in 19 cases out of 20, landlords are tempted to fabricate a rate for the purposes of the suit. Now, here is a case in which a number of raiyats were paying not merely lower rents than their neighbours but rents altogether inadequate; the strict application of the law would have warranted an enhancement of (in some cases) 200 per cent., but

just because the Government applied the law fairly, and did not attempt to manufacture a rate, the litigation has gone on for nine years, and matters are very much where they were when it began. I don't think there could be a stronger instance of the hopelessness of fairly applying this rule of enhancement. If the Government had established its claim it would have been a great hardship to the raiyats to have had their rents enhanced by so large an amount, but the Government has so far failed to make out its case because it has failed to show what the prevailing rate is. A plaintiff will almost always fail to show this unless he takes measures beforehand to establish, or, in other words, to manufacture, a rate, and accordingly that is the general means of proceeding in these cases. To use the forcible language of an acute and experienced Judge—'The prevailing rate is as a rule manufactured by the aid of raiyats bought over to submit to enhancement, and the new rate thus introduced is made to spread over the country by the agency of the Courts.' The landlord who attempts to work this ground of enhancement fairly will find himself involved in litigation as tedious and as unprofitable as these Malinagor suits have proved to the Government of Bengal.

"This, however, is somewhat foreign to the subject of my amendment, which merely aims at introducing a slight alteration in the wording of the Bill. The Select Committee have changed the language of the present law, and in some respects they have changed it very much for the better. But they have introduced a novel and most dangerous principle—the principle of ascertaining the prevailing rate by taking an average of existing rates. This, I think, is the interpretation which any Court would naturally put upon the words which direct the Court to have regard to the rates generally paid during a period of not less than three years. This is entirely opposed to the present law, as will be seen by a reference to the reported case of *Sumeera Khatoon*, I. W. R., p. 58, 31st August, 1864. In that case the Hon'ble Judges remanded the suit for a fresh trial and desired the lower Court to 'bear in mind that its adoption of the average rate from the different rates given by the several witnesses was an incorrect and unsafe mode of fixing the proper rate, and that the onus of proving what the proper rates are was on the plaintiff and not on the defendant.' If section 31 (*a*) of the Bill means anything, it means that the Court is to do what the High Court said was an incorrect and unsafe method to adopt.

"This doctrine of an average rate is not only illegal, but it is fraught with most mischievous consequences. I need hardly remind the Council that suits on the ground of the prevailing rate are entirely one-sided; they are always

cases of levelling up, never of levelling down. The landlord may sue to enhance on the ground that a tenant's rent is below the prevailing rate, but the tenant cannot claim a reduction on the ground that he is paying more than the prevailing rate. If the principle of an average rate is once introduced, the inevitable result must be that all rents will be levelled up to the maximum. Suppose that there are three rates, at one rupee, two rupees and three rupees per bíghá. Under the present law the Court would perhaps decide that no rate was sufficiently established and general to be entitled to be called the prevailing rate. But under the wording of the Bill the Court would look at the rates generally paid; and it would almost certainly come to the conclusion that two rupees was the prevailing rate. This would be all very well if the rents of all the raiyats were thenceforth to be fixed at this rate. But the only result of the decision would be to knock out the one rupee rates. The two rupees and three rupees rates would remain. In the next suit, the Court would probably decide that the prevailing rate was two rupees eight annas, and thus each successive case would be a ground for a higher and a higher claim in the next. It may be said that, as a raiyat who has once been enhanced will be protected for fifteen years, the process will at any rate be a slow one. But this really affords no security. The landlord will institute one or two cases to get rid of the lowest rates. He cannot again enhance those particular raiyats, but he can enhance all those whom he has not sued. He will sue different raiyats in successive years, and within the statutory period of fifteen years he will be able to bring all the rents in the village up to the highest level paid by any one.

"My amendment proposes to meet this by declaring that the Court shall look not to the rates but to the rate generally paid. This is entirely in accordance not only with the law as laid down by the High Court in the case I have already quoted but with the wording of the old Regulations. Section 6 of Regulation V of 1812 declares that 'pattás shall be granted, and collections made, according to the rate payable for land of a similar description in the places adjacent.' The onus would lie on the plaintiff first to show the existence of a prevailing rate in the village, and secondly, to prove that the defendant was paying at a lower rate than this. I do not say that this would remove all the objections to the retention of this ground of enhancement in the law, but it would give the landlords all that the old law was intended to give them, and it would prevent that flagrant abuse of the law which seems likely to result from the present wording of the Bill."

The Hon'ble MR. QUINTON said that he would reply very briefly as to the reason for the vote he was about to give. He had been from the first

opposed to the prevailing rate being a ground of enhancement, and if he thought the amendment of his hon'ble friend was merely confined to the removal of an inconvenience which would attend the working of the provisions for enhancing rent he would give him his hearty support. But the question was very fully considered by the Select Committee, and from what his hon'ble friend had said in his argument about the village rate, he (MR. QUINTON) had come to the conclusion that the amendment in its present form would almost entirely change the ground of enhancement as set forth in the Bill. He was opposed to the prevailing rate as a ground for enhancement, but he was still more opposed to putting in the Bill any provision which would in reality render it more objectionable as a ground of enhancement. On these grounds he must vote against the amendment. He would not give any reasons for his vote, because he thought it was not desirable that the speeches of hon'ble members should cover the same ground as that which had already been taken by the hon'ble member in charge of the Bill.

The Hon'ble MR. EVANS said:—"With regard to the first point I think the hon'ble member has misunderstood the position as to the particular case I referred to and the effect of the observations I made on the last occasion. The suits brought against the raiyats in 1876 were for enhancement on all the grounds of enhancement, and they were finally thrown out in 1878 on the ground that the notices served by the Government were ambiguous and did not show properly the grounds on which enhancement was sought to be made. Then Government instituted fresh suits in 1881, I think, and what was remarkable was that the Government then abandoned the grounds of enhancement on which they had sued in the first instance, and rested their case entirely and solely on the ground of the prevailing rate; and the observations I made were intended to show that if it had not been possible to work the prevailing rate without creating fictitious rates of rent, it was strange that the Government officers should have been of opinion that the prevailing rate should be selected as the best of all the grounds which were taken before; and I also remarked that inasmuch as the cases were now being prosecuted in appeal by the present Government, I could not believe it was the opinion of the law officers of Government that none of these suits would succeed without the manufacture of fictitious rates. Therefore I thought that the persons who were acting on behalf of the Government in these cases must entertain a different view in regard to that matter. And with regard to these cases having been an inheritance from the former Government, that could be no defence, because the officers of Government were now contending in appeal before the High Court

that they had made out their case, and were entitled to have these heavy enhancements decreed on the sole ground of the prevailing rate. I merely explain this to show that my obsevations have been misunderstood. Then we come to the statement of one of the Judges, who stated that it was customary to manufacture fictitious rates. That means that some people have resorted to the practice of taking kabúliyats containing nominal rates of rent which were not intended to be enforced, and that they suborned raiyats to make documents by way of proof of a rate which was non-existent. This matter of manufacturing rates, of giving illusory evidence of this kind, was what led the Council to make it a direction that the Court should have regard to the rates paid for the last three years. As to manufacture of false evidence, there is no class of cases in India in which false evidence is not constantly manufactured. The moment any law is passed, there are many persons who at once proceed to see how evidence can be manufactured to meet the requirements of the law. If this manufacture of false evidence were a good ground for repealing this part of the present rent law, it would be an equally good reason for repealing one-half of the laws we have made. With regard to the other matter of average rates, as long as we preserve the words of the present law 'the prevailing rate,' and not the average rate, the rulings of the High Court which prohibit the striking of an average, except to a very small extent in very special cases, would equally apply to the present section as settled by the Select Committee; and that there is nothing unfair in giving a direction that the Court should look to the prevailing rates will be apparent from the case in 5 W. R., page 70, in which the Court expressly said that the Judge must look to the rates prevailing at places adjacent. I do not think we have in reality in any way changed the law or the rulings on the subject of average. Say, there are two rates, one of Rs. 5 and one of Rs. 2; merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think the class of judgments I have more than once referred to, in which the Judge says 'This man is found to be holding at Re. 1; the claim is to have his rent enhanced up to Rs. 2 on the ground of the prevailing rate, and there is a great deal of contradictory evidence as to what the prevailing rate is; I doubt the evidence which makes it out to be Rs. 2, but I find that except in isolated cases land of this description is never held under Re. 1-8; therefore, I shall be safe in finding that the 'prevailing rate' is not less than Re. 1-8',—that is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so. Because it seems, according to Colebrook, that he, having found in 1811 that the parganá rates were in many cases undiscoverable, thought it would be wise to provide some rules with

regard to such cases, and the rule having been made in the Regulations of 1812, gave rise to the provisions as to 'prevailing rate' in the Act of 1859. Under the expression 'the prevailing rate for similar lands held by similar classes of raiyats in places adjacent' the Courts have been able to give a certain amount of relief; and this ground of enhancement has, I think, on the whole been found the most workable of the grounds provided in Act X of 1859.

"Then with regard to the actual amendment which has been brought forward by my hon'ble friend, I will point out that the great objection is this, that it incorporates into the definition directions which the Select Committee propose to give to the Judges. Every lawyer knows that if into a definition of the ground on which enhancement is to take place you incorporate a number of things which the Court may have regard to, you make those things so positively a part of the definition, that in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground. I fear it will be exceedingly difficult for a Court to conduct an investigation in this way without an enormous amount of expense and laborious investigation, and that there will hardly be a case which will not be capable of being upset by a special appeal to the High Court. It is not because I wish to change or widen the law that I think the draft, as it has been settled by the Select Committee, should remain. I should be sorry again to do what has been inadvertently done in Act X of 1859, that is, to offer to landholders grounds of enhancement which are unworkable; and if that is done again after the strongly expressed determination of the Government and of the Select Committee to make the grounds really workable, I think we shall be incurring a very grave responsibility, and that we shall find it very difficult to justify ourselves. We have in fact cut down the area from which we are to draw the comparison; we have cut it down to the village, and complaints are heard that we have cut it down too much, because as the law stands you may enhance rent of a whole village by showing that the neighbouring zamíndár has succeeded in getting his villages to pay higher rents. Adjacent land, it has been held, need not be conterminous. Although the provision as it stands in the Bill somewhat restricts the power which the zamíndár at present possesses, we thought it well, on the whole, to cut it down, because it has been found that raiyats have now great difficulty in meeting suits for enhancement of rent on the ground of the prevailing rate, because the area for comparison is wide and vague, while zamíndárs find it difficult to know how much proof to give as the area is undetermined. But having cut down the area of comparison to the village itself, one does not like to insert words likely to

increase the risk of its being unworkable. And that will be the effect of the proposed amendment. I am therefore obliged to oppose it."

The Hon'ble MR. HUNTER said:—"My Lord, I should like to say a few words on this subject, as I start from an opposite point of view from that which has been taken by the hon'ble mover of the amendment. I think the prevailing rate is in itself a good ground of enhancement. It is a ground which has always existed; and it has been continuously enforced in the management of estates since we entered the country. It is a ground which has been recognised by our early Regulations; and it was formally embodied in the law of 1859. It has been frequently urged upon the Select Committee to expunge that ground or to modify it in some way, so as to render it ineffectual. The Select Committee have taken precisely the opposite course. They have endeavoured to give reality to the old law in this as in other matters, and to render the prevailing rate an effective ground of enhancement where it can be equitably urged. I believe that the amendment now brought forward would have the effect of nullifying this ground of enhancement by rendering it very difficult to enforce it in the Courts. It would lead to the very abuses and fabrication of evidence which the hon'ble member who moved the amendment has so frequently and so eloquently deplored. I therefore think that if the prevailing rate is to remain at all, the Select Committee have done wisely in giving reality to it."

His Honour THE LIEUTENANT-GOVERNOR said:—"I concur with my hon'ble friend the mover of the amendment. I think the amendment gives better security against fabrication and provides better safeguards against abuses than those which will prevail under the section as it stands. In putting forward this amendment we recognise the retention of the prevailing rate as one of the main grounds of enhancement, though I believe that whatever wording may be adopted, in the application of it you will find that it is practically unworkable, from the fact that it is totally impossible to prove in any part of the country the existence of a prevailing rate. It is defended on the ground of its antiquity; but if that is its main ground of defence, then there are a great many other things which we might have to fall back upon. One of these was that in the early days zamíndárs who did not pay the land-tax were immediately punished in person and kept in prison. The growth of information and experience has shown the way in which the prevailing rate is worked. The difficulty of establishing the existence of a prevailing rate has led to irregular and improper means to fabricate it. The resort to such measures

is demoralizing to those who use it and unjust to the unfortunate raiyats. Wherever we have had local enquiries and anything like detailed investigation, the fact has come out that there is no such thing as a prevailing rate, and that the rates of rent in every village were innumerable. This was the result of the personal enquiries held by Mr. Finucane, Mr. Tobin and Bábú Parbati Churn Rai upon this particular point in different districts; and I believe that if detailed enquiries were made elsewhere, you would find exactly the same results. I am glad to hear from my hon'ble friend Mr. Evans that he thinks the form of safeguard adopted by the Select Committee in the Bill will secure that the Courts do not take the average of numerous rates in the decision of suits under the section. It is only to make this point stand out clearer that the wording of the amendment which I would support has been suggested. The Courts have always held that the provision of the law as it stands should not be worked in the way of taking the average of many rates. The section by the amendment only gives emphatic support to this rule. With regard to the personal matter which has been brought against me with reference to the rent suits at Malinagor, I wish to say that, so far as regards the time when those suits were instituted in 1876 or 1878, the argument *ad hominem* which the hon'ble and learned member (Mr. Evans) directs against me, can have no application to me, because in those years I was employed in another and distant field of service, and had nothing to do with Bengal; but it is obvious that even if I had then been Lieutenant-Governor of these provinces, I could not possibly have interfered in the matter. The prevaling rate is a ground of enhancement in the existing law, and it was perfectly open to our Collectors and law officers to adopt it for enhancement in particular cases. But beyond that I would justify myself on the ground that a Lieutenant-Governor is not in a position to know what cases are going on in litigation between Government and others, and there may be hundreds of cases going on in different districts at the present moment in which the prevailing rate is being urged as a ground of enhancement. As my hon'ble friend, the mover of the amendment, has observed in the present state of the law, the Government has as much right as anybody else to appeal to the grounds which the law allows, though it may not be wise in doing so. It may be observed that even in the Malinagor suits it has not yet been proved that there is such a thing as a prevailing rate. The decision of the Judge was a very summary decision, and I understand that an appeal to the High Court has led to a call for the papers to ascertain whether there is such proof of a prevailing rate as to justify the finding of the District Judge. Therefore this particular case gives no support to the theory of a prevailing rate. As the principle of a prevailing rate however is to be retained in the Bill, the aim of

the amendment is by providing an additional safeguard against its wrong use to prevent the recourse to an average rate, which the law never intended."

The Hon'ble SIR STEUART BAYLEY said :—"I think I should be grateful to the Government of Bengal that they have not opposed the ground of the prevailing rate altogether; they have however discredited it, by saying that it does not exist, and that there is no justification for it. I will not follow my hon'ble friend Mr. Reynolds in the exhaustive disquisition which he has given as to the reasons there were for supposing that the prevailing rate can never be found, but I will confine myself to the particular points which are before me. But I must first say one word with regard to the decision to which the Select Committee came not to abolish the ground of the prevailing rate generally. The main reason, as I explained before, was that in one shape or another it has been allowed as a ground of enhancement since the time of the Permanent Settlement; the parganá rate of which had been transmuted into the prevailing rate, and had in that shape been in the Statute-book since 1812. In that case I may fairly say it will be hard to remove the prevailing rate altogether, even if there were no other reasons for retaining it, and those who oppose it will have to show very strong reasons for doing so. But there is really a very sufficient reason why it should be retained, namely, that there are no other means by which the zamíndár can recover a just rate of rent from those raiyats who by reason of relationship to the *amlé*, or of caste, or by bribery, have been allowed to enter and hold at very insufficient rates. My own experience as to the management of wards' estates has convinced me that where gumáshtas have not been very closely looked after, they are in the habit of letting in their relations and friends at very low rates of rent, and the zamíndár has no means of remedying the results of the fraud or friendship either of a predecessor of his own or of his predecessor's agent or gumáshta; and it was for that reason that I voted with the majority of the Select Committee for the retention of the prevailing rate. I could not accept the suggestion to which my hon'ble friend Mr. Reynolds refers as having been made by him to the Committee because it threw on the zamíndár the impossible task of proving that fraud or favoritism attended the original letting to the raiyat, and the remedy would have been quite useless.

"I now come to the alteration proposed in the amendment, which at first sight seems a very little one. At first sight it merely uses the singular where we use the plural, but it also inserts as part of the definition what the Bill as it stands puts in as a guiding direction to the Court; and that makes all the difference in the world. In the one case the Court is bound by a hard-and-fast

rule which, if the case fails to tally exactly with the definition of the prevailing rate, causes it to fall to the ground; in the other the directions are for the guidance of the Courts as to the steps they should take to ascertain the existence and reality of the ground taken for enhancement. That is my real objection to the amendment. The proposed amendment will not have the effect which anybody on first reading it will suppose it is intended to have. It is apparently intended to allow enhancement on the ground of the raiyat's rent being below what is the prevailing rate as it is now understood by the Courts. My hon'ble friend Mr. Evans has told us that the Courts are very rightly not allowed to make an average. But the amendment goes further than this. It comes to this, that if there is more than one rate, if everybody is not holding at the same rate, then the ground of a prevailing rate could in no case be at all maintained. If a zamíndár wants to enhance the rent of a raiyat who holds at Re. 1-8 per bígha, and shows that out of 24 other raiyats 14 pay at Rs. 4 and 10 at Rs. 3-8, the Court must, as I understand the amendment, reject the suit, because, as in such a case there is no one single and universally prevailing rate, no enhancement can be made. If that is the meaning of the amendment, it will not do what it purports to do; it proposes to give a ground of enhancement, and then takes it away; it is practically aimed at the abolition by a side wind of that ground of enhancement as now understood and worked by the Courts. For these reasons I prefer the section as it stands, and which, we are informed, is in accordance with the present law and the interpretation put upon it by the Courts, and we are told that, if the section remains as it is, the Courts will not work it upon the principle of an average.

"I ought also to mention to the Council that I received a paper this morning too late for circulation; it is a communication protesting against our limitation of the vicinity to 'the village'; at present it is the rate prevailing in places adjacent, and now we have, as my hon'ble friend Mr. Evans has explained, restricted it to the word 'village'. The paper is from Messrs. Thomson and Mylne, landholders of Shahabad, gentlemen who, as everybody who knows the facts will acknowledge, through a long career and by their excellent example as agriculturists in Behar have earned the highest possible reputation both as progressive agriculturists and also as good landlords. These gentlemen object to our restricting the right of enhancement on the ground of the prevailing rate to the village, because they say it prevents a landholder who has allowed the rate to remain low in his own village from taking advantage of the more severe and stringent action of his neighbour in the neighbouring village. The answer to that has already been given by my hon'ble friend Mr. Evans,

namely, that the point was carefully considered by the Committee. The grounds which led to the change which has been made are two—first, that a very wide interpretation was given by the Courts in recent cases to the words 'places adjacent', and in one case it has been interpreted to cover not the adjacent villages nor even the whole parganá, but the neighbouring parganás, which might be 30 or 40 miles off. It is perfectly clear that when you compare a raiyat's rent with rents paid in places at some distance you do him an injustice, because as long as you confine it to his own village he can prove what the rates are. But if you go outside his own village, the raiyat is quite unable to show what the rate there really is, and is at the mercy of the evidence brought by the other side. And from that point of view—and it was to a great extent accepted by the representatives of the zamíndárs—we came to the conclusion that it is on the whole fair to restrict the comparison of rates to the particular village. I make these observations, although no one has objected to the alteration which has been made by the Committee, because it is the only opportunity which I have had to refer to the objections which have been made by my highly-respected friends Messrs. Mylne and Thompson."

The Hon'ble MR. REYNOLDS said in reply:—"I purposely avoided referring to the general question. I did not attempt to argue in favour of the abolition of this ground of enhancement altogether. The charge brought against the amendment is that it would practically be depriving the landlord of this means of enhancement. If the general question is raised, I quite admit with the hon'ble member that this is the only means by which a landholder can remedy acts of fraud or favouritism of his agent or of his predecessor; but if that is the ground on which the hon'ble member defends his position, why does not he confine the operation of the section to cases of that kind? Then, with regard to the question as to the operation of the amendment in the case put by the hon'ble member, namely, that if one raiyat paid at Re. 1-8 per bíghá, and the rest some at Rs. 4 and some at Rs. 8-8, the section as proposed to be amended would prevent any enhancement at all, of course, a possible example can be put in reference to any proposal; but the object of the amendment is honestly to say that where there is no rate substantially established to be the prevailing rate, enhancement on the ground of the prevailing rate should not be allowed; and that I think is according to the existing law. If there is no prevailing rate a suit for enhancement on that ground ought to fail. But I would ask the hon'ble member to consider the hypothetical case I put, where 10 raiyats pay at Rs. 2, 10 at Rs. 3 and 10 at Rs. 4. I don't think that in such a case there should be any enhancement

on the ground of the prevailing rate, because such a rate would not have been established. But the section as it stands would tend to the enhancement of all rents up to the maximum of Rs. 4, and that would not be in accordance with the principles of the present law."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that for clause (*b*) of section 30 the following be substituted:—

"(*b*) that the value of the produce of the land has been increased otherwise than by the agency or at the expense of the raiyat."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*b*) of section 30, for the words "staple food-crops" the words "the crop grown on the land" be substituted. He said:—"The use of the words 'staple food-crops' would give rise to this anomaly, that when the crop grown on the land had risen in value, the landlord would get no enhancement whatever if the price of the staple crops had not risen simultaneously; while, on the other hand, when the price of the staple crops had risen, and the price of the crop grown on the land had not risen or probably had declined, the raiyat would still have to pay enhanced rent, and at the same time have to spend more money in buying his food-grain. So that the provision would operate hardly both on the landlord and the raiyat; and with a view to prevent this anomaly I move this amendment, which I think is in conformity to the law as it exists at present."

The Hon'ble MR. GIBBON said:—"I certainly think my hon'ble friend has misunderstood the provisions of this section. The use of the term 'staple food-crops' is rather as a standard of value than as a means of enhancement; it is to be used for the purposes of adjustment. I think he has failed to see that the standard will affect the reduction of rents as well as their enhancement in the future. Any crop the price of which is dependent on its export value cannot be used as a standard of adjustment. If the amendment proposed be carried, it will infuse an amount of uncertainty into our system as to become intolerable; it will become impossible to follow the fluctuations of the markets. Any commodity that is to be taken as a general standard of value for the adjustment of rents must be a commodity that is in general use among the people amongst whom it is grown; only such commodities can be regular in their prices. Staple food-crops vary little in their prices from year to year, whereas the value of indigo, tea, sugar and other crops dependent on their export value for their

prices constantly fluctuate, and for some years past they have least a downward tendency; the acceptance of such commodities as a standard might have the effect of reducing rents instead of enhancing them."

The Hon'ble SIR STEUART BAYLEY said:—"I explained in my opening speech what the intention of the Committee was. We took the staple food-crops as an index to prices generally. We deliberately rejected the idea of enhancing or reducing rates of rent according to the crop grown on the ground. If the hon'ble member will look at the result of the words he proposes, he will find when he comes to enhance rents he will have to ask the Court to compare the prices of crops grown today with the prices of crops grown 10 years ago. But he will first have to prove what the crop grown 10 years ago was. This he can never do. It is not the fact that the same crop is grown for 10 consecutive years. It is especially in the more highly priced crops that variations occur more frequently. But that is not my main objection. My real objection is one of principle, that the raiyat's rent ought not to be raised because he is a shrewd man and grows the crop which will pay him best; and similarly the landlord's rent should not be diminished because the raiyat is a foolish man and grows the crop of the least value. For working purposes we assume all rents to be at a fair and equitable rate. It will require no great acumen to see that if the rates are to be altered according to the crop it will be injurious both to the landlord and to the raiyat; and if the raiyat is to be taxed for growing more expensive and remunerative crops it will in the aggregate work more harm to the zamíndár than even to the raiyat."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that for clause (*b*) of section 30 the following be substituted:—

> "that the net value of the produce has been increased otherwise than by the agency or at the expense of the landlord."

He said:—"My Lord, without expressing any opinion of my own on the motion, I will state briefly the reasons which have led the hon'ble member to propose this amendment. His first argument is the general one based on the poverty of the raiyats in Bengal. My hon'ble friend considers that the raiyats, especially in Behar, are so poor as to render it exceedingly inexpedient to give to the landlords the trenchant ground of enhancement embodied in this section (30). The second argument of my hon'ble friend may be briefly stated as follows. Not only does my hon'ble friend consider that the raiyats are too

poor to be subjected to so sharp a weapon of enhancement, but he also considers the advantages which the raiyats obtain from an increase in the prices are to a large extent illusory. He believes that the expense of cultivation increases *pari passu*, that very little gain really accrues to the raiyats from a rise in prices, and that what little gain does ultimately accrue to them, is needed by the raiyats to improve their position. My hon'ble friend fears that, if a rise in prices is made a ground of enhancement, not only will the cultivator obtain no advantage but he will be in a worse position than before. The effect of the amendment will be to render it more difficult for a zamíndár to obtain an enhancement on the ground of a rise in prices, I have laid before my hon'ble colleagues the arguments of my hon'ble friend, and I now leave the matter in the hands of the Council."

The Hon'ble SIR STUART BAYLEY said:—"I must object to the amendment. The long series of litigation since 1859 has proved that it is impossible to say what the nett value of produce is, and no Court has ever been able to find out the cost of cultivation; therefore this ground of enhancement will be absolutely illusory, and the Committee accordingly rejected it."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that for clause (*c*) of section 30 the following be substituted:—

"that the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (*c*) of section 30 the following be substituted:—

"that the productive powers of the land held by the raiyat have increased otherwise than by the agency or at the expense of the raiyat."

He said:—"This is the present law on the subject. It gives the zamíndár the right to enhance rents for any increase in the productive powers of the land, however caused, unless the cause of increase is the raiyat's own expense or agency. I do not wish to press at this moment the question of the zamíndár's proprietary right in the land. But it will be found that, even if the raiyat's rent is enhanced, it leaves to the raiyat also a share of the increase which is caused not by his own agency or expense but either

by natural or artificial causes. The Bill limits the right of enhancement simply to the ground that the increase is caused by fluvial action, but there may be several other causes with which the raiyat has nothing to do, which improve the productive powers of the land, and for which improvement the zamíndár has an equitable cause of enhancement. Suppose that a railway is constructed, or a public embankment is thrown up which prevents a part of the land from being trespassed upon by cattle or wild animals, or that such work prevents the land being inundated by the overflow of the river, and that this increases its productive powers; again, suppose it be shown that by the better provision made by the Government for the conservation of forests there is greater regularity in the rainfall, and there is therefore an improvement in the productive powers of the land; I submit that in these cases the landlord is equally entitled to a share in the profits. The zamíndár's rent cannot be increased to the full value of the profit; the raiyat will get his share in it. Supposing him even to be a co-proprietor in the land, still the zamíndár, as well as the raiyat, should get their respective shares by reason of such improvement in the productive powers of the land. Instead, therefore, of limiting the ground in the way it is done in the Bill simply to fluvial action, the words of the present law in that respect should be retained."

His Excellency THE PRESIDENT said:—"I think I shall best consult the convenience of the Council by putting this motion to the vote. It is obvious that not only great loss of time but great inconvenience must result from the hon'ble member again moving an amendment which has already been dealt with by the Council. It is quite true there are four words in this amendment which are not to be found in the amendment which has just been negatived, but they do not virtually render the amendment of the Hon'ble Peári Mohan Mukerji in any sense different from that which was moved by the Hon'ble the Maháráját of Durbhunga."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that in section 80, clause (*d*) and the *explanation* be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to clause (*d*) of section 80 the words "or other specific cause, sudden or gradual," be added.

The Hon'ble MR. REYNOLDS by leave withdrew the amendment that clause (*a*) of section 31 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*a*) of section 31 the words "during a period of not less than three years" be omitted. He said:—"The use of these words will lead to this, that if the majority of the raiyats of a village have submitted to enhancement of rent on account of a rise in the value of produce, and a dozen or a score of raiyats obstinately refuse to pay enhanced rent, the landlord will have to wait for three years before he can sue these recusant raiyats for enhancement of rents. I submit that in a suit instituted under the clause in question it will be enough for the Courts to enquire whether the rents paid by them have been paid *bonâ fide* by the majority of the raiyats. Enquiry into payment for three consecutive years is not necessary for the decision of such a suit. *Bonâ fide* payment of rent for a single year is enough to enable the Court to decree a suit for enhancement on these grounds. In other words, I move that the restriction as to proof of three years' payment be removed."

The Hon'ble SIR STEUART BAYLEY said:—"I must ask the Council to reject this amendment. It was explained by my hon'ble friend Mr. Reynolds and by His Honour the Lieutenant-Governor yesterday that a prevailing rate is frequently manufactured by *bogus* kabúlíyats, that is, a raiyat undertakes to pay a rate of rent which he does not in reality ever intend to pay with the object of proving a high rate in a suit brought against another raiyat. Our object is to show that the rate which ought to be proved is not a rate of this kind, but the actual existing rate, and payment for three years is considered to be good and sufficient proof to afford protection against colourable agreement."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in line 2 of clause (*a*) of section 31, for the word "rates" the word "rate" be substituted.

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that section 32 of the Bill be omitted. He said:—"My Lord, this section was so fully considered in the Select Committee, that it would not be right for me to detain the Council by offering any further remarks upon it."

The Hon'ble MR. REYNOLDS said:—"This matter was discussed at length by the Committee, and I do not think the decision come to should be disturbed."

The Hon'ble MR. HUNTER said:—"My Lord, speaking for myself, I also hope the Council will not disturb the arrangement."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*a*) of section 32, for the words "the decennial period" the words "a period of three years" be substituted. He said:—"The section requires that, for the purpose of determining what is the average price of grain for the purpose of working the rule of proportion, the Court must take the average of the immediately preceding ten years. This, I submit, will not only be a work of difficulty and add to the delay and expense of enquiry, but it will in many cases tend to reduce the amount of enhancement which the landlord will be clearly entitled to get. I think that a much shorter period, say three years, will be a reasonable period for striking an average to work the rule of proportion."

The Hon'ble MR. REYNOLDS said:—"This question was discussed at some length in Select Committee. Originally the term of five years was inserted in the Bill, and it was urged that the period of five years was too short, and concrete examples were given in which it would work injustice, in some cases to one party and in some cases to the other. We, therefore, agreed to the decennial period, but at the same time we added clause (*c*) to enable the Court to take a shorter period in case it was impracticable to take the decennial period."

The Hon'ble MR. HUNTER said:—"My Lord, I too hope that the Council will not alter the term of years fixed by the Select Committee. There are cases in which it would be almost impossible to take a period shorter than ten years. The hon'ble mover of the amendment suggests three years. I would ask him whether, during a year of famine or in the two years following, enhancement of rent should be granted against a tenant on the ground of the rise of prices? The high prices caused by famine after extend over three years. There is really no answer to this. The result of substituting three years for ten years would be that after a period of famine, and while the cultivators were reduced to the last stage of weakness and misery for want of food, a legal system of enhancement (based on the sufferings of the tenants) could be pushed on throughout the famine-stricken districts."

1885.] [*Sir S. Bayley; The Mahárájá of Durbhunga; Bábú P. M. Mukerji.*]

The Hon'ble SIR STEUART BAYLEY said:—"I quite agree with my hon'ble friend Mr. Hunter. It was on his suggestion, and after going into statistics to show how prices varied from year to year and how they were affected for some time after a bad year, that the decennial period was adopted. Nothing is more striking than the slowness with which prices fall after a calamity of that sort, notwithstanding that the harvests have been abundant in the subsequent years. We thought it best to counteract the operation of such special years by taking a large average."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 3 to 6 of clause (*b*) of section 32, the words from "reduced by one-third;" &c., to "purposes of comparison" be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in lines 6 to 10 of clause (*b*) of section 32, the words commencing with "provided" be omitted. He said:—"This proviso is based on an entire misconception of the actual state of facts. It takes for granted that in every case, whenever there is a rise in the value of produce, there is a greater proportionate rise in the cost of cultivation. In the voluminous literature on the subject there is not a single statement by any officer to the effect that the rise in the cost of cultivation is in any greater proportion than the rise in the price of produce. Unless that statement can be proved, countenance should not be given to a provision like this which takes the fact to be assumed. There are three contingencies with reference to this matter—first, the cost of cultivation may increase in the same ratio as the cost of produce, in which case the rule of proportion will work equitably without any reduction on the ground of the increased cost of cultivation, because it will leave the raiyat not only a proportionate increase of profits but also give him a proportionate increase in the cost of cultivation. If the cost of cultivation is increased in less proportion, it will give the raiyat greater profit, the landlord less. It is only in the third case, where the cost of cultivation has increased in a much greater ratio than the price of produce, that the rule of proportion will work hardly on the raiyat. Unless the Council has before it evidence to show that the cost of production had increased in any greater ratio than the price of produce, I submit it will be unfair to make a provision like this. In my dissent I explained my meaning by a hypothetical case. Suppose the price of produce of a bíghá of land to be Rs. 8 and the rent Rs. 3, the cost of production Rs. 3 and the profit to the raiyat Rs. 2. Then, if the price rises to Rs. 10, by the rule of proportion the amount of the enhanced rent will be

Rs. 3-12, the cost of produce will be Rs. 3-12 and the profit to the raiyat will be Rs. 2-8; so that every case in which there is a rise in the value of produce the rule of proportion contemplates a proportionate rise not only in the profits of the raiyat but also a proportionate rise in the costs of cultivation. It is on these grounds that the 15 Judges, in laying down the rule of proportion, distinctly said that the cost of cultivation was not to be taken into account, because it may for all practical purposes be taken for granted that there is a proportionate rise in the cost of cultivation with a rise in the value of produce."

The Hon'ble MR. REYNOLDS said:—"I think the hon'ble member asks too much when he asks the Council not to pass this clause unless it is prepared to show that the cost of production tends to increase more rapidly than the price of produce. It is because it is so difficult to prove the cost of production that all schemes for enhancement on this basis must fall through. There is reason to believe that the cost of production has a tendency to increase in a greater ratio to the rise in price; and if this is the tendency in a considerable proportion of cases we ought to give the raiyat the benefit of the doubt and make the rule general, because we have no data to show to what exact number it will or will not apply. I join issue with the hon'ble member in the hypothetical case of a tenant whose gross produce is Rs. 8, the rent Rs. 3, the cost of production Rs. 3, and his profit Rs. 2. Considering that the average size of holdings in this province is five bighás, the raiyat in that case will have an annual profit of Rs. 10 on the whole area of his holding. I put it to the Council whether a man in that position ought to be enhanced at all, and, if at all whether the enhancement should not be fenced round with modifications of this kind, so as to give the tenant a fair chance of having sufficient left to him to live upon."

The Hon'ble MR. HUNTER said:—"My Lord, I regret that my hon'ble friend has again raised this question, but I am prepared to meet his amendment with a direct statement of figures, which I hope will be convincing to this Council. The hon'ble member complains that to deduct one-third from the rise in prices, as an allowance for the increased cost of cultivation, would seriously diminish the enhancement of rent. Let me commend to my hon'ble friend's notice the following concrete case:—If a holding at an old rent of Rs. 12 yielded at old prices Rs. 30 worth of produce, and the value of produce were to increase to Rs. 60 or double, then, deducting one-third of the excess value, the proportion would be as follows. As the old value (Rs. 30) is to the new value less one-third of the increase (Rs. 50), so will be the old rent (Rs. 12) to the new rent. The new rent, therefore, would be Rs. 20, and I feel sure that my hon'ble friend would not, in his own estates, desire to raise the rent of any tenant by a higher

proportion on the ground of a rise in prices. I should feel confident, my Lord, to leave the matter without further comment, if only my hon'ble friend were concerned; because I know his fairness of dealing with his tenants. But, as there are perhaps others who cannot be answered by this *argumentum ad hominem*, I wish to add one other observation. Underlying this particular question of a one-third deduction of the increase, is the general question as to the division of the unearned increment occasioned by a rise in prices. The hon'ble member's amendment would give the whole unearned increment to the landlord. The Bill divides the unearned increment between the landlord and the tenant. The exact proportion of two-thirds to the landlord and one-third to the tenant, as given by the Bill, was decided on after long and mature consideration. I think it is a fair division, and I would, therefore, oppose any attempt to now re-open the question."

The Hon'ble SIR STEUART BAYLEY said:—"My hon'ble friend Mr. Hunter has left me very little to say, for he has stated exactly the line I was prepared to take. I explained in my opening speech how the cost of cultivation tends in this country to increase in a more rapid ratio than the price of produce, and how it acts on the raiyat. Most of the labour is done here by the raiyat or his family, or, where outside labourers are employed, they are paid in grain. On the other hand, what are the other elements which enter into the cost of cultivation beyond the labour used? The principal cost is for cattle, ploughs, manure, &c. Now, while pasturage land is daily diminishing owing to the pressure of population, the cost of keeping cattle is increasing, so much so that within the last few years the raiyats are growing crops for their cattle. For the same reason manure is also becoming dearer, and this adds to the cost of cultivation. What my hon'ble friend said is very true, that the principle underlying the question is that of the unearned increment—in what proportion it should be divided. The Government of Bengal in the letter of the 15th September proposed a deduction of one-half; the Committee decided upon allowing one-third. The fact that the Courts cannot ascertain what the cost of cultivation is, and consequently what proportion of the increase of price should be deducted, is an accepted fact; therefore an arbitrary proportion must be taken, and the question is, where the line is to be drawn. The question has been carefully worked out in the report of the Rent Commission. I will read two extracts from their report. They said:—

'The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of

a country remains the same, there is a constant tendency for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place, the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes.'

"Then they go on to consider how the unearned increment is to be divided. They said :—

'In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zamíndár nor the raiyat, but by general causes, the reasoning used above (§55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule * * * will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the raiyat and the remaining one-third to the landlord.'

"It will be seen that while some members of the Rent Commission thought the raiyat should have two-thirds and the zamíndár one-third of the increment, the majority came to the same conclusion as the Government of Bengal that it should be equally divided. We have after fully considering all opinions come to the conclusion that one-third should be deducted for increased cost of cultivation, and that the rent should then be increased in full proportion to the increase of prices."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that clause (*c*) of section 32 be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in section 33, line 4, after the word "improvement" the words "made after the commencement of this Act" be inserted. He said :—"My reason is that zamíndárs who before the passing of this Act did not think of registering improvements made by them will be unable to get any enhancement on those improvements."

The Hon'ble MR. REYNOLDS said :—"I think the hon'ble member overlooks the effect of section 80, which provides for improvements made before the passing of the Act; the present amendment is therefore not required."

The Hon'ble SIR STEUART BAYLEY said:—"Section 80 was inserted to meet the case to which the hon'ble mover has referred. If, therefore, the words proposed are inserted in section 33, there will be no ground for inserting that section."

The amendment was then by leave withdrawn.

The Hon'ble MR. GIBBON moved that section 35 be omitted. He said:—"I will call the attention of the Council to the wording of this section. It says that—

"Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable."

"The first portion of the section allows the Judge a discretionary power to overrule the law. Section 7 gives the Court directions as to what shall be considered fair and equitable. It allows the Court to decree enhancement when the rent paid is below the customary rates paid by other people. Sub-section (2) gives an absolute discretion to the Courts only to allow enhancement when the Court considers it fair and equitable. Section 8 goes further. It allows the Court, in cases where it considers that immediate enhancement will fall hardly on a tenure-holder, to allow the enhancement to be made gradually. Section 30 and the following sections lay down the ground upon which occupancy-holdings may be enhanced, and it lays down rules to guide the Court as to what is fair and equitable. Section 36, which we have not yet come to, allows the Court, where the immediate enforcement of a decree for enhancement in its full extent will be attended with hardship to the raiyat, to be carried out gradually. Therefore to declare that the Court shall not in any case decree an enhancement which under the circumstances it considers unfair and inequitable, is unnecessary. It allows the presiding officer, when the bias of his mind tends that way, to ignore the provisions of the Act and follow the bent of his mind; it will give him an excuse to set aside the provisions of the Act. Where it suits the bias of his mind he may, whenever he pleases, set aside the law. We are giving to all judicial officers, even the most inexperienced, a power which the most experienced may hesitate to exercise. The reason to my mind must be cogent, the necessity very great, before we allow a Judge sitting in Court to override the provisions of the law."

The Hon'ble SIR STEUART BAYLEY said:—"I am not prepared to accept the amendment. The principle that all rents decreed by the Court should be fair and equitable has no doubt been accepted by the Council, but it is not

the case that each ground of enhancement carries with it the limit beyond which the law would deem enhancement unfair and inequitable. In its previous stages the Bill provided a maximum, but when the maximum-limit was removed, it was provided by one general clause that where the rent decreed, although coming under the rules prescribed by the law, are unfair and inequitable under the specific circumstances, it should not be decreed by the Court: the special circumstances should be taken into consideration. That is the meaning of the section. I know my hon'ble friend will not wish any Court to decree what it does not think fair and equitable. The object of the section is to enable the Court to act by its judgment in the matter. I don't think there is danger that the Courts will be misled by the discretion, because there will always be an appeal to the High Court; the High Court will soon call to order any Judge who exercises his discretion in an improper manner. It is a judicial discretion."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amir Ali, by leave withdrew the amendment that in line 6 of section 85, after the word "inequitable" the following words be inserted:—

"or which would entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments:—

That section 87 of the Bill be omitted.

That, in the event of his last preceding amendment not being carried, in lines 7 and 10 of sub-section (*1*) of section 87, for the words "fifteen years" the words "five years" be substituted.

That in lines 15 and 16 of sub-section (*1*) of section 87, the words "or dismissing the suit on the merits" be omitted.

That in section 88, clause (*b*), line 3, for the words "average local prices of staple food-crops" the words "in the value of the produce of the land" be substituted.

That in section 89, sub-section (*3*), line 6, for the words "one month" the words "two months" be substituted.

That in line 2 of sub-section (*4*) of section 39, after the words "Board of Revenue" the words "after hearing any of the interested parties who might have duly entered appearance" be added.

The Hon'ble MR. HUNTER moved that in sub-section (*6*) of section 39, for the words "shown thereby" the words "shewn in the lists prepared for any year subsequent to the passing of this Act" be substituted. He said:—"My Lord, this Bill will substitute a new and sharp procedure for the enhancement and reduction of rents in place of an old and a complicated one. Under the existing law, such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of the produce. In order to obtain an enhancement on this ground, the landlord had first to prove an increase in the selling prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the increased prices to the actual produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complex factors at present and in time past. The present Bill substitutes for this difficult and complicated process the simple question of a rise or fall in the prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is that enhancements which were not practicable on this ground will now become practicable. But the Bill further simplifies the burden of proof. In the first place, it confines the question to the prices, not of the actual produce of the land, but of certain staple food-crops; in the second place, it provides for the publication of price-lists in the official Gazette, which lists are to be accepted by the Courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point.

"The Bill originally proposed that these lists should be taken as conclusive evidence. It appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill as now revised accords only the value of presumptive evidence to these lists. In doing so, however, I would again urge on my colleagues that we have given the same legal value to two classes of evidence, of which the real value is essentially different. For the lists to be published in the official Gazette are of two distinct classes—old lists of prices collected under no adequate safeguards for their accuracy, and new lists of prices to be collected under the very efficient safeguards provided by this Bill. I believe that the future lists to be compiled

under those safeguards will be worthy of acceptance as presumptive evidence. But my enquiries show that the old lists, collected without any of those safeguards, cannot safely be accepted as presumptive evidence. At a late stage in the deliberations of the Select Committee, a decennial period was substituted in place of a quinquennial period; so that the figures submitted to the Committee only enable me to show what would be the results of accepting the price lists for the quinquennial periods originally contemplated. If, then, we take the price-lists submitted to the Committee for quinquennial periods, they curiously conflicting different results in adjoining districts—districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of silver, and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Húgli river would give an enhancement of 12 per cent. in the Bardwán district; and an enhancement of 28 per cent. in the Nadiyá district on the other side. Further up the Ganges the enhancement would be 10 per cent. in the Patna district on the southern bank, and close on 20 per cent. in the Muzaffarpur district on the northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent. in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating from the price-lists of rice alone. If we endeavour to correct their discrepancies by adding a second crop to the calculation, say maize, as the Local Government will do under the provisions of this Bill, we get still more astonishing results. In the Bhagalpur district, rents would be enhanced 25 per cent. if calculated on the average prices of rice submitted to the Committee; but they would be reduced 46 per cent. if calculated on the price-lists of maize. In the next district but one to the west, Muzaffarpur, rents would, on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates; but they would be reduced about 22 per cent. if estimated in maize rates. In the Patna district, which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhagalpur, nor 22 per cent. as in Muzaffarpur, but only 2 per cent. These results are worked out from the figures submitted on behalf of the Bengal Government to the Select Committee. I am aware that they are incomplete, and that they would be revised before they were published in the Gazette. But, after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give to them the value of presumptive evidence. I would ask the Council, therefore, while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had

under the Evidence Act at the time when they were collected: that is to say, they shall be held by the Courts to be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zamíndárs, nor on behalf of the raiyats, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants—a double-edged weapon—which may produce startling results both in the enhancement and in the reduction of rents."

The Hon'ble SIR STEUART BAYLEY said:—"We are prepared to accept this amendment in substance subject to re-consideration as to the wording of it."

The amendment was put and agreed to.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in sub-section (*7*) of section 39, line 1, for the words "Local Government" the words "High Court" be substituted.

The consideration of the following amendments was temporarily postponed:—

(1) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that section 40 be omitted.

(2) The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI to move that section 40 be omitted.

(3) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that, if his last preceding amendment be not carried, in sub section (*1*) of section 40, lines 2 to 6, the words from "or on the estimated value," &c., to "partly in another" be omitted.

Also to move that in sub-section (*1*) of section 40, lines 6 and 7, for the words "either the raiyat or his landlord" the words "the raiyat and his landlord" be substituted.

Also to move that for sub-section (*2*) of section 40 the following be substituted, namely:—

"The application may be made to the Civil Court."

Also to move that for section 40, sub-section (*3*), and sub-section (*4*), clauses (*a*) and (*b*), the following be substituted, namely:—

"On receipt of the application the Court shall ascertain the description and quantity of

i

the rent in kind paid or payable for the last preceding ten years, and the tenants shall pay in future each year the amount in money which would purchase the same description and quantity of produce at the average prices prevailing for the same in the locality for the five years immediately preceding that for which payment is made."

Also to move that in sub-section (5) of section 40, in line 5, for the words "revenue proceeding" the words "civil suit" be substituted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that section 43 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. The new rights which the Bill contemplates giving to non-occupancy-raiyats have necessitated the introduction of a number of new sections simply to give them protection in certain exceptional cases where the zamíndárs have not protected themselves by agreements. It is these cases only that the provisions of the Bill, commencing with section 43 and ending with clause (10) of section 46, deal with. It introduces a system which is entirely unknown to this country, and the entire procedure is both cumbersome and expensive as well to landlords and raiyats. I submit that for the purpose of a few exceptional cases such a cumbrous and expensive procedure, and one altogether unknown to the country, may well be dispensed with."

The Hon'ble RAO SAHEB VISHNANATH NARAYAN MANDLIK said:—"This is a very novel provision. Mr. Field said:—

'I am unable to see the justice of the restrictions proposed to be placed on the enhancement of rent of non-occupancy-raiyats.'

"This new legislative creation is a tenant-at-will, and it strikes me that the direct result of these provisions will be to increase the number of day-labourers and to decrease the number of these new creations. I say new creations advisedly, because the High Court has ruled in the case of occupancy-raiyats what their privileges are, and according to what Mr. Field says, both in the work on which the Rent Commission proceeded and in his work on land-laws generally, it seems the legislature so late as 1859 and 1869 have left this new question untouched. I cannot understand what equitable rights a man can have who takes land on certain definite terms. I therefore support the amendment."

The Hon'ble MR. REYNOLDS said:—"We are hardly in a position to discuss this amendment until the amendment of section 29 has been settled. It is

not definitely stated that the provisions of section 29 are to extend to this chapter. I contend that these provisions are right and proper. The assertion that a non-occupancy-raiyat is a mere tenant-at-will raises a very large question. If we admit the general principle, which, I think, we should, that it is desirable to regulate enhancements, I am aware of no reason why it should not be extended to non-occupancy as well as occupancy-raiyats. With regard to section 46, we leave enhancements out of Court entirely to arrangement; the only protection we give to the non-occupancy-raiyat is that, if he refuses to agree to the enhancement proposed, we give him the liberty to claim a five years' judicial lease. I think it very reasonable that he should have that consideration granted to him. It has been all along put forward as an object of our legislation to extend the occupancy-right as far as possible, and this section and section 46 do not go unreasonably far. I should be sorry to see any alteration made in section 43."

The Hon'ble MR. GIBBON said:—"I may say briefly that I do not approve of the motion. I approve of the section as it stands. The occupancy-raiyat is in a different position to the non-occupancy-raiyat. The occupancy-raiyat is not compelled under any portion of the Bill to enter into any written engagement with the landlord. If his position is disputed by the landlord, he can appeal to the provisions of the Bill to have the terms and conditions of his holding determined. When a non-occupancy-raiyat is let into possession of land, he may be let in under a written agreement; at the end of that agreement he may have his rent enhanced or adjudicated; and if it is to be adjudicated the procedure for such adjudication is laid down. If the landlord and the non-occupancy-raiyat come to terms amongst themselves, it is very necessary that the landlord should at once put into writing the terms on which the tenant holds the land. It is not necessary that it should be alleged that he held for three years without written agreement, in order that his holding should be binding. If his holding is by verbal arrangement, he can reject any claim for enhancement and claim an adjudication of rent for five years. I cannot see what effect the provisions of section 29 will have on this section. I maintain that the section is right in principle and will be equitable in practice and should be retained."

His Honour THE LIEUTENANT-GOVERNOR said:—"I also oppose the motion. The non-occupancy-raiyat has not a satisfactory position. He enters on land on such terms as he can settle with the landlord, and it is quite in the power of the landlord when the term of his engagement expires to evict him under section 44, clause (*c*). But if the landlord demands enhanced rent, section 43 comes

into operation, and the raiyat is obliged either to agree to the terms proposed or to the rent determined by the Court, for which section 46 provides. Considering that the object which the majority of the Select Committee have always had in view, of affording some measure of protection to the non-occupancy-raiyat, I think it is necessary for the future relations of landlord and tenant that this section should be allowed to stand."

The Hon'ble SIR STEUART BAYLEY said :—"I agree with His Honour the Lieutenant-Governor as to the necessity of supporting the rights of non-occupancy-raiyats. It has all along been one of the objects of the Government of India in introducing this Bill to provide a certain amount of modified security in the position of non-occupancy-raiyats. As I said on a previous occasion, the strength and security which our Bill gives to non-occupancy-raiyats is very far short of that given to occupancy-raiyats, but is in advance of the present law, and has been deliberately made. The particular section which we are asked to remove is one which provides that the rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement under section 46. I cannot accept this amendment as it stands. It is rather premature to discuss the bearings of the clause which I propose to insert in section 29, but I cannot avoid following the hon'ble mover of the amendment by saying a few words. If we accept the principle of part-performance for one class of raiyats, the same considerations point to its being accepted for the other class. The effect of this is worth considering. It means that after the initial lease of the non-occupancy-raiyat expires, if his rent is enhanced verbally, the landlord would not sue for the enhanced rent except on proof that the raiyat had paid for three years. The result would be to facilitate the growth of occupancy-rights, for first comes the period of the initial lease, then the admission of three years' subsequent occupation, and then, if the enhancement is contested, will come in the provisions of a judicial lease for five years. I propose therefore that, when the discussion comes on on the amended section 29, the hon'ble member should say whether he desires to introduce a similar clause in this chapter. If he does, I shall of course be prepared to accept it. In the meantime I must protest against the acceptance of the amendment before the Council."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 43 the words and figures "or by agreement under section 46" be omitted. He said :—"I have already submitted the arguments in connection with this amendment in my speech on the preceding amendment."

The amendment was put and negatived.

1885.] [*The Mahárájá of Durbhuñga*; *Mr. Reynolds*; *Mr. Quinton.*]

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in clause (*b*) of section 44, line 4, the words "consistent with this Act, and" be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in clause (*c*) of section 44, line 2, the word "registered" be omitted. He said:—"The reason is that there is no registered lease."

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS moved that in clause (*c*) of section 44, after the words "registered lease" the words "for a term of not less than five years" be inserted. He said:—"I need not detain the Council with any detailed or elaborate argument in support of this amendment. The position of the non-occupancy-raiyat is this, that he has to pay the rent agreed upon, and if admitted to occupation on a registered contract he may be ejected on the ground that the term has expired. There is no stipulation or arrangement in the wording of the Bill as to the term for which the initial lease ought to be granted, but I believe it will be generally considered that the grant of a lease for a reasonable term of years ought to be encouraged, and my position is strengthened by one of the dissents, in which it is remarked that the effect of the operation of some of the provisions of this chapter will be to place the non-occupancy-raiyat in a worse position than at present; the landlord, having an absolute right to eject him, will in every case grant a lease for a short period and reduce the non-occupancy-raiyat to a mere tenant-at-will. That will be guarded against to a certain extent by this amendment that the initial lease shall be in every case for a period of not less than five years. If the landlord desires to take advantage of the clause which permits him to eject the raiyat at the expiration of the lease, the lease originally given should not be for less than five years."

The Hon'ble MR. QUINTON said:—"I think this proposal is worthy of support. The hon'ble member in charge of the Bill has said that one of the objects of the Bill is to give a greater degree of protection to the non-occupancy-raiyat than what he enjoys under the existing law, and there have been, since this legislation commenced, various schemes proposed to give effect to it. The main protection proposed to be given is that where the landlord wishes to enhance the rent he must give notice, and if the tenant refuses to pay the enhanced rent the landlord can demand such rent as the Court thinks fit for five years. This is undoubtedly a great protection beyond what he enjoys under the existing law. But it appears to me that if the power of ejectment stands as it is now, that the landlord may turn him out on the expiration of the lease by

a mere notice to quit, the landlord can nullify all the clauses of this chapter by giving the necessary notice. I think therefore that the chapter as it stands is open to the objection that the protection it holds out can be defeated by such means."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I think this amendment will give non-occupancy-raiyats what they not only never possessed but will convert them into something like occupancy-raiyats, giving them a right to hold for at least five years, although the zamíndár may wish to let in a raiyat for only a year or two for a mere temporary purpose. If the raiyat does not agree to such short term, the lessee will have the option to reject the engagement and to apply to some other landlord, or to come to some other arrangement with his landlord. But there is no reason why to a raiyat who has admittedly no rights whatever the landholder should be forced to give a lease extending for at least five years, and if he does not do so he will have no right to eject the tenant. Nothing that has been placed before the Council justifies or warrants a provision of this kind."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"Provisions like this will defeat the very object for which they are enacted, and I trust the amendment now proposed will not be accepted by the Council."

The Hon'ble MR. HUNTER said :—"My Lord, I oppose this amendment. I believe that it strikes at one of the fundamental principles of the Bill, namely, the distinction between the occupancy and non-occupancy raiyat. The Bill makes provision for the very effective protection of the occupancy-raiyat; it also provides for the development of the non-occupancy-tenant into an occupancy-raiyat. But one of the principles which I personally laid stress on from the commencement, was the recognition of the initial freedom of contract between a landlord and a new tenant. After much discussion this principle was accepted by the Select Committee, and the initial freedom of contract between a landlord and a new tenant was formally affirmed by that body. I regard this amendment as an attempt to indirectly weaken the effect of the decision thus arrived at. I do not think that the amendment is justified either by the position of the non-occupancy-tenant in the past, nor by the status which he actually possesses at present. Further, I think that it would be at once impolitic and unjust, at the present late stage of the measure, to introduce a provision which would seriously curtail the acknowledged rights of the zamíndárs in regard to a large class of tenants."

The Hon'ble MR. GIBBON said :—"I also oppose the amendment."

His Honour THE LIEUTENANT-GOVERNOR said:—"I support this amendment because it gives to the non-occupancy-raiyat a securer position than the Bill as it stands will give him. I may be allowed to allude here to a part of the opening speech of my hon'ble friend Sir Steuart Bayley that my words and action in a previous debate on this measure are inconsistent with the position I now assume. I stated, if I remember rightly, in the discussion of the Bill last year that there was a wide distinction between the position of the occupancy and that of the non-occupancy raiyat, and I am prepared to stand by that doctrine. Now when I made that statement I was arguing against the proposal of the Government of India in its recommendation to the Secretary of State, that the whole distinction between rights of occupancy and non-occupancy should be abolished; that legislation should proceed on the basis of not recognizing any distinction between the two classes; that we should begin from the recognition of all raiyats being in the same position. My contention was that any legislation based upon such a theory was wrong as being contrary to the practice recognised since the Permanent Settlement. I urged that every Collector in the country would tell you that non-occupancy-raiyats do not stand in the same privileged status and position as the raiyat who has occupancy-rights, and I felt sure that, if legislation on the wide basis proposed by the Government of India was attempted the difficulties connected with legislation on the subject would be very greatly enhanced. I would appeal to hon'ble members whether, in dealing with a Bill which ignored any distinction between the two classes, the difficulties would not be very much more serious than now when we recognise such difference; and I may claim the support of those hon'ble members against whose interests I am supposed to have acted whether I have not, in this matter at any rate, represented the principle which they accept. The words in which I entered my respectful protest against the recommendations of the Government of India can be quoted, and, to say the truth, I am rather proud of the fact that the decision of the Secretary of State was in accordance with the views which I held. But it is quite a different thing that, while you recognise a distinction between the two classes of raiyats, you still can recognise the necessity that the non-occupancy-raiyat should have facilities placed in his way which will enable him to grow into an occupancy-raiyat; and in dealing with the subject I have never varied from the expression of the hope that this legislation would put such facilities in the way of the non-occupancy-raiyat not only in his own interests but in the interests of the zamíndár. All the provisions which have ever been contemplated to secure his status by means of compensation for disturbance, judicial leases or otherwise came not from me nor, as far I am aware, from any parti-

cular member of this legislature, but originally from the report of the Famine Commission. As the Bill has come out of the hands of the Select Committee, I do not think the non-occupancy-raiyat has been secured in the position which I would desire him to have; and anything therefore which has a tendency to improve his position, to enable him to reap the fruits of his industry and to secure with the acquiescence of the zamíndár his growth into the position of an occupancy-raiyat deserves the favourable consideration of the Council. If therefore the Council see their way to accept the proposal that the initial lease should be for a term of not less than five years I shall be glad; because while the zamíndár will still have the right of eviction, he will gain thereby an opportunity of seeing whether he has got a good tenant or a bad one.

The Hon'ble SIR STEUART BAYLEY said:—"I have rarely had more difficulty in making up my mind on any point than on that now before the Council. But before I deal directly with the question you are asked to vote upon, I wish to offer a few remarks with reference to what has just fallen from His Honour the Lieutenant-Governor. I must venture respectfully to correct a misapprehension into which His Honour has fallen. In my opening speech I was quoting from what the Lieutenant-Governor said in the debate in this Council two years ago after the Bill drawn in accordance with the Secretary of State's views had been introduced. I was certainly not guilty of quoting from any paper which His Honour may have written protesting against the letter of the Government of India of March, 1881. No such paper has been published, and if it exists I could not with propriety have referred to it. The particular expresssions which I used were out of the above speech, in which he dissented to the compensation for disturbance scheme in regard to non-occupancy-raiyats, on the ground that the non-occupancy-raiyat had no rights. I only wish to correct this misapprehension.

"Coming now to the actual point before the Council, the arguments on the two sides respectively appear to be these. We want the non-occupancy-raiyat to have the chance of acquiring the occupancy-right. At the same time we want not to take away from the zamíndár all power of selecting a good raiyat and all power of regulating the rents of his raiyats. In respect of the former I have always supported the position that the zamíndár should have the power to eject a raiyat at the end of an initial lease. Unless you give him that right I do not see how, if he lets in accidentally an unsatisfactory, cantankerous or turbulent man, he is to get rid of him. I think it is fair he should have some selection in the first letting of his land. On the other hand, we want the

occupancy-right to accrue in the hands of the non-occupancy-raiyat. I have not supposed that zamíndárs will, as a rule, be anxious to eject the raiyat at the end of the initial lease. I would still believe, in spite of what the hon'ble member has said in his dissent, to the effect that in all cases the zamíndár would give a one year's lease in order to be able to eject the raiyat when he pleases, yet wiser counsels will prevail and that he will see that it is not for his interest to do so. I may mention also that the question of giving a long lease in the first instance was urged upon us by high authority, and it was considered a good deal by the Select Committee, but it was not accepted at the time. It was considered, I must confess, not so much with regard to the question of ejectment at the end of the time, as with regard to the question of compensation for disturbance. The principle of the proposal was that a non-occupancy-raiyat ought either to have a long lease or, if he only received a short one, then he ought to have compensation for disturbance. But compensation for disturbance fell through. Now the question has to be decided, is it an object to leave the zamíndár a right to select his raiyat, and to say for how long he shall have a lease in the first instance, or that we should tie his hands and say 'You shall not have a raiyat for less than five years'? I have great difficulty in making up my mind, as anybody's decision will depend upon whether he thinks the old rights of the zamíndár ought to be retained, or that the necessity of supporting the raiyat is of paramount importance. On the whole, I think we ought not to overthrow the rights of the zamíndár, and I think we have given the raiyat a fair chance of becoming an occupancy-raiyat. I am afraid also that the specific safeguard, even if unobjectionable in principle could so easily be evaded as to be valueless. On the whole therefore I incline to vote against the amendment."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (*d*) of section 44 the following be substituted :—

"on the ground that he has refused to agree to pay enhanced rent at a rate not exceeding double the rate of rent paid by him during the preceding five years".

He said :—"This is offered to the Council as an alternative for the expensive and tedious procedure contained in the Bill. I think it will afford sufficient protection against capricious enhancement of rent and ejectment on the ground of refusal to pay enhanced rent. This double limit is the limit which was from the time of the Rent Commission suggested as a reasonable provision not only for non-occupancy but for occupancy-raiyats."

The Hon'ble SIR STEUART BAYLEY said:—"The amendment means that we should get rid of the judicial lease. Now, this judicial lease is really an essential part of the protection given to the non-occupancy-raiyat, and, whatever value may be attached to the protection as it stands, I quite agree with those who think the protection will not be worth anything if a judicial lease is not permitted when the non-occupancy-raiyat's rent is enhanced by the Court. I therefore oppose the amendment."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that in section 44 the following be added as a ground for eviction:—

"(e) on the ground that he has committed waste or caused the deterioration of the soil."

He said:—"It has been settled by the Council with reference to the occupancy-raiyat that even he may not be allowed to commit with impunity waste on the land or cause deterioration of the soil. If the non-occupancy-raiyat, whose legal status and rights are much inferior to those of the occupancy-raiyat, does these things, I cannot think it reasonable that the Bill should contain no provision for such cases."

The Hon'ble SIR STEUART BAYLEY said:—"I think the Council decided yesterday that the proper penalty in such cases was not eviction but a suit for damages or for an injunction. 'Waste' was a word which had absolutely no meaning as applied to cultivation in this country. Why! the whole process of agriculture in this country has been described by a great authority as one of 'spoliation of the land'. All cultivation here, if compared with the English method, would be regarded as waste, and the use of the word would introduce an extraordinary amount of uncertainty and litigation."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that to section 44 the following be added as a ground for eviction:—

"on the ground that he has, without his landlord's consent in writing, sub-divided or sub-let his holding or any part thereof, save as expressly authorised by this Act".

He said:—"Both the Government of India and the Secretary of State have recommended that sub-letting should be discouraged. The evils of the

institution are well known. If it be held an objectionable practice in the case of occupancy-raiyats, how much more so it must be in the case of non-occupancy-raiyats. Even the friends of the raiyats have urged on the legislature the necessity of provisions for preventing the evils of sub-letting, and I find that it was one of the institutions which the Famine Commission very strongly condemned in their report."

The Hon'ble MR. REYNOLDS said:—"I think the question of sub-letting is sufficiently provided for by section 85, and that of sub-division by section 88."

The Hon'ble SIR STEUART BAYLEY said:—"Sub-division is absolutely invalid without the landlord's consent in writing, and sub-letting is only validated under certain very exceptional circumstances under a registered lease."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I wish to point out that the provisions as to sub-letting in section 85 apply only to occupancy-raiyats, because, although the word 'raiyat' has not been qualified, the provision which it contains that a sub-lease may extend to nine years is inconsistent with the position of a non-occupancy-raiyat in the Bill."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Maháráját of Durbhunga, that to section 44 the following be added as a ground for eviction:—

"on the ground that he has disclaimed the title of his landlord before any public officer or Court".

He said:—"The result of the judicial decisions have established that in Bengal as in England a tenant disclaiming his landlord's title forfeits his tenancy. The amendment fairly summarises the results of the judicial decisions. As to the equity of the principle there can be no doubt. Nor do I see any objection on the score of principle to enacting it. A tenant can never be harrassed by false claims in this respect, for the disclaimer is entirely his own act, and unless it is reduced to writing by a proper authority he cannot be proceeded against in respect thereof. The necessity for enacting such a provision for the protection of the landlord is clear. In questions of boundary disputes or disputed title, it is common for tenants to be won over by the rival party who may not really be in possession. In common rent-suits raiyats thus gained over raise issues of title and plead adverse possession.

The whole question of title is fought out as a side issue. We are sure this hon'ble Council has no sympathy with such dishonest tenants or with the unnecessary and reprehensible fostering of litigation. In Bengal the consequences of such disclaimer are very effective checks upon false claims to hold land as rent-free, which, in the present state of the law, it is very difficult for the land-holder to disprove. Justice and expediency alike demand that the judge-made law on the subject should not be repealed by implication."

The Hon'ble MR. REYNOLDS said :—"I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable."

The Hon'ble MR. ILBERT said :—" I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-books. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it the Courts regard it with disfavour and limit its application in every possible way.

"And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite land-marks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section enabled a tenant who entertains a *bonâ fide* doubt as to the person entitled to his rent

to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court. And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land in his possession rent at a rate to be fixed by the Court. By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further."

The amendment was put and negatived.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, withdrew the following amendments:—

That in section 44 the following be added as a ground for eviction:—

"(*h*) on the ground that he has persistently obstructed the landlord or any person authorized by him in entering upon the holding for any lawful and reasonable purpose".

That in section 44 the following be added as a ground for eviction:—

"(*i*) on the ground that he is a person imprisoned for debt or convicted of any offence against his landlord or any resident cultivator of the village".

That in section 44 the following be added as a ground for eviction:—

"(*j*) A landlord may, in any other case, obtain a decree for eviction by giving one year's notice to quit and such compensation as the Court may consider fair and equitable under the circumstances of the case."

That in line 8 of section 45, for the words "six months" the words "one year" be substituted.

That to section 45 the following proviso be added:—

"If the landlord fails to prove the service of the notice to quit, the Court shall, on proof of his right to eject, grant to the tenant six months' time to vacate the holding from the date of the decree."

The Hon'ble MR. AMÍR ALÍ moved that after section 45 the following section be inserted:—

"Where, after receipt of such notice and before institution of suit, the raiyat expresses his willingness in writing to pay for his holding a fair and equitable rent to be determined by the Court under section 46, clause (*b*), or by arbitrators appointed by the Court or by the

parties themselves, the raiyat shall be entitled to remain in occupation of his holding at the rent so determined for a term of five years from the expiration of his lease, but on the expiration of that term he shall be liable to ejectment under the condition mentioned in section 45, unless he has acquired a right of occupancy."

He said:—"I have stated in my dissent that the Bill provides no efficient safeguard against the ejectment of a non-occupancy-raiyat with a view to prevent the possibility of his acquiring an occupancy-right. To exemplify my meaning I have simply to point to clause (*o*) in section 44 which I move to omit from the Bill. It has been stated in this Council that 90 per cent. of the raiyats in Bengal possess occupancy-rights. My view is that the majority of the raiyats of Bengal, who possess occupancy-rights, possess it only by courtesy. One of the most experienced Native officers of Government in the Executive Service—I allude to Bábú Bunkim Chunder Chatterji—thus speaks on the point:—'Most of the agriculturists are tenants-at-will, and the zamíndár can eject them at his pleasure; rights of possession are in many places only chimerical; the raiyats have possession by law, but not as a fact.' My hon'ble friend Dr. Hunter, in his Statistical Account of Bengal, says that 'the husbandmen seldom change their holdings, and the same land generally descends from father to son, so that most of the cultivators may be said to have a sort of occupancy, although when a dispute occurs with the superior landlord the cultivator generally loses his case'—5 Vol., page 92. Another writer of great experience ascribes this to the fact that in the *jama-wásil-báki* papers the zamíndárs constantly change the names of the raiyats. One can easily imagine that those who believe the acquisition of occupancy-rights by the raiyats is in derogation of the right of the landlords should endeavour by every possible means to prevent the raiyats acquiring those rights. One must judge of the future always by the past. Hitherto the landlords have had recourse to illegitimate methods for the purpose of preventing the acquisition of occupancy-rights; how much more will the endeavour be repeated after the recent angry discussions? Is it likely that any raiyat once let in under a registered lease will be allowed the chance of holding that specific land or any land within the *village* for 12 years or more? In the face of what has already happened, in the face of what we hear asserted every day, it is idle to say that there are no just grounds of apprehension on this score. Every raiyat will henceforth be let in under registered leases, and will be required to give up his holding on the expiration of his lease and get other land beyond the village, and this process will henceforth take place under the countenance of the law. Will such a thing be to the eventual good of the country? I believe there cannot be two opinions regarding the beneficent results accruing from a general extension of the right of occupancy. When one considers the

insecurity attached to a common tenant's position, of his consequent unwillingness to improve his cultivation, to do more than eke out a bare subsistence, the necessity for giving some substantial guarantee against frequent and arbitrary eviction will at once be realised.

"If you give some assurance to the raiyat that his holding is his own, that it would descend to his heirs, that he would not be ejected from it as long as he paid a fair and equitable rent, you furnish him with a strong motive to develop the resources of the soil. With a view to afford the non-occupancy-raiyats some protection I beg to move the insertion of the section I have read out."

The Hon'ble MR. REYNOLDS said:—"However much I sympathise with the object of the hon'ble member, I am afraid his amendment is inconsistent with the principle, which has been already accepted, of the zamíndár's right to eject at the end of an initial lease. The Council has decided that a landlord ought to have the power to get rid of a tenant at the end of that term. But the amendment of the hon'ble member is directed to the root of that principle; therefore I think that to accept the amendment will be inconsistent with the decision of the Council."

The Hon'ble SIR STEUART BAYLEY said:—"I oppose this amendment, because it is absolutely inconsistent with the decision which the Council has just come to."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I do not withdraw my amendment that section 46 be omitted, but I think that as a necessary result of the loss of my amendment on section 45 this amendment will also be negatived."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Maháráját of Durbhunga, moved that section 47 be omitted. He said:—"I think this section as it stands is altogether unnecessary. It simply tries to formulate a rule which is merely a rule of evidence on which the Courts would be guided by the general principles of the law of evidence. If the section is inserted, it will simply be superfluous. If a lease comes after a previous lease, it cannot be said that the raiyat has been newly admitted to occupation under the second lease. I think this question may well be left to the Courts."

The Hon'ble MR. REYNOLDS said :—"This section really seems to me one of the most practical use and value in the whole chapter. A non-occupancy-raiyat is liable to be turned out at the end of an initial lease or any subsequent lease, if he has not attained rights of occupancy. His only protection is in the possibility that the zamíndár will not take the trouble to apply to the Court. The section was retained by the Select Committee, as it gives a very practical and valuable security."

The Hon'ble SIR STEUART BAYLEY said :—"I entirely agree as to the great importance of this section. If this section were of no importance, and if the Courts would always come to the same conclusion without it, I am not sure that I understand on what grounds the hon'ble member is so anxious to expunge it. It is because it is of much value that I object to its omission."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for section 29 the following be substituted :—

"29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

"(*a*) the contract must be in writing and registered ;

"(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

"(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

"Provided as follows :—

"(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

"(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

"(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

1885.] [*Bábú P. M. Mukerji; Rao Saheb V. N. Mandlik; Mr. Reynolds.*]

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I think the draft which has been circulated embodies the conclusions to which the Council arrived at yesterday's meeting after the debate on the Hon'ble Mr. Evans' motion. I should beg only to suggest that the provisions of this section, which applies to only occupancy-raiyats, should be extended also to non-occupancy-raiyats."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The only point I have to suggest is that which was referred to yesterday by the Hon'ble Mr. Evans, namely, the principle which he advocated as to occupation for three years, and which is accepted by the hon'ble member in charge of this Bill. The principle which I maintain is most definite, namely, that of the registration of a lease which is not admitted, as may be seen from the first proviso in this amendment, which runs thus:—

> 'Nothing in clause (*a*) shall prevent the landlord from recovering rent at the rate actually paid for a continuous period of three years immediately preceding the year for which the rent is claimed.'

"The less determinate element is accepted, and the more determinate element is rejected. With regard to the third proviso, which runs thus:—

> '(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable',

I think the term 'specially low rate' is very indefinite, and will lead to litigation; so also is the expression 'in consideration of cultivating a particular crop for the convenience of the landlord'. While I was ready to accept the proposals placed before the Council and afterwards withdrawn by the Hon'ble Mr. Evans, I cannot say the same with regard to the new provisions. They are open to objections which I have above explained. By letting in oral evidence, we are upsetting one of the main principles of the Bill."

The Hon'ble Mr. REYNOLDS said:—"I do not wish to detain the Council after the long discussion which took place yesterday, but I regret that the hon'ble member in charge of the Bill has surrendered the principle that enhanced rent should only be enforced under a registered agreement. The importance of that principle is very great, and even under the circumstances which were so forcibly put before the Council by the Hon'ble Mr. Evans, I still think that the security of a registered agreement is so great that some inconvenience ought to have been risked in order to obtain it. The Behar

Rent Committee decided that there should be no enhancement out of Court, except under the form of a registered agreement, and that was the opinion of practical men, both official and non-official. We know the procedure under which enhancements are obtained in that province, and that there are not many enhancement cases in Behar, because they are not wanted. The landlord simply gets the patwárí to put down the enhanced rent in the jamábandi and he sues on the jamábandi. There is evidence before the Council to show that that is the common way in which it is done. It is true that under this section enhancement cannot take place till after three years, but even with that limit there is great danger in allowing this if we have not the security of a registered instrument. I referred to the precedent of the North-Western Provinces Rent Act, and I was told that the cases were not parallel, because in the North-Western Provinces the agreement may be registered before a kanungo, and we have not that facility in Bengal. I do not admit that does away entirely with the parallel. We have quite as many registering officers in Bengal as there are kanungos in the North-Western Provinces, but I admit that we have not got these village officers at present, and the people are not accustomed to the registration system. But this objection will no longer apply when we have, as I hope before long we shall have, a survey and record-of-rights, and the means of maintaining it in Behar. I trust the hon'ble member in charge of the Bill will not object to put in words in the section which will exclude from the objection of that clause any local area in which arrangements have been completed for a survey and record-of-rights. There will then be no excuse that there is no village-officer before whom the registration can be made. If the hon'ble member will agree to that clause it will remove a good deal of the objection I feel to this proposal. In regard to clause (iii), as to specially low rates of rent in consideration of cultivating particular crops, I should have been better satisfied if it were confined to contracts already existing. I cannot see the necessity for future contracts under this special provision. In future it will be in the power of the landlord to make an agreement at a higher rate, with a condition that the tenant shall hold at a lower rate as long as he grows certain crops. The provision as it stands is calculated to lead to a good deal of litigation owing to its indefiniteness."

The Hon'ble MR. HUNTER said:—"My Lord, this amendment has been attacked both as to the form and as to its principle. The form of the amendment may, I think, be safely left to the hon'ble member in charge of the Bill and to the hon'ble the Law Member. But with regard to the principle embodied in the amendment, I feel bound to say that it seems to me to be both

fair and wise. Hon'ble members of the Select Committee will be aware that I agreed to the section as it stands in the Bill with great reluctance, and I felt that reluctance afresh as I listened to the speech of the Hon'ble Mr. Evans yesterday. No one could have followed that speech without perceiving that the Bill as it stands attempts to legislate in the teeth of the established custom in Bengal. I therefore accept my Hon'ble freind's amendment as the best compromise which has been presented to us. It embodies a principle which the majority of the Select Committee desire to retain, and at the same time it removes certain defects from the section as it now stands in the Bill."

The Hon'ble MR. AMÍR ALÍ said :—"I am very loth to trespass on the time of the Council, but as I spoke against the amendment as it was proposed by the Hon'ble Mr. Evans I wish to say a few words on its present form. I desire to endorse what fell from the Hon'ble Rao Saheb Mandlik. We have introduced a most indeterminate element where there was something determinate before. We have by proviso (i) done away entirely with the beneficial effect of the preceding clause; and with reference to clauses (ii) and (iii) I am bound to say that they appear to me so complicated, involving so many difficult considerations, that the judicial officers trying cases under these clauses may well be required to pass an examination before they are entrusted with the adjudication of those questions."

The Hon'ble MR. GIBBON said :—"I beg to record my approval of the amendment in preference to what is in the Bill. But I regret the Council did not see their way to accept the proposal of the Behar Committee, which met with the approval of the Hon'ble Mr. Reynolds. That proposal was that it should be left to landlord and tenant to come to a mutual understanding provided such agreements are in writing and registered, without determining by law the terms and conditions of the agreement."

His Honour THE LIEUTENANT-GOVERNOR said :—"I accept the compromise as a solution of the difficulty."

The Hon'ble SIR STUART BAYLEY said :—"I think I should offer some reply to the objections which have been made. I did not altogether follow some of the severe criticisms of the Hon'ble Rao Saheb Mandlik. In regard to the first point, the vague and indeterminate drafting of the third clause, I am in the hands of the Council. I can only say that it has satisfied the Hon'ble Mr. Evans and the Hon'ble the Law Member of the Government. I think I may place

their approval against the criticism of the hon'ble member, and I think the Council may safely trust to their guidance as far as the matter of drafting is concerned.

"Then we come to the criticism of the principle involved in the amendment. The Hon'ble Mr. Reynolds objects that I have surrendered the valuable principle of enhancement by registered contract, and especially in regard to Behar. I think I value the principle of registered contracts as much as anybody can. I have always said that I look on this as a most important section of the Bill, not only from the good effect of registration in reducing and simplifying legislation, but also from its indirect educational effect on the raiyat's knowledge of his rights; but I yielded to the strong case made out by the Hon'ble Mr. Evans showing how great a change the law involves in the actual facts of everyday life, and what inextricable confusion may take place unless we take these facts into consideration, and I waited with great anxiety and earnestness to hear what reply would be made to him. I can only ask the Council whether my critics gave or attempted to give anything like a sufficient answer to these arguments, and whether it is not my duty to accept a compromise which gives distinct and definite point to our wish and anxiety that contracts should be registered in every case possible, but at the same time does not enable the raiyat to repudiate an agreement which he had carried out for 10 or 15 years, because at some long antecedent period the rent was low and no subsequent contract could be produced. Defence of such a position was absolutely impossible, and I do not think the Council will be wrong in accepting this compromise. Then I come to the suggestion which the Hon'ble Mr. Reynolds made with regard to the example of the North-Western Provinces Rent Act. He said rightly that the parallel was not exact. Granted that we have a number of registering officers equal in number to the kanungos of the North-Western Provinces, yet the actual difficulty was not in the number of officers but with regard to a record-of-rights being prepared and maintained. In the North-Western Provinces you have such a record, in Bengal you have not, nor have you a registration of rents or the machinery to maintain it. The hon'ble gentleman asked whether I could not see my way to provide that, when Chapter X of the Bill comes into force in any place, this proviso should cease to have effect; that is, that we should insist on the contract being registered before a Revenue-officer. Chapter X refers to the preparation of a record-of-rights; it does not provide either for the maintenance of that record, or for the correction of it or for the control of the officers who have to keep it up. Consequently, Chapter X alone will not give

the facility or the security which the North-Western Provinces system now gives. These matters are, however, within the competence of the Lieutenant-Governor's Council to legislate for, and I will point out that the last section of the Act gives the Lieutenant-Governor power to legislate for the amendment of the Act; and should the time ever come when the system in Bengal is in this respect on all fours with the North-Western Provinces, then it will be quite in the power of the Lieutenant-Governor to assimilate the system in Bengal to the system in the North-Western Provinces, because then the two systems would be on entirely the same basis."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MURKERJI moved, on his own part and on behalf of the Hon'ble the Mahárájá of Durbhunga, that section 48 be omitted. He said:—"The institution of payment in kind is one of the oldest institutions in the country. It has always worked very satisfactorily. It is free from those sources of dispute and litgation which are inseparable from money-rents. It involves no suits for enhancement or abatement of rent. The benefits of a rise in the price of produce are shared both by the landholder and his tenant without the interference of Courts. The tenants are not driven into debt, and if they have to borrow they borrow from their landlord, whom experience has shown to be a much less exacting creditor than the village-usurer. The landholder participates in the profits and losses of the cultivation, and in districts like Patna and Gya, where the *bhaoli* system obtains, the landholder co-operates with his tenants in the cultivation. It is the landholder who clears the water-channels and maintains the embankments. If the works were left to individual raiyats, they would be wholly unable to maintain the works with the limited means at their disposal, and cultivation would come to a deadlock. It would be therefore very inexpedient to give either of the parties the right to make capricious claims for the conversion of produce-rents into money-rents, and I think it would be in the interests of both landholders and raiyats if this section were omitted."

The Hon'ble MR. QUINTON said:—"My hon'ble friend started by saying that payment of rent in kind was for the mutual advantage of the raiyat and the landlord. He thought the parties themselves were the best judges of thei own advantage; and if they find it is for their mutual advantage, neither party will apply for commutation. I would point out that the rule we propose to apply is in force in the North-Western Provinces and the Central Provinces, in which large tracts are under the system of cultivation known as *bhaoli* tenures.

I do not propose to detain the Council by a discussion on the advantages or disadvantages of the *bhaoli* system: on the one hand, it benefits the landlord in seasons of prosperity, on the other, it protects the raiyat from calamities of season. But we think the principle is a sound one that either party to whom it is an advantage should have the option of applying for a commutation of rent. On these grounds I oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"I cannot altogether agree that the doctrine which the hon'ble mover of the amendment has laid down, to the effect that the payment of rent in kind is free from dispute or litigation, is the correct doctrine on the subject, because I have spent a great part of my life in districts where such holdings are common, and my experience is directly to the contrary. I am not one of those who look on payment of rent in kind as in itself an evil which ought to be got rid of. That opinion is very commonly held, and at one time it was held strongly by the Board of Revenue, and it was then their policy to discourage it in every way. This perhaps accounts for the absence of all provisions for dealing with it from Act X of 1859. I have myself seen the great advantage of it. The system is one under which in a bad season the landlord shares the risk, and the raiyat never has to pay more than a certain share of what he reaps; it enables him to tide over a very bad year without being utterly broken down, as he would be if he had to pay a money-rent. In South Behar, where the system most prevails, the country depends very much on the rainfall; water is collected in reservoirs, which are prepared partly by the raiyats and partly at the expense of the landlord; that is, the raiyats supply ordinary labour and the landlord supplies skilled labour besides giving the raiyats a meal during the time they are at work; and this reservoir supplies the smaller channels, the whole cultivation depending upon it. I should be sorry to see a sudden stoppage put to that system. But there is no question that cultivation under the *bhaoli* system is careless and unprogressive; the raiyat knows that the full advantage of whatever better cultivation he may make will not go to himself. I think the hon'ble member's objection would have had great force if the Bill provided, as the original Bill did, that the raiyat or the landlord might demand absolutely and in every case to have a commutation in money; but we have now simply given the right to apply for commutation, and have also given the Revenue-officer a discretion to refuse. It is not possible to lay down definite rules to guide the Revenue-officers whether the application should be granted or not. The circumstances are so diverse that it will be impossible to do it. Speaking for myself, I could easily decide in some cases whether it would be good or bad.

Unquestionably where the interests of a great number of raiyats are concerned, where one reservoir supplies a number of homogeneous holdings with water, it will be entirely wrong to grant the application of an individual raiyat; but where we have to deal only with the holding of an individual raiyat, where this does not depend on one general system of irrigation, I do not see why he should not be allowed to commute. Again in regard to the landlord, the *bhaoli* system is a good one for a small landholder, who can look after the proceeding himself, but for a large landholder, who has to trust to agents, it is a bad one. It allows an enormous amount of simple cheating by the landlord's agents and against the landlord's agents by the raiyats. We must leave it in each individual case to the Revenue-officer, who goes to the spot to decide. I am told that no hardship or injury to the raiyats under this system is made out. This I must absolutely contradict. I would refer you to the opinion of the Commissioner of Patna who succeeded me. He defends the system on the whole on the same grounds as I do, but says it leaves the raiyat at the mercy of the landlord's agents.

"Similar but much stronger remarks are made by the experienced Deputy Collector whose words are quoted by the Behar Rent Committee, and are brought forward by them as the foundation of their recommendation. The proposal that commutation should be allowed was originally made by that Committee and adopted by the Rent Commission, and I find it in every subsequent proposal in regard to legislation for Behar."

The amendment was put and negatived.

The Hon'ble MR. AMÍR ALÍ by leave withdrew the amendment that in line 3 of section 48, for the word "exceeding" to the end of the section, the following be submitted:—

"exceeding one-fifth of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, by leave withdrew the following amendments:—

That in the event of his last preceding amendment not being carried, in clause (*a*) of section 48, line 2, for the word "registered" the word "written" be substituted.

That in clause (*a*) of section 48, line 3, for the word "fifty" the words "one hundred" be substituted.

That in clause (*b*) of section 48, for the word "twenty-five" the word "fifty" be substituted.

That in lines 4 to 7 of section 49, the words from "and after", &c., to the end of the section, be omitted.

That in the event of his last preceding amendment not being agreed to, in line 4 of section 49, the word "written" be omitted.

That in line 6 of section 49 for the word "six" the word "one" be substituted.

The Hon'ble MR. GIBBON moved that for section 49 the following be substituted:—

"An under-raiyat shall not be liable to be ejected by his landlord, except—

"(*a*) on the expiry of the term of a written lease;

"(*b*) when holding otherwise than under the terms of a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord."

He said:—"The subject of sub-letting by an occupancy-raiyat to another person was found to be a difficult one in Committee. I contended we should give the under-tenant as much protection as it is possible to give him; that it is necessary when sub-letting that the agreement should be by written lease, not necessarily a registered one; that when an occupancy-raiyat sub-lets his lands on a verbal agreement the sub-tenant should, in the case of his landlord wishing to eject him, be entitled to hold at a judicial rent for three or five years, or that the sub-tenant should receive the same protection as is to be provided for the non-occupancy-raiyat under the Bill. But the Committee did not see their way to this; the only suggestion they adopted was that, when a sub-raiyat was let in on a registered lease, it should be for a term of years. I admit with reference to a sub-lessee that the Committee have given a sub-lessee on a registered lease every protection possible short of making him an occupancy-raiyat; he is to be let in for a term not exceeding nine years; the lease is also to be treated as an incumbrance on the holding. Under the present law sub-letting is not controlled and a sub-lessee receives no protection. If the tenant acts in collusion with the landlord, it is in the power of the occupancy-raiyat to dispute the sub-lease and avoid all liability; the occupancy-raiyat may surrender or abandon his holding, and the sub-lessee receives no protection. There are two kinds of sub-lessees; one is the capitalist, the other the poor

raiyat; the capitalist has had every protection given him under the Bill, and the defects of the present law are as regards the capitalist sub-tenant to be remedied under the Bill; but the poor raiyat, who is let in on a verbal lease, except that he can only be ejected after six months' notice, receives no further protection. Section 48 provides that the landlord can only sue for a rent not exceeding 50 per cent. over his own rent if on a registered lease, and 25 per cent. if on a registered agreement; it is to this extent only that he gets protection. Occupancy-raiyats who sub-let on bhaoli agreements give no written leases and may eject their tenants at pleasure under the Bill; if they hold their lands at a money rental they might have to forfeit a portion of the outturn crop, but the hardship to the sub-tenant is the same. I propose that he shall only be liable to ejectment on the expiry of a written lease, or when holding on a verbal engagement, or on notice to quit served in the year previous to the one at the end of which he is to be ejected. This will in all instances insure him one year and a half's possession of the land. That is the least protection we can give him, for the poor raiyat is entirely dependent for his living on the property he holds, and we give him no protection except that of six months' notice; he should receive at least a year and a half's notice."

The Hon'ble MR. HUNTER supported the amendment:—He said:—"One of the acknowledged defects of the Bill as it stands is the scant protection which it gives to the under-tenant. The Select Committee clearly perceived this defect; but they did not so clearly see their way to remedy it. I regard my hon'ble friend's amendment as a fair and very moderate attempt to supply what I have always felt to be an omission in the Bill. Its effect will only be to render the eviction of an under-tenant a somewhat more difficult and tardy process. I would press on those who have not hitherto seen their way to agree with my hon'ble friend and with myself in this matter, that the under-tenant is the tenant of the future throughout large areas of Bengal, that already his numbers have become a most serious problem, and that he is the only class of tenant for whom the Bill has failed to make any adequate provision."

The Hon'ble MR. AMÍR ALÍ also supported the amendment. He said:—"I think the reasons which have been advanced by the hon'ble mover of the amendment are very cogent, and it is unnecessary for me to add anything further."

The Hon'ble SIR STEUART BAYLEY said:—"I am very sorry I do not see my way to accept this proposal; the first part of the amendment, I think, unnecessary, as it is a part of the present law; if you hold under a lease you can only be ejected on the expiry of the lease. With regard to those who hold without

written leases, the law provides for a notice of six months, and I do not think it is shown to be really necessary that we should give him 18 months' notice; on a notice of six months he should be able to move elsewhere and take up another holding."

The Hon'ble MR. GIBBON said in reply:—"With reference to a written lease, my reason is that that may be an inducement to holders to give written leases, so that they may at the end of the lease eject without notice, whereas without a lease they are bound to give notice. The giving of written leases should be encouraged as much as possible."

The amendment being put, the Council divided:—

Ayes.	*Noes.*
The Hon'ble G. H. P. Evans.	The Hon'ble J. W. Quinton.
The Hon'ble H. St.A. Goodrich.	The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. J. Reynolds.	The Hon'ble Rao Saheb Vishvanath Narayan Mandlik.
The Hon'ble W. W. Hunter.	The Hon'ble Sir A. Colvin.
The Hon'ble Amír Alí.	The Hon'ble Sir S. C. Bayley.
The Hon'ble R. Miller.	The Hon'ble C. P. Ilbert.
The Hon'ble T. C. Hope.	Lieutenant-General the Hon'ble T. F. Wilson.
His Excellency the Commander-in-Chief.	The Hon'ble J. Gibbs.
His Honour the Lieutenant-Governor of Bengal.	

So the amendment was agreed to.

The Council adjourned to Monday, the 9th March, 1885.

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

SIMLA;
The 28th April, 1885.

Government of India Central Printing Office.—No. 813 L. D.—6-5-85.—360.