Thursday,
5th March, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

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

The Council met at Government House on Thursday, the 5th March, 1885.

PRESENT:

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

BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble the Mahárájá of Durbhunga's amendment that in line 4 of section 23 of the Bill, after the word "unfit" the words "or permanently less fit" be inserted, was resumed this day.

His Excellency THE PRESIDENT said that, at the close of yesterday's proceedings the consideration of section 23 of the Bill was postponed, with the view of considering an amendment which had been moved by the Hon'ble the Mahárájá of Durbhunga. HIS EXCELLENCY understood that the hon'ble member in charge of the Bill thought he would be able to meet the Mahárájá's wishes.

The Hon'ble SIR STEUART BAYLEY said:—"I propose to meet the hon'ble member's wishes in the following way, by the insertion of the words 'materially impair the value of the land or' after the words 'does not' in line 4 of section 23.

The amendment was put and agreed to.

The Hon'ble MR. AMÍR ALÍ said:—"Before I move the next amendment, which stands in my name, I would beg permission to make an alteration in clause (*a*). The amendment will run thus:—

That after Section 24 of the Bill the following section be added:—

An occupancy-raiyat shall be entitled in Bengal Proper to transfer his holding in the same manner and to the same extent as other immoveable property:

'(*a*) Provided, however, that, where the right of transfer by custom does not exist, in the case of a sale the landlord shall be entitled to a fee of 10 per cent. on the purchase-money.

'(*b*) Provided also that a gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.

'(*c*) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

'(*d*) When any such notice has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.'

"With reference to the subject of this motion, I have already pointed out the reasons which lead me to think that the excision of the transferability clauses from the Bill has been a mistake, and I do not wish to take up the time of the Council at any length in support of the contention that those clauses should be restored. I believe it has been sufficiently established that the raiyats who possess the right of free transfer are more prosperous and better able to withstand the visitations of famine and scarcity than those who do not possess that right. And I believe it has also been sufficiently proved that the fears which are entertained by some people, that if the power of free transfer is given to occupancy-raiyats, the holdings will pass into the hands of moneylenders, are in the main groundless. The information collected at the instance of the Bengal Government, I think, has established conclusively that it is not the case that where the right of transfer is exercised by raiyats their holdings pass into the hands of money-lenders; that in the majority of instances the transfers are, as a matter of fact, made to *boná fide* cultivators; and that wherever the right

exists and is exercised the raiyats hold with the utmost tenacity to their holdings; that their cultivation is better and their standard of living superior to those of other raiyats. It also, I believe, is shown upon the evidence to which I have referred that changes in the ownership of occupancy-holdings are less frequent than among the proprietors themselves. I will call one instance to the recollection of the Council, and that is the case of the guzáshtadárs of Shahabad. In view of these circumstances I would urge upon the Council the acceptance of my amendment. I know that the excision of the transferability clauses has met with the approval of the Executive Government and the high authority of Your Excellency; and therefore in bringing forward the present motion I do so with a certain amount of hesitation and diffidence. The question, however, is one of very great importance, and my apology for urging it on the Council consists in the testimony borne by the hon'ble member in charge of the Bill himself to the prosperous condition of the raiyats who possess the right of transfer. It is said that the right of transfer would prove detrimental to the interests of the zamíndárs. With reference to that I desire to make one or two observations, and I hope they will be considered carefully by the Hon'ble Peári Mohan Mukerji. The zamíndár has been given the power of selling up an occupancy-holding in execution of decrees for arrears of rent, even when there is no right of transferability attached to the holding itself. Of course, where the right of transfer is attached to the holding, as in Bhagulpore and Shahabad, higher prices will be obtained for such occupancy-holdings. But in places where there is no right of transfer possessed by the raiyats the value of the holding will be nominal, and the price obtained will not cover the amount of arrears and the cost of litigation. Then, in the next place, we have made no change in the power of sub-letting. Well, sub-letting having been maintained without any change, it is not difficult to imagine that people wishing to buy occupancy-holdings can easily get round the provisions in the Bill against absolute transfer by simply offering a good salámí and getting the holding in that way. The very complications which the zamíndárs wish to avoid by keeping back the power of transfer will arise under the power of sub-letting. Therefore, by denying the right of transferability, by making it dependant upon custom, we have not gained much, but we have done considerable harm. I believe the Council is aware that, where the right of transferability has not been sufficiently established by long usage, a small fee is paid by the raiyat for obtaining the consent of the landlord; not unfrequently he has to pay, besides, a conciliation fee to the ámlá. In places where the custom has been long established, where the practice has been recognized by long usage, the raiyat does not pay any fee. The question having been raised as to the right of the occupancy-raiyat to transfer the

tenure, there is every reason to fear that the zamíndárs, even in those places where the right of transfer has been up to this time exercised without question, will not allow it unless a substantial portion of the purchase-money is made over to them. Whether that eventuality is one which is at all desirable I would leave to this Hon'ble Council to judge. I believe the legislature would be extremely unwilling to leave, by the excision of the transferability clauses, any such loophole which will either endanger rights which do exist and are exercised at present, or will be likely to interfere with the growth of the custom of transferability which is admittedly doing so much good towards the prosperity of the raiyat. I will only add a few words to explain the meaning of the amendment. As a matter of fact, the Council will perceive that what I ask for is the re-insertion of the clauses in the former Bill with a slight modification, namely, in clause (*a*). That clause did not exist in the sections which were cut out of the former Bill. My object in inserting it is to give to those landlords on whose estates the right of transfer does not exist a substantial fee by way of salámí for their consent or acquiescence in the sale. The fee they now get is a fee of an unrecognised character. By clause (*a*) they will get a recognised substantial fee. Of course, in places where the right is exercised now without dispute, they are not entitled to any fee, and it will not be right for them to expect any. In the second place, I confine the operation of the section to Bengal Proper. The Bengal Government in its letter of September last pointed out the reasons why it is desirable to confine the right of free transfer to Bengal Proper.

'In Behar there are various reasons which render it expedient not to extend the right to the whole of that province independently of existing custom. I had accordingly brought forward a proposal in Committee to exclude Behar from the operation of the proposed provision to render occupancy-holdings generally transferable. That proposal was not accepted, but the Committee have since decided to omit the transferability clauses with reference to the entire province. I agree with the Bengal Government in the view that the right should be confined to Bengal Proper alone, and consequently my amendment refers to Bengal Proper alone. As for the meaning of 'transfer' and 'gift,' they are defined in the Transfer of Property Act, and for this reason ble I do not think it is necessary to insert any definition of those words here. I beg therefore to move that the clauses which I have read out may be re-inserted in in the Bill, and the numbering of the sections be altered accordingly."

The Hon'ble SIR STEUART BAYLEY said:—"I have been permitted to explain

to the Council what my own personal views are on the subject; but as a member of the Executive Council, the Executive Council having decided that transferability of these tenures should not be accepted as a principle of general application in this Bill, it is not right that I should ask the Council to support the amendment of my hon'ble friend opposite, nor, under the circumstances, do I think that I am justified in again taking up the time of the Council in explaining why the Executive Council decided not to have it. In its present shape it is clear that the amendment is one which could not receive the countenance of the Government of Bengal, and I therefore think that any discussion on it would be of no practical value. But I would like to point out that the amendment does not provide for the great difficulty which the Government of Bengal had felt in reference to the necessity of excluding the moneylenders. The Government of Bengal, in a letter of September last and subsequent communications, remarked that, even if the right is restricted to Bengal, still they could not support it, unless it was so hedged in that occupancy-holdings should fall only into the hands of persons who derived their main support from agriculture. The motion does not meet the *sine qua non* to which the Government of Bengal insisted, nor can it be accepted without other difficulties arising. It was left, for instance by this motion, for the Courts to decide what 'Bengal Proper' was, and in the next place the registering officer would have to decide what was the custom, and whether it existed or not. With these remarks I leave the matter in the hands of the Council."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"When the Government of India recommended a provision for the free sale of occupancy-holdings, they were not ignorant of the possible injury which such a provision would give rise to. In their despatch to the Secretary of State the Government of India said :—

'So far we have considered the landlord's interests, but the protection of the raiyat is a matter of much greater difficulty. The moneylender by means of mortgage might appropriate the whole profits of these holdings, or by foreclosure or purchase he might be possessed of the occupancy-right.'

"The question was thoroughly discussed in Select Committee, and it was found that not only high officers of State considered it to be a dangerous provision, but that the experience which the country had obtained from the operation of such a provision in the Dekkhan and the Sonthal Parganás showed clearly that was not at all desirable. The Chief Justice of Bengal truly remarked with reference to this that he 'thought it equally true, on the other hand, that to give a poor population like the Bengal raiyats

the means of selling or mortgaging their tenures at pleasure was a certain means of making them improvident or unthrifty.' It was, therefore, in the interest of the raiyats, and not in the interest of the landlords, that this provision was abandoned by the Select Committee. The hon'ble member has stated in support of his amendment that the condition of the raiyats in places where the custom obtained was one of greater prosperity than in other places. But the question should be viewed in its proper light. In places where this custom has obtained, the institution has been brought about under the operation of the rule of the survival of the fittest. In such cases the institution must necessarily be suited to the requirements of the locality, and must, therefore, be productive of much good; but to thrust upon a poor and improvident people the power to deprive themselves of their substance and homesteads, and of their means of living, is, I submit, not altogether consistent with the other provisions of the Bill. The Select Committee not only provided for a fee to be given to the landlord for his consent to the sale, but they also provided that the landlord could either accept the fee or veto the sale upon three grounds: *first*, that the purchaser was not a cultivator; *second*, that he was a bad character; and *third*, that he was an enemy of the landlord. If the hon'ble mover of the amendment had moved an amendment for recommending the insertion of a rule for free sale with these restrictions, I would have had no hesitation in giving my support to it; but, although I should have found no difficulty in supporting it, I should have thought it was a dangerous one in the interest of the raiyat."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The Bill as it comes to us is the work of the Select Committee, who have carried out the wishes both of the Government of Bengal and the Government of India. I therefore think the onus is upon those who come here to advocate a change, unless it can be practically shown that the change is one for the good of the country. So far as I have followed the current of the decisions of the Bengal High Court, a mere occupancy-right does not carry transferability so far as Bengal is concerned. I think that the four corners of the present legislation are enough for our present purpose without going either to the Dekkhan or other parts of India. I think that sufficient has been conceded on the lines of the Bill as it stood. If occupancy was not transferable according to the law as it was interpreted by the High Court, and if the Government of Bengal and the Government of India thought fit that legislation should not advance further, they had devised restrictions for the protection of the public. Whether it was the landlords or the raiyats who required protection, that was hardly the place where one could now go into the question of absolute transferability. It was

too large a question. I think that the Council should remember that if the section now proposed were introduced a very large number of sections would have either to give way altogether or would have to be further hedged in by restrictions, which I think it would be very difficult at this stage to introduce. I will, therefore, oppose the motion."

The Hon'ble MR. REYNOLDS said:—"I agree with a great deal of what has been said by the hon'ble mover of the amendment, and especially with regard to what he said as to the additional value which would be given to the occupancy-right by the concession of the power of transferability. The question has been very fully and ably discussed by Mr. Field in a note to his Digest of the Rent Law, and his conclusion was in favour of declaring the occupancy-right transferable. I must add that I cannot altogether assent to what the Hon'ble Peári Mohan Mukerji said with reference to the precedents afforded by the Sonthal Parganás and the Dekkhan. I do not think they are cases in point with reference to Bengal. The danger of giving to occupancy-raiyats the power of transferability is the fear of the lands falling into the hands of moneylenders, and this is a real danger in places like the Sonthal Parganás and the Dekkhan, where the moneylending classes are an alien race, having no community of interest with the people. We have in the Sonthal Parganás moneylenders who are Bengalís, and in the Dekkhan the moneylending class are Marwáris; but that is not the case in Bengal, and I am still of opinion that with certain safeguards the right of transferability might have been recognized in Bengal without any danger to the interests of the people. But at the same time I am not satisfied with the form of the amendment; for instance, in clause (*a*) it is provided that where the custom of transferability does not exist, a fee of 10 per cent. shall be payable to the landlord. Such a fee, in my opinion, is too high, and the hon'ble member has not provided for cases in which the right exists by custom subject to the payment of a fee. Then the hon'ble member proposes that a gift shall not be valid unless it is registered, but he has not provided for the case of sales being made under cover of a gift; and above all there is no provision in the amendment for ensuring that occupancy-holdings so transferred shall continue to remain in the hands of the agricultural classes. Though I believe the danger of the money-lender's intrusion has been much exaggerated, I admit that there is some residuum of danger in connection with this matter, against which precautions should be taken, and in the present state of Bengal I should be sorry to see the right of transfer freely imported into the Act without any safeguard against the evils to which I have alluded. I therefore cannot support the amendment."

The Hon'ble MR. HUNTER said:—"My Lord, I had not intended to speak on this amendment, because I am much in the position of my hon'ble friend Mr. Reynolds. I think the amendment in substance good, but I am unable to accept the form in which it is put. To my mind there can be no doubt that the evidence before this Council—evidence which has been carefully gone into by the Select Committee—has abundantly established the fact that the sale of occupancy-rights is growing into an established custom. I believe that by leaving the sale to custom we are subjecting poor men, needy men, to a number of exactions, and to a number of very serious inconveniences during the process of sale. But while I feel very strongly that it would have been a great advantage to the raiyat if we could have given the effect of law to that custom, I do not see my way to accept the amendment in the form in which it has been placed before the Council."

The Hon'ble MR. GIBBON said:—"Much as I desire to see the right of transferability adopted and legalized, I must oppose the amendment. While I desire to see the right of transfer legalized, I wish also to see the just interests of landlords protected, and the country protected against the evils of land-jobbing: neither this evil nor the interests of landlords are protected by this amendment. Much as I desire to see the right of transferability adopted, it should, in my opinion, be adopted for the whole province, and not for Bengal Proper alone. To legalize transferability for Bengal and not for Behar will hereafter be looked upon as having prohibited it for Behar. The hon'ble member has given many reasons for desiring to give the right of transferability, but he has given no reason which is not equally applicable to the circumstances of Behar; if they apply to the circumstances of one province, they apply equally to both. If we legalize transferability in Bengal, not in Behar, it should be by a separate Bill. I am sorry therefore I must object to the amendment."

His Honour THE LIEUTENANT-GOVERNOR said:—"This is an old question which has passed through several stages of consideration up to its final abandonment by the Government. The hon'ble member who moves this amendment will not doubt that, as far as my own views go, I sympathize entirely in the position he takes. The recognition of the free right of transfer on behalf of raiyats having occupancy-rights would, in my judgment, ultimately be a great benefit to the country, though I am willing to admit that, as regards its present adoption, there is no question in which my own opinion has undergone greater modification than in this one. In our first proposal to the Government of India two years ago we recommended the adoption of the right of transfer throughout

Bengal in the belief, which we thought sufficiently established, that the practice of transfer was generally prevalent; but later enquiries seemed to show that what might be safe in Bengal would not, under the peculiar conditions and circumstances of Behar, be safe there; and in our second letter we desired to confine the exercise of the power to the districts of Bengal Proper. But even as regards that Province the point which claims especial consideration is that the zamíndárs themselves have shown the strongest opposition to the acceptance of the proposal; and certainly I can speak from my own experience that, in all my interviews with zamíndárs on the subject of this Bill, no question has been more prominently brought forward and opposed than this one, and further that the opinions which have been expressed in non-official communications and in the writings of the Press have condemned the policy as one which is likely to be attended with serious evils in the transfer of lands from the hands of the agricultural classes to those who have no interest in agriculture. We have thus to take account of the fact that there is a strong outside hostility to the legal recognition of the right of transfer in this class of raiyats. I fully support the view taken by my hon'ble friend Mr. Reynolds that any reference to the case of the Sonthal Pargánas or that of the Dekkhan affords no parallel to the circumstances of Bengal. In the Sonthal Province there is an aboriginal people, rude, half-civilised and uneducated, amongst whom large numbers of money-lending Bengalís are settled; and to open the door to the transfer of occupancy-rights among such a people would undoubtedly lead, and has already led, to evil effects. But the parallel does not hold good where you have to deal with a people who are beginning to know the value of landed property and can use the discretion as to parting with it or not. Still after much consideration the safer view has prevailed that the introduction of any provisions like those which the hon'ble member has moved should not form a part of our present legislation; though in accepting this view we must all realize the fact that we do not thereby close the door to the growth of a system of transferability. The fact is that the practice obtains all over the country; it extends to a considerable extent in Behar; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district in Bengal is one which no one can dispute; it comes before us on the unquestionable authority of the Registration Department, and is admitted by the landholders themselves. Therefore, I think it is quite our wisest course to let the practice develop itself, and in a few years it will be very much easier to recognise the practice from the fact of the custom having become established. In view of all these circumstances I would strongly press upon the hon'ble member to withdraw his amendment."

His Excellency THE PRESIDENT said:—"As a reference has been made to my connection with this subject, I should like to have an opportunity of expressing my own opinion upon it. In the first place, we have to consider the matter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of sale or transfer, and the Courts of Bengal, as I understand, have hitherto maintained this view. It is therefore a question as to how far we should be justified in giving the occupancy-tenant a right carrying a money value to which he has not hitherto been entitled by law. That he should have it by custom is a totally different question. It stands to reason when a landlord has allowed such a custom to grow up, when the landlord has permitted sales of occupancy-interests to take place, it is but fair and just that the actual tenant, who has paid consideration for the occupancy-right, should be allowed to dispose of it upon the same conditions as those upon which he bought it. Without, however, wishing to pronounce dogmatically upon this part of the question, I have to observe that when the matter was brought to my notice the Government of Bengal had already decided that the legalising of the custom was at all events not desirable in Behar. It was also decided that its application to Bengal must be hedged and restricted by various safeguards, one of which consisted of the right of the landlord to bar the transfer where the transferee was objectionable to him. Thus it became apparent that even its application to Bengal might be also questioned. I can quite understand that the hon'ble member who has moved this amendment should take a different view of the question, because I believe that he is more immediately acquainted with a part of the country where the raiyats are in a very satisfactory and strong position; and undoubtedly, where that is the case, transferability is not only a convenience, but works without injury to the raiyat and with advantage to the public. But, on the other hand, we must remember that if the amendment were to be adopted we should at once confer upon vast numbers of indigent men the right and the opportunity of mortgaging the land on the unembarrassed condition of which the salvation of themselves and their families depends. However, I need not enlarge upon this view of the question, because the remarks which have already fallen from the Lieutenant-Governor I think amply justify the view which has been taken of the subject by the Government of India. I think it right, however, to say, on behalf of myself and my colleagues, that if, at this stage of the proceedings, arguments had been adduced in favour of such an amendment as that which has been proposed by Mr. Amír Alí, we should have been quite prepared to give to them that attention which they deserve. But, so far from that being the case, even those

other members of the Council who are disposed to look with an indulgent eye upon the principle in the abstract, announce to us that they do not feel themselves in a position to support it. Under these circumstances, we—I for one, and I imagine all my colleagues—feel that there is no reason whatever why we should depart from the conclusion at which we originally arrived."

The Hon'ble Mr. Amír Alí then by leave withdrew the amendment.

The Hon'ble Bábú Peári Mohan Mukerji moved that to section 25 of the Bill the following clause be added :—

"that he has defaulted to pay within fifteen days the amount of a decree for arrears of rent passed against him."

He said :—"Both the Rent Commission and the Government of India recommended the abolition of the provision for ejectment for non-payment of rent simply on the ground that it would be incompatible with the condition for free transfer of a raiyati holding; but now that the provision for free transfer has been expunged from the Bill, I submit that the permissive provision for ejectment for non-payment of rent be inserted in the Bill. The power of ejectment has been enjoyed by landholders from 1793, and, notwithstanding all that has been said by some officers, I challenge not only strict enquiries but any reliable evidence of the fact that the power has been abused during such a long time. And when there is no evidence of that fact I submit that it will be inexpedient to deprive landlords of a right which gave them an effective remedy in cases of non-payment of rent. It acts as a threat on the raiyat against default and delay in payment of rent, and I think the power is essentially necessary to enable landlords to collect their rents with punctuality now that the provision of free sale has been done away with. It has been observed by my hon'ble friend Mr. Amír Alí in moving his last amendment that power has been given by the Bill to put up to sale a defaulting holding, but I need hardly inform the Council that it is no new power which the Bill has given to landholders; it is a right which they have all along enjoyed but which the Committee thought was of no earthly use to them, because when a man has the choice of either putting up a defaulting holding to sale or of applying for ejectment it will be in the interests both of the landholder and the raiyat that the landholder should apply for an order of ejectment and not for sale. An order for sale involves much additional cost on the raiyat in respect of the necessary processes of Court, such as the proclamation for sale, sale-fees, and so forth, and in the majority of cases it is found, as has been justly remarked by the Hon'ble Amír Alí, that the proceeds of sale does not cover even the cost of processes. The

provision for sale as a substitute for the power of ejectment is liable to this further objection, that even when a sale has been effected it is in the power of the raiyat to apply for the reversal of the sale, and a suit to that effect may be carried on for years, and the question whether the sale was valid or whether it was invalid would not be settled till years after the sale was effected. In the meanwhile the purchaser has invested money in the land, and other rights have accrued; and if the sale is ultimately set aside both the raiyat and the landlord will be seriously damaged. I submit that in the interests of the landlord and that of the raiyat himself, the provision for ejectment contained in the present law should be maintained."

The Hon'ble MR. EVANS said:—"I do not feel justified at this stage of the proceedings in supporting a motion for allowing the old form of ejectment. I always had great doubts whether the change made in the Bill would be beneficial; but as this is one of the cardinal points in the Bill I do not think there will be any chance of the Council re-considering the matter, which has been settled and which has such great authority in its favour.

"I entertain very considerable doubts as to its working well. I think that, instead of having to resort to these execution-processes, the landholder should be able to ask the Judge, in cases where there was no bid or an insufficient bid, to stop the sale and make the amount payable within fifteen days. I have not made any substantive proposition, because I am not clear that the relief will be sufficient to justify my introducing any amendment of that kind. I feel that there are inconveniences to the zamíndárs, and I can only hope that it will work out better than the ordinary execution of money-decrees is working in this country."

The Hon'ble MR. GIBBON said:—"Had the hon'ble mover accepted the suggestion I threw out to him in Committee that the order for ejectment should act as a full acquittance of the decree, I would have given him my co-operation. The hardship in adopting the old law, allowing the judgment-debtor to be ejected if he does not pay the amount of the decree within fifteen days, lies in the fact that when he is ejected the decree still holds good against him, and he is still liable to pay the full amount of the decree. I accept the provisions of the Bill simply as the better of two evils, not as an effectual remedy. The provision in the old law which allowed the zamíndár to eject if the defaulter did not pay the amount of the decree was valuable only on account of the moral effect it had on the raiyat; and as such it was necessary, I think, to embody it in the Bill; at the same time the difficulties in the way of transfera-

bility which have been stated by the Hon'ble Mr. Evans are very true. I have often found that nobody would bid at the sale of the raiyat's holding and the holding had to go back to the same raiyat. At the same time the difficulties stated by the hon'ble mover of the amendment are also true; process and sale fees are so exorbitant that the amount realized from a sale is often hardly sufficient to cover them. The remedy lies in reducing process and sale fees and in applying a rule of percentage on the amount of the decree or the amount of purchase-money realized."

The Hon'ble SIR STEUART BAYLEY said:—"I understand the hon'ble mover of the amendment to assert that the Rent Commission originally recommended this system of ejectment on the ground that, as there was to be a free transfer of occupancy-holdings, ejectment would be incompatible with it, and he also said that the Government of India had settled it on this ground. But I must point out that this was an entire mistake. Neither the Rent Commission nor the Government of India connected it with the question of free transfer generally. What they did connect it with was the fact that sale for arrears of rent was provided, which is quite different from the question of free transfer generally; consequently the fact of having removed free transfer from the Bill makes no difference whatever in the grounds urged both by the Rent Commission and the Government. I will read what the Rent Commission said:—

> As an occupancy-holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent. We have accordingly enacted (section 20, clause (*e*)) that no raiyat may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such raiyat and his landlord have contracted in writing that the raiyat shall be liable to ejectment for a breach thereof.

And they went on to express their dislike of the system of forfeiture. I think the hon'ble member will find also that the Government uses the same language. The hon'ble member will, therefore, see that the question did not in the least depend on the question of transferability generally, but particularly whether the occupancy-right should be sold for arrears of rent or not; and, as we have maintained the process of sale, we are justified in saying that we are carrying out the views of the Rent Commission, the Government of India and the Secretary of State, all of whom have held that where we have the right of sale we do not want also the process of ejectment. At the same time I may remind the hon'ble member, as I pointed out before when the question was discussed two years ago, that though evictions through the Courts were not

frequent, yet illegal eviction was very frequent; and I at that time quoted an experienced Magistrate, Mr. Edgar, who had a return prepared of complaints preferred in his district on this ground, which amounted, if I recollect right, to some 500 in two years. The Government of Bengal had supported this statement. As a matter of fact it is not the action of the Courts in this matter which we dread; it is the threat of ejectment hanging ever over the head of the raiyat which paralyses his industry, and makes him an easy prey to extortion and oppression. It is this tremendous engine in the hands of unscrupulous subordinates which we desire to restrain. The hon'ble gentleman admits that the real use of ejectment is that it acts as a threat, and I think he said it had a very moral effect. We are agreed as to the power, but scarcely as to the moral effect, of the threat. He would wish us to believe that this power is desired in the interest of the raiyat. Such an interest I believe the raiyat and the raiyat's well-wishers would very gladly forego, but I can hardly suppose that my friend uses the argument seriously. That it is in the interest of the zamíndár I can understand, and if he puts it on that ground there is a fair scope for argument; but when he claims that it is in the interest of the raiyat that he should be ejected and the surplus value of his holding and improvement should go into the pocket of the zamíndár I do not understand. More especially I do not understand it as applied to the amendment in its present form. In order to give it even a semblance of fairness he should have supplied the omission which the Hon'ble Mr. Gibbon has pointed out; he has not put in any provision that ejectment in execution of a decree should be deemed to be a full satisfaction of a decree; he has left the raiyat liable for the amount of the decree even after the landlord has got the land in his own possession and has got into his own pocket the value of any improvements effected by the raiyat on the land. The Hon'ble Mr. Evans has thrown out a suggestion that there might possibly be made a relaxation in the form of the section in case of the sale of the holding not fetching the full amount of the decree. That question was brought before the Select Committee and was discussed, but I do not see any amendment on the notice-paper concerning it. I may, however, inform the Council that one of the grounds on which it was felt to be unacceptable was this, that it would make it the landlord's interest in every case to prevent the raiyat's holding being sold for anything like its full value; if he could fall back upon ejectment without compensation when the price bid was low, it would clearly be his interest to keep the price low, and a powerful landlord would have little difficulty in doing this by keeping away other bidders; but the thing which strikes at the root of the amendment is this, that it is really unnecessary: ejectment is of necessity included in sale, it is merely a question of whether improvements

should be forfeited also, for it is obvious that the landlord in the process of sale has a power of ejectment; he puts the holding up to sale, and if he does not get a bid he buys it for four annas or eight annas and the man is ejected. I do not think it necessary to go beyond this. On the main question I may say that we have intentionally and deliberately restricted the power of ejectment, because we think that at the best it is a dangerous power, and it has been part of the deliberate policy of the Government from the beginning of the rent question, from the despatch to the Secretary of State and his reply, to restrict ejectment in every way we can. For these reasons I shall vote against the amendment."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"After what has fallen from the Hon'ble Mr. Evans and the Hon'ble Mr. Gibbon I wish to ask His Excellency's permission to move the amendment in a modified form, namely, that—

'Ejectment under this section shall be in full satisfaction of all demands under the decree.'"

The Hon'ble SIR STEUART BAYLEY said:—"I think it is rather late in the day to raise that question now; it was raised and discussed in Committee, and the hon'ble member has deliberately moved his amendment without it. I do not think that it is quite fair to present a new amendment now in consequence of suggestions which have been thrown out in the course of the debate, but at the same time I do not wish to object to the amendment in this case being put."

His Excellency THE PRESIDENT allowed the Hon'ble Bábú Peári Mohan Mukerji to propose an amendment in the modified form, which he asked permission to do.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I rely on the statements which the hon'ble member in charge of the Bill has read from the report of the Rent Commission and the despatch of the Government of India to the Secretary of State, and it was those statements which I had in my mind when I referred to those documents. The statements may be differently interpreted, but in connection with the fact that the power given to the landlord to put up to sale a holding for which rent is due is not a new power, but one which landlords have exercised since 1793, if not from an earlier date, I think that no meaning other than what I have put on it can be given. The mistake of the Rent Commission and the Government of

India lies in supposing that the power of bringing defaulting holdings to sale is a new power given to landholders. But that is not so. Then the hon'ble member has asked how the provision for ejectment can be in the interest of the raiyat. I have explained fully in the speech I have already made that when a sale is effected certain expenses must inevitably be incurred; expenses of application, expenses of proclamation, fees of sale, and so forth, must ultimately fall upon the raiyat; and if the sale-proceeds do not cover them, the landlord has the right of realization by the sale of the goods and chattels of the raiyat and other processes; whereas the order for ejectment will free the raiyat from any such expenses; and if in addition to that it be conceded as an entire satisfaction of the decree in the execution of which ejectment is made, nothing will be more welcome to the raiyat, as it will save him not only from the expenses incidental to sale, but from all liability under the decree. I submit that in this modified form the proposal should commend itself to the Council."

The Hon'ble MR. EVANS said:—"If the zamíndárs are willing to put it in this form, I should be inclined to give preference to it, provided it was coupled with the further provision giving compensation for tenants' improvements. That, however, is a matter which will require careful consideration, but it seems impossible that at this late stage of the proceedings it can be accepted. As I said before, I should have been glad to support any proposal which would have the effect of modifying the rigour of the law, because the court-fees and process-fees swallow up the value of the property in dispute. From some reliable data which I have recently received as to the summary process of distraint for irrigation-dues, I find as a positive fact that in the majority of cases where the amount of the distraint is small the costs of process far exceed the amount to be paid. I feel that it is in the power of the Executive Government very greatly to diminish the evil by lowering process-fees, and I can only hope that in the interest of the raiyat the very warm anxiety displayed by the Government will induce them, having regard to all the circumstances, to use some means of reducing the cost of process. If that is done the raiyats will have a great benefit conferred on them."

His Honour THE LIEUTENANT-GOVERNOR said:—"The inconvenience of allowing fresh amendments to be raised in the course of the discussions has been forcibly exemplified in this instance. It seems to me very unreasonable that the hon'ble member should, after having gathered the views of other hon'ble members upon a question brought forward by him, raise a new dis-

1885.] [*The Lieutenant-Governor; The Maháráját of Durbhunga; Bábú P. M. Mukerji; Mr. Reynolds.*]

cussion in an amended form in the hope of catching some votes in support of his proposal. Here we have been led into a long discussion as to the character and amount of process-fees. Instead of adhering to the amendment of which he gave notice, he raises a question on a point with regard to which the Council has received no notice. I shall certainly oppose the amendment. I think it is not convenient to review the subject in any modified form after the question has been thoroughly discussed and the proposal has been rejected."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to section 25 the following clause be added:—

"(*c*) that he has not paid his rent at the appointed time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that to section 25 the following clause be added:—

"that he has committed persistent waste by neglecting the repair of irrigation-works or caused the deterioration of the soil."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. I think a provision like this will be a necessary provision by virtue of the addition which has been made to section 23 on the motion of the hon'ble member in charge of the Bill. The Council has already decided that the raiyat should not have it in his power to deteriorate the quality of the land, and I think in all consistency we should see that some penalty should be attached to a breach of that provision. I think the form in which the amendment is put is the form which the penalty should take for a breach of the provision."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment. It appears to me that a good deal of what the hon'ble member in charge of the Bill has said in speaking on the amendment in regard to ejectment for non-payment of an arrear applies as much to this amendment. The objection is to what the hon'ble member called the moral effect on the raiyat, not a moral effect in compelling him to do his duty, but in dealing with any claim of whatever kind made against him by his landlord. I do not think it can be fairly said that, because we have inserted in section 23 the words that a raiyat must not materially impair the value of the land, it follows that we should provide the penalty of ejectment as a proper penalty for a breach of duty in that respect. What the amend-

ed| clause proposes might be a ground for damages or for an injunction, but I cannot admit that it will be a reasonable ground for ejectment, the landlord having his remedy of not being injured as long as the rent is paid and having the right to sell in default. Then the words proposed seem to me to be dangerously wide. It is not easy to say what is persistent waste, or that a man has neglected to repair irrigation-works without some definition of his duty as to such repairs. I do not think such a suit would be likely to be successful, but there is the fact that danger would arise from the moral effect such a provision is likely to have. The same remarks apply to the words 'deterioration of the soil'. We should, I think, leave the landlord his remedy by way of a suit for damages or injunction against the cultivator, but I am strongly opposed to the principle of suing for ejectment on such grounds."

The Hon'ble SIR STEUART BAYLEY said:—"What I had to say has been anticipated by the Hon'ble Mr. Reynolds. As I said before, it has been the deliberate policy of the Government of India to restrict the grounds for ejectment. On looking at Mr. Field's digest, I see that in giving the substantive law in the text that 'the raiyat shall not, without the consent of the landlord, materially alter the condition of the land held by him, and render it unfit for agricultural or horticultural purposes' the remedy is stated to be a suit for damages or an injunction to restore the land to its original condition. He says the conditions of good agriculture are not sufficiently understood in India to raise a question of this nature. The hon'ble member will recognize Mr. Field as an authority on a point of this kind; but, without basing my argument entirely on Mr. Field's authority, I think the importance of not permitting the threat of ejectment in every case between landlord and tenant is so great that when other remedies can be found we ought not to give such a power. I therefore think we ought not to accept this amendment."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendments that to section 25 the following clauses be added:—

"(*e*) that he has, without his landlord's written consent, sub-divided or sub-let his holding, or any part thereof, save as expressly authorized by this Act;

"(*f*) that he has by writing, or statement reduced to writing, disclaimed the title of his landlord before any public officer or Court."

The Hon'ble MR. EVANS moved that for sections 28 and 29 the following be substituted:—

"No instrument, whereby an occupancy-raiyat is bound to pay for land in which he has an occupancy-right a rate of rent in excess of the rate which was payable by him in the agricultural year next preceding the execution of the instrument, shall be admissible in evidence unless it is registered.

"No occupancy-raiyat whose rent has been enhanced in respect of any land in which he has an occupancy-right shall be liable to any further enhancement for fifteen years from the year in which his rent in respect of such land was last enhanced."

He said:—"It is with very great regret that I have to make many of the objections which I am about to make, because I recognise that a great portion of the matter I am objecting to is intended to give protection to the raiyat, and I am thoroughly desirous that the raiyat should be protected as far as it can be done by means of a workable scheme; and so far I am entirely at one with the views and objects which have moved the Government of Bengal in this matter, and have no desire to diminish in any way any protection which we can give justly and in a workable form to the raiyat. What I fear is that in the form in which the section stands it will, as a matter of fact, be unworkable in practice and will create more mischief than it will remedy. Some objections may, no doubt, be raised to the amendment which I propose, but I have no kind of partiality for the particular form of my amendment as long as the matter is substantially dealt with in some form or other. We find, as would be expected with regard to a matter of this kind, that the increase of rent paid by an occupancy-raiyat with a fixed tenure must be, from the nature of things, either by decree of Court or by agreement between the parties; because, if there is a dispute between the parties, there is no means of enhancing the rent but through the Court, and if there is no dispute the parties settle the matter between themselves, as they do in regard to all other matters in which they are able to agree. With regard to the provision which we have made in this chapter for settling disputes which arise between landlords and occupancy-raiyats as to increases of rent, where the dispute is of such a nature that they cannot settle it without going into Court, I am entirely satisfied and have no objections to make. But it must be known that it is not desirable that the parties should be forced to go into Court when it is not necessary and when the dispute can be settled less expensively out of Court. We know that in this country litigation is costly, and in many cases leads to the ruin of one or both of the parties, and more especially of persons who are ignorant. As to the restrictions on settlement by agreement, there are very serious objections that occur to me. Section 28 pre-

scribes that if enhancement by agreement is not made exactly according to the provisions of the Act, the result will be that it is void; that is to say, that the agreement, so far as the increase of rent is concerned beyond what the raiyat was paying the year before he came to an agreement, is absolutely and entirely void. The result is not that money so paid voluntarily under a void agreement is recoverable; no doubt the landlord will keep the money in his pocket, but if at any time he sues for rent at the enhanced rate which the raiyat has consented to pay, the raiyat will be able at once to say he has not to pay that amount of rent, because the increase of rent by agreement or consent is unenforceable. The contract is void. This section goes on to say that it shall be void in all cases—that is the effect of it—excepting in cases provided for in section 29. And it embodies this condition, that the agreement must be in writing and registered; that is to say, it must be a registered contract, and you cannot register a contract unless it is in writing. The next point is that the rent as it existed the year before must not be enhanced by more than two annas in the rupee or 12½ per cent.; and thirdly, the contract must fix the rent for a term of at least 15 years. That is to say, it prescribes that every contract which enhances any man's rent, which binds him to pay a higher rent than the year before, is *ipso facto* void if it does not contain a statement that the rent is fixed for 15 years. The contract is void by the absence of that formality. The next provision is that the registration of the contract shall not be ordinary registration, but must be a registration under this section. The section provides that—

'The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 96 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.'

"Practically, as far as I understand the provision, it directs that the registration of all contracts which bind a raiyat to pay more rent than he paid the year before should be a special registration. Whether the provision that the registering officer shall ascertain all these things is directory or imperative is not very clear, but it is apparently contemplated that the registration shall be special. But later on it is provided that the Local Government may make rules for the guidance of the registering officer for making registrations under this section; so that it does seem to be some kind of special registration, and therefore documents registered under the ordinary law of registration will not be considered to be registered according to this section, and such registration will be void. The Council will see what difficulties will arise on that point when I explain what the difficulties are

which beset it. Having explained to the Council that unless all these conditions are fulfilled a contract is void, I shall now consider what is the practical effect of them in two classes of cases. The first class of cases is that of a very large number of raiyats in this country who have no written engagements for their rent. The Council is aware that it is provided in the Permanent Settlement Regulations that the zamíndár shall give a pattá and the raiyat shall give a kabúliyat, and that engagements shall be in writing, and that the writing shall be in a certain form. The Council is also well aware that it was found absolutely impossible to bring about these results. The penalty prescribed was that the zamíndár should be non-suited if he did not produce an engagement in the prescribed form. So far as a form is prescribed, it is repealed by the Regulation of 1812, and so far as there is an authoritative order that engagements shall be in writing, it has remained a dead-letter in almost every part of the country from that day to this. In the Act of 1859 the provision is kept up that either the landlord or the raiyat may claim a written engagement, but it is optional and has very little effect; and there are still large tracts of country in which written engagements, especially amongst the poorer and smaller classes of raiyats, are not as a matter of fact in writing. The reason why this provision has had no effect is that there is a considerable mass of raiyats who have a rooted and traditional hatred of putting their names to any kind of document. Now, even if the Council is prepared to enact that every engagement for rent should be in writing, which no one has suggested, I do not see how we can possibly hope, if raiyats have this feeling, that any legislation we can make will secure engagements being in writing, and I do not see how we can secure that variations of unwritten engagements should be in writing. If an engagement is not in writing, how can any variation of it be expected to be in writing? I think we may take it as certain that people who do without written engagements will continue to do without them, and that we shall not be able by any Act to drive them to have written engagements. Then what is the position in case the Bill stands unamended? The engagement to pay a certain rent is unwritten, and the variation by which a raiyat agrees to pay a larger amount of rent will also be unwritten, and so long as there is peace between the parties the raiyat will go on paying his rent. But it may be that years after the enhancement of rent has been made the landlord or his successors will have to institute suits for arrears of rent, and then the tenants, if well advised, will plead that the enhancement was made after the passing of this Rent Act, and the enhancement is therefore void *ipso facto*, because it was not made in writing. They may say, 'It is true we have paid the enhanced rent for many years, but still the Court cannot enforce it; therefore

we demand to be put back to the position in which we were five, six or ten years before the enhancement was made.' I think every one will agree that that is not a desirable state of things; and the remedy is simple, namely, to allow things practically to remain in the position in which they are now with regard to oral engagements. At present there is no particular law on the subject, but, owing to the impossibility of proving an oral agreement to pay enhanced rent, the zamíndár has to prove that the raiyat has actually paid the enhanced rent for some years. He will not go into Court for a decree for enhanced rent on the ground of an oral agreement. But what happens is this. When a raiyat has orally agreed to pay an enhancement rent and has paid it for two or three years, the landlord, when he sues for arrears, proves that the raiyat is now paying a certain amount of rent which he had agreed to pay, and, having paid that rent for some time, it is abundantly clear that he must have agreed to pay at that rate; so the Court gives a decree. The reason why he gets a decree is that there is no law which makes oral agreements void. If you make oral agreements void the result will be that the raiyats will have the defence which I have stated. I do not think it is in accordance with the principles of equity or of natural justice to allow such a defence. The English Statutes which provide that certain engagements shall be in writing, such as the Statute of Frauds, were passed for purposes of public policy; but we find that in those Statutes exceptions are made in favour of contracts part-performed. I think it would be unreasonable to make a provision to this effect without any limitation or exception whatever, so that even 20 or 30 years after an enhancement is made and cheerfully submitted to by the raiyat, he may show that the original engagement was void, and he can then revert to the position in which he stood before that time. I take it that the principle which was found necessary in England that part-performance should be a substitute for the formalities must be recognised because of the ordinary way in which mankind transact their business, and because of the way in which certain classes of raiyats make their engagements, and that some provision ought to be made in the Bill to provide that part-performance of the contract shall be sufficient as proof of such an agreement having been made. I have not embodied that in my amendment, because I thought it better to propose an amendment in wider terms. But I wish it to be clearly understood that it is not my intention to place the raiyat in a worst position than he is in now in regard to oral agreements. I would be perfectly willing, although it is not contained in my amendment, if the Council think it necessary, in order to meet the real difficulty which I have pointed out, that they should prescribe how much part-performance of an oral agreement should be sufficient. I mean to say

that at any rate I would not be disposed to think that an allegation of the payment of one month's rent would be sufficient to satisfy the Court. No Court would be satisfied of the existence of such an agreement unless the raiyat had paid at the enhanced rate for one year at least. It would be a matter for the Council to consider whether the carrying out of an agreement for one or two years should be deemed sufficient instead of a written contract. If persons will go on without written contracts, you cannot force them to have written contracts; then you must provide that there must be such sufficient performance of the unwritten contract as to satisfy the Court that the arrangement has really been made and, what is more, that it has been acted upon. I have always considered that the fact of a raiyat having paid rent at an enhanced rate for one, two or three years without demur is much stronger evidence of such an agreement having been made than a registered document; because documents are often collusively given. I have had cases in which the raiyat has said that he gave a registered document because the landlord had paid him something to do so in order to injure another man, and they have sometimes actually produced witnesses to prove that they had been told that they would not have to pay increased rent under the registered contract; but when we find that a man has actually paid at the enhanced rate for two or three years, we may surely be satisfied of the reality of the transaction. We shall have an unworkable scheme if we keep the section as it is now, and I apprehend that it will have to be amended some way or other.

"Then, having told the Council of this difficulty, I come next to consider what will be the effect of this section on written engagements. First, I will observe that I do not think that we shall be able to induce the people of this country to change their common forms of pattá and kabúliyat. I do not anticipate that we shall be able for many years to come to get the people to deviate in the smallest degree from their common forms. At present I seldom or never see a kabúliyat in which the raiyat has stated 'My rent in the last year was so and so; I have now agreed to pay the further sum of so and so.' There may be a few such agreements of that kind, but I doubt if it is ever done; the tenant will go on giving pattás and kabúliyats in the same way as before, containing no statement except that he agrees to pay a certain rate of rent for certain land. The raiyat will give a fresh kabúliyat stating the amount he has to pay under the new agreement, and stating nothing else. The first effect of such written engagements will be that they will be void unless the kabúliyat contains in itself a statement that the rent is fixed for fifteen years. Pattás and kabúliyats will not as a matter of fact contain that provision, and why should

you make it void because it does not contain that statement? I do not object to the term of fifteen years, but you have made it imperative that it should be so stated in the contract, and it will follow that when the enhanced rate is attempted to be enforced the raiyat will say that the kabúliyat which he has given is *ipso facto* void, because it does not state the term of 15 years for which the enhanced rent is not to be altered; it may state no term or it may state a shorter term. Instead of making that an imperative incident in the form of the pattá and kabúliyat, the object will be very easily attained by merely stating that the legal effect of the agreement shall be that the rent cannot be enhanced again for fifteen years.

"Then I come to a further matter, namely, registration. I feel that there is considerable force in what Mr. Hennessy and others have said that it is very hard to compel registration of contracts for such small amounts, that the registration-fees are very high and the distances at which the registration offices are situated are great. But desirous as I am to protect the raiyat, and admitting that registration does give him some protection against false documents which a gumáshta may have manufactured and to which he may have affixed each man's mark (for in most cases the raiyats cannot write), therefore, although it is in many cases very inconvenient to cause the registration of documents of such small amounts, amounting in some instances to an enhancement of only two annas, on consideration I think it is better to modify rather than abandon this rigorous provision, and the practical working of my proposal would be this, that, although contracts may exist between the parties, no contracts at all will be produced in Court. And with regard to these small raiyats, they will be in the same position as if the engagements with them were unwritten, because, although there may be written engagements, they being unregistered will not be admissible in Court; therefore the Court will simply have to look to the prior rate of rent paid. Although we are breaking the ordinary rule that registration is not necessary in respect to small matters, it may be worth while to do so; but in going this distance I am going a very considerable way. It is because I will not consent, so far as I am concerned, in any way to participate in the formation of any scheme that will not work that I am making these observations now. I am willing that contracts, if in writing, should be registered, but if there are no registered or written engagements part-performance should be considered sufficient.

"I come to a further objection. I pointed out that the section appears to require special registration; that the registering officer has to make special

enquiries under sections 74 and 75 of the Bill as to which the Government has to prescribe certain rules; so that if the contract is not registered under this special registration it will be held that that omission renders the written instrument void. As I have said, a pattá or kabúliyat will not shew any enhancement at all. The result will be that these pattás and kabúliyats will be documents some of which will be compulsorily registered under the present Registration Act and some of them under this special registration. Every prudent man will take care, if a contract is of sufficient value to make it worth while, to register it, and if he does not do so he will have to prove part-performance. If it does not state any enhancement, he will register it in the ordinary form. Then if it does create a liability to pay a higher rent, though it be not so stated, will it be void because it is not registered in the special form? If it is not to be void, that should be specially stated in this section. Then the registering officer is directed to hold an enquiry under this section; first, whether any abwábs are included in the document. Considering that abwábs are illegal and the Courts will not enforce them, what is the use of compelling the registrar to see that the kabúliyat does not contain any provision for the payment of abwábs? If we are going to do this with regard to pattás which bind the raiyats to pay more rent, why not make the same provision with regard to every pattá? Why should we not provide that no kabúliyat shall be registered which has a provision for the payment of abwábs? The answer is that if it does contain such a provision the Courts will not enforce it. I am speaking of the difficulties which will increase the cost of registration. The registering officer has also to hold the enquiries stated in section 178. That section contains all the restrictions in contracts which we have thought it necessary to make under the Act, and again I say that whenever a contract is brought into Court and it appears to the Court that any of the provisions of the Act is contravened, or that the contract contains covenants contrary to section 178, such covenant will be declared by the Courts to be void. But we are not content that they shall be declared void by the Courts; we wish to prevent a tenant from signing anything until long enquiries have been made on difficult questions of fact as required by section 178. The registering officer will first have to ascertain the fact whether the raiyat is an occupancy-raiyat at all; then he will have to go into several other matters, one of which (sub-section (3), clause (*a*)) is as to whether the contract takes away the right of a raiyat to transfer or bequeath his holding in accordance with local usage; he has to enquire whether there is a local usage, and if that usage is contravened; but that is one of the matters very much in dispute in some parts of the country. Then section 178 provides that nothing

in the section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land; so that if the lease appears to have anything to do with waste land he will have to satisfy himself that it is *bonâ fide* for waste land only, and then he will allow a relaxation of some of these conditions. I do not think that all these enquiries are necessary; they are exceedingly well meant, and I entirely sympathize with the objects of His Honour the Lieutenant-Governor, and my very deep respect for his judgment and knowledge renders it painful to me to differ from him. Still when I see these difficulties I feel I shall be neglecting my duty if I avoid pointing them out so that we may make such provision as may be necessary. Considering the great difficulties in regard to registration, you are making it more difficult and more expensive, because the registering officer may keep the parties dancing attendance upon him for weeks together because he is not satisfied as to the existence of certain local customs and other matters with regard to which he is required to satisfy himself. And then, when all these investigations are done, what is the effect? All the registering officer has done goes for nothing, because when documents which are required to be registered are taken into Court the raiyat is at liberty to prove that the document does contravene the provisions of the Act; and if he can prove that he can afford to say 'I told the registering officer a number of lies and so satisfied him, but I can prove by indisputable evidence that as a matter of fact the contract does contravene certain parts of this Act'; and the result will be that all the investigations of the registering officer will be perfectly worthless and the matter will have to be fought out in Court. I therefore think it will be better and sufficient as regards these matters to enact only that written contracts shall be registered, which is a very great protection. I do not mean to say that it is absolute protection, because nothing is an absolute protection. You have for instance cases of false personation of the raiyat, though that is rare. There are no laws under which it is not possible to commit fraud if a man is willing to go in for perjury, conspiracy, forgery and false personation. If such things are resorted to, they are occasionally successful, but what really and in all ordinary cases prevents the commission of such acts is the strong arm of the criminal law and the heavy sentence of transportation for life. I object to all these expensive extra processes of registration. If a pattá is in the ordinary form and does not disclose the fact that it enhances the rent, are we prepared to declare it to be void or not? If not, that is a fatal objection to the whole scheme of special registration.

"These are the general objections which I have to the section, and I think

they may all be met just as well by something else as by the amendment which I have put on the paper. My amendment is no doubt apparently defective in that it does not contain any provision with regard to part-performance, but the practical result will be much the same. If the Government of India is disposed to meet the point with regard to unwritten engagements being admitted on proof of part-performance, that would be sufficient. And with regard to written engagements, by not providing any particular form in which they must be made and making the fifteen years' term a mere statutory provision for enhancement, it will be found to work better, and it will meet my general objections to the section.

"There remain only a few remarks which I have to make upon the particular question contained in clause (*a*) as to the restriction upon enhancement, namely, that it shall not be more than two annas on the rupee. I have already said so much about it in the general observations I have made when the motion for the consideration of the Bill was before the Council that I do not propose to add very much to what I then said. I pointed out that there are two or three classes of cases in which it will be impossible to impose such a limit of enhancement in defiance of justice and common sense. There are certain well-known cases in which it is inexpedient at any rate that a limit should be imposed. Where the enhancement is merely on the ground of rise of prices, and where there has been an enhancement within the last 10 years, I do not believe that enhancement of more than two annas in the rupee could be got, and I think two annas may represent what is ordinarily obtained in such cases; but there is a very large class of raiyats who are allowed to sit on land on low rates in consideration of cultivating a particular kind of crop, and the landlord ought to be able to say to them 'If I cease to make you cultivate this particular kind of crop, what would you give for the land?' and we know that in such cases enhancements of 50 and 100 per cent. and more are common. The zamíndár, sooner than fight a large body of raiyats and incur the large expenses incidental to legal proceedings, will in many cases take one-half of what he would be entitled to if he took the raiyats into Court; and if an enhancement of 25 per cent. instead of 12½ per cent. were agreed to between the parties, what would be the necessity of compelling the landlord to sue? Under this clause the zamíndár must put them into Court. The raiyats will come in and say 'You are our father and mother and take an enhancement of 25 per cent.'; he will say 'I cannot do so under the law, but you may enter a consent decree for 25 per cent. with costs.' There are large numbers of raiyats who have for some reason or other been allowed to sit at low

rates and are legally liable to an enhancement of more than 12½ per cent. besides the special classes I have mentioned, and it is unreasonable to prevent their settling with their landlord out of Court. I feel certain that it will be better to strike out the two annas limit and to leave the parties to settle among themselves. The self-interest of the raiyats might be trusted to prevent their giving any more than they think the zamíndár will get. But when the raiyat has come to the conclusion that he will lose his suit and the zamíndár will get large enhancement, is it wise to prevent him compounding the matter for a comparatively small enhancement? I know it is strongly argued that the raiyats are in need of protection, and I have said what I had to say on that subject on the last occasion. The raiyats, as we have seen, have the power to combine together and fight their landlord, and in many cases they will do so when they see a chance of success. But when they see that their neighbours have failed they will say 'The Courts are very expensive and uncertain, and we will give an agreement sooner than take the risk', and it is their interest to do so; but you say 'You shall not do this; it is better for you to go to Court'. Is the Council quite certain that it is a better judge of what is best for the raiyat—as to whether he should go into Court or not—than the raiyat himself? I think as regards that matter the raiyat is really the best judge. While I would seek to protect the raiyat in every way which is for his benefit, I would decline to put in something which, though it is intended for his protection, will work more mischief than it does good, and will not as a matter of fact prove to his advantage. If the Council will not come to the conclusion to omit the 12½ per cent. limitation upon enhancement, I certainly will ask that some provision may be made for some of those cases in which raiyats hold at specially low rates in consideration of cultivating particular crops."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said that, after the eloquent speech of the learned and Hon'ble Mr. Evans in support of the motion, he had very little to say in support of it. The provision for a registration of engagement, which provided for the payment of enhanced rent would be a very great hardship upon the raiyats themselves. Their trouble and expense and the hindrance of their daily avocations would not be the least of these inconveniences. One should have supposed that in a matter like this the Council would be guided in the direction in which the present law had been found by judicial decisions to be effective. But he could challenge hon'ble members present to point to any judicial ruling saying that the absence of the provisions like those contained in sections 28 and 29 had led to hardships. On the contrary, the ruling at present supported the view which

had been so eloquently maintained by the hon'ble member. He would read a decision given by Justices White and Maclean in a case in which the zamíndár was allowed to give evidence of a verbal agreement to pay enhanced rent on the part of the raiyat. The following was the opinion:—

"A verbal agreement was proved in the Lower Court to have been made between the defendant and the lady's agent, and this document was put in evidence to meet the defendant's objection about the extent of his holding and the rate of rent. The Lower Appellate Court has treated this document as a lease, or agreement for a lease, and consequently held that he was not at liberty to admit the verbal evidence which was produced in the first Court. I am unable to concur in the view taken by the Judge of the document. In my opinion it amounts to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement are true, and consequently the document requires neither to be stamped nor registered."

The Hon'ble MR. MANDLIK said that the question now brought before the Council by the Hon'ble Mr. Evans was one of two conflicting principles. If ample security was provided to the raiyats by means of registered contracts, a great deal of litigation could be avoided. While he was so far in favour of the amendment, he could not discuss the new provisions properly until they were duly brought before the Council in writing.

The Hon'ble MR. REYNOLDS said that this was one of the most difficult questions with which the Select Committee had to deal, as on the one side there was no object to be gained in driving the parties into Court, and it was very desirable that they should be left to make their own arrangements; and on the other hand there was a mass of evidence to show that if no restrictions were put upon contracts out of Court, there was hardly anything to which a raiyat could not be got to agree. A number of instances had been given in the papers before the Council from which it was clear that the raiyat could not be considered a free agent in making a contract with his landlord, and that if he signed the agreement he did not really know what he was about. For these reasons the Select Committee had decided that no enhancement out of Court should be legal unless agreed to by a registered contract, that the rent must not be enhanced so as to exceed two annas in the rupee, and that the period must be fixed at 15 years. The Hon'ble MR. EVANS considered that such a rule would lead to difficulties both with regard to raiyats who had no written engagements and to those who had such engagements: and that there were certain classes of cases in which the two annas limit would be unreasonable, especially cases in which raiyats held at low rents in consideration of their cultivating particular crops.

With regard to this point MR. REYNOLDS might refer to the report of the Behar Rent Commission. The members of that Committee were practical men, who must have been fully conscious of the objections which might be urged against their proposals: but they were unanimous in recommending that no enhancement out of Court should be allowed except under a registered contract. A similar provision existed in the present law in the North-Western Provinces. Under section 12 of Act XII of 1881, there could be no enhancement except under a registered contract, or by suit in Court, or by order of a Settlement-officer. He thought that when these facts were taken into consideration it could not fairly be said that the provision for requiring registered contracts would present insuperable practical difficulties.

Then, as to the form of the contracts, MR. REYNOLDS was not sure that he had understood the hon'ble member's objections on the subject of registration. It was not contemplated, in MR. REYNOLDS' opinion, that there should be anything which could be called special registration, or that the registering officer should be bound to make any detailed enquiries. It was only intended that the registrar should satisfy himself that the contract was in accordance with certain plain provisions of the Act, and that the raiyat understood the terms of the contract, and entered into it as a free agent. But MR. REYNOLDS would offer no objection to the striking out of sub-sections (2) and (4) of section 29 if it were thought that this would simplify the proceedings.

The hon'ble member went on to refer to the two annas limit, and he remarked that this limit would operate unfairly in certain classes of cases, and that it would be better to allow 25 per cent. out of Court than to drive the parties into Court. MR. REYNOLDS believed, on the other hand, that there was great danger in legalizing large enhancements out of Court. If the landlord wanted a greater enhancement than two annas in the rupee, he ought to be required to submit his claim to the decision of a Court. If there was a practical difficulty in any case, it would be in regard to the cultivation of particular crops, and in regard to this MR. REYNOLDS thought it would be enough to make special provision for cases of existing contracts under which raiyats might be holding at specially low rates in consideration of their cultivating a particular crop. The provision need not extend beyond existing contracts, because in future it would be in the landlord's power to let the land at the full rate, and to grant a reduction so long as the particular crop was grown.

Then, reference had been made to what were called amicable agreements,

where no written contract existed at all; and it was proposed to recognize these as binding if they were supported by proof of part-performance. MR. REYNOLDS thought that such a provision would go far to diminish the value of the section altogether, and would allow enhancements to almost any extent out of Court. He believed that the proposals of the hon'ble member, even with the modification which he understood him to be ready to make, would have a very injurious effect on the section relating to enhancements and on the controlling power which it was intended to exercise in the matter of enhancements out of Court. If hon'ble members doubted whether the section, if passed into law in the form in which it came before the Council at present, would meet all the circumstances of the case, he would ask them to remember that it might be amended hereafter, and he urged that for the present it would be better to allow the section to stand as it was, and to maintain the principle, which had been already enforced in the North-Western Provinces, and which was recommended by the Behar Committee, that the rent of the occupancy-raiyat should not be enhanced except by a registered contract or a suit in Court. If the arguments on both sides were taken into account, he believed that there was far more danger in such an amendment as had been suggested than there was in leaving the section as it stood. He therefore hoped the amendment would not be accepted.

The Hon'ble MR. AMÍR ALÍ said that he was opposed to the amendment proposed, on the grounds which he had already pointed out in his remarks on Monday last. The two-anna limit was a necessary one. The raiyat can hardly be supposed in the majority of cases to be in a position to hold his own against the zamíndárí influence. In many places the demand for land was so great that the raiyats were anxious to agree to any terms; and whether they were able to pay the enhanced rents or not, it was enough for the zamíndárs to show a high rental on the village-papers. If the two-anna limit would drive the parties into Court, then, he would contend, that the four-anna limit on enhancements in Court should be restored. As regards the objection on the ground of the difficulty of registration, that seemed to him to apply to all cases of registration. Part-payments should not be presumed to be a proof of an agreement; for that would simply leave the matter where it now was.

The Hon'ble MR. GIBBON said:—"I must say I concur in all the arguments which have been brought forward by the Hon'ble Mr. Evans in condemnation of the section as it stands in the Bill, but I go further. I disapprove altogether of the policy of restricting amicable settlement of the rents or of laying down the conditions or terms under which landlords and tenants

shall be compelled to come to an amicable settlement amongst themselves. The Hon'ble Mr. Reynolds has quoted the proceedings of the Behar Rent Commission with approval. I was a member of the Behar Commission and concurred in the findings of the commission but on a reference to the proceedings of the Committee it will be found that they never attempted to lay down the terms or conditions under which landlords should come to a settlement with their tenants. They had simply declared that the mutual arrangements to be come to between landlord and tenants should be in writing and registered, and I maintain that that is the correct solution of the question and the one which should be arrived at by this Hon'ble Council. The framers of this Bill have taken away the present procedure of issuing notices of enhancement through the Court, which is a cheap and easy process for bringing pressure to bear on the tenants to enhance their rents. It is therefore no longer necessary to place such restriction on amicable settlements as is now being provided under the Bill. The whole purport of this portion of the Bill is to force the landlords and tenants into the Court. If parties are to be forced to settle their affairs through the Courts, they should be settled free of expense. This I deem to be an impossibility. Why put parties to the expense of going to the Court when they do not wish to go there? The restrictions imposed by the Bill are useless, obstructive and unnecessary and can and will be evaded by the bad men among the landlords. Take for instance an application under section 158. If a landlord applies to have the rents, terms and conditions of a holding declared, and the tenant elects to declare that he is holding at an enhanced rent, what Court in the world would declare that his proper rent is a lower one? It can also be evaded by an amicable suit. I may be allowed to say that I equally object to the amendments of the Hon'ble Mr. Evans. The true solution of the difficulty is, as proposed by the Behar Commission, that whatever agreement is come to should be in writing and registered, be the conditions what they may."

His Honour THE LIEUTENANT-GOVERNOR said that he was bound to recognise the temperate spirit in which his hon'ble and learned friend Mr. Evans had brought forward proposals on which evidently he felt very strongly. The hon'ble member had placed before them arguments against written contracts and the registration of such contracts and the particular limitation of enhancements out of Court with all the legal force and acumen, with which, as they all knew, he was so well accustomed to plead in Courts, and HIS HONOUR did not at all undervalue the force of his logic. But HIS HONOUR could not agree in all that had fallen from the hon'ble member on these points. He understood the hon'ble member to say that it would be practically impossible to enforce

the limitations of enhancement out of Court to two annas in the rupee, and he apparently wished to maintain that parties should be left to make their own arrangements without any such interference on the part of the law.

That kind of argument might be reasonable enough in England, where parties to contracts in such dealings met on something like an equal footing, and might be left to look after their own interests: but he thought it was asking the Council too much to believe that parties here in India were at all in an equal position. All the facts were against that supposition. The Hon'ble Mr. Reynolds had given an accurate statement of the case, and, if there was any necessity to add evidence in support of his contention, HIS HONOUR could adduce a great deal in support of the fact that in matters of this kind the raiyat was placed every day at a great disadvantage and was justified in claiming protection from the law. From the evidence taken in the Behar Commission, it was found that the raiyat might be regarded in the position of a "minor," that is, of one who could not be left to his own intelligence to enter into a contract. If there was one principle more than another upon which the Council had been agreed from the very commencement of this legislation, it was that a proved necessity existed for imposing a limit upon the zamíndár's demand. The raiyat was not a free agent, and from documents produced in this Council last year it was shown that he was constantly compelled to sign agreements which would have been incredible if the papers themselves had not been produced. What was true of Behar in this respect was notorious from the cases which had come up from Mymensingh, the 24-Parganás, and in fact from all parts of the country. It must always be borne in mind that in the Bill as it had been drafted the limitations of enhancement out of Court in no way deprived the landlord of his right to get a higher rent if he was justly entitled to it. In enhancements by suit no limitation had been imposed; and if the zamíndár had grounds for thinking that he should get more by way of enhancement than two annas in the rupee or 12½ per cent. upon the existing rent, let him take the case to Court, where there would be the assurance that the facts on both sides would be fully examined and a decision passed after the sifting of all the evidence. Even the hon'ble member (Mr. Evans) admitted that a 12½ per cent. enhancement was a reasonable increase, and his plea was only for exceptional cases. But such hard cases might be otherwise provided for without infringing the principle, upon which section 29 was based, that where there is not the guarantee of fair dealing which the control of the judicial Court afforded some positive check must be put upon excessive enhancements out of Court.

HIS HONOUR therefore considered some such provision as this was absolutely necessary to regulate enhancements, and that it should form part of the Bill.

The Hon'ble SIR STEUART BAYLEY said:—"It is with great regret that I have even in appearance to oppose the motion of the hon'ble gentleman opposite. In all the multitudinous points that have come before us in Committee it has been my good fortune almost invariably to find that there was a substantial agreement between us; and even on this question I trust it will be found that our divergence is more apparent than real, or at all events that the alterations I am prepared to make will go a long way to reconcile my learned friend to these clauses. The section is, in the opinion of some, one of the most important in the Bill. This view, for the reasons given in my opening speech, I am unable to share, as I think the effect of the section must be more indirect than direct. But if not one of the most important, it is certainly one of the most debateable sections, and one about which I have had extreme difficulty in making up my own mind—a difficulty by no means lessened by the very divergent views we have heard expressed on the subject in debate.

"To turn now to the actual objections taken by the hon'ble member. These I find to be partly to the form and partly to the substance of the section. So far as they refer to the form, I could wish that they had been brought forward at an earlier stage in order that I might have consulted with him at leisure as to the best way of meeting them. He objects to the form, if I understand rightly, because the section involves a special system of registration, and the specification of certain conditions in the deed; and therefore a deed of enhancement which has been registered in the ordinary way, and which fails to specify these conditions, as for instance that it is to be in force for 15 years, is invalid, and it is doubtful even if rent collected under such a deed would not be an illegal exaction. Well! on these points I am quite prepared to alter the section so as to meet his objections. The fact is that the clauses which provide for comparison and examination by the registering officer are a survival of the section of the original Bill which provided for the approval of these contracts by a Revenue-officer. It was the intention under the Bill as it now stands that they should be registered in the ordinary way by ordinary agency, but in view of the objections pointed out by my hon'ble friend to the retention of the special conditions and form of registration, I am glad to adopt the suggestion of Mr. Reynolds that the sub-sections providing for these should be abandoned.

"Next I come to an objection which is one rather of substance than of form, though it partakes of both characters. It is directed against the provision

that all enhancements by contract must be in writing. The objection is that as a matter of fact in nine cases out of ten such contracts are not reduced to writing, still less are they registered, and if they are written they rarely refer to the old rent, but generally take the shape of a fresh pattá for a specified term of years. The hon'ble member very justly urges the impossibility of changing the immemorial custom of oral contracts by a stroke of the pen, and points out that the effect of the law will be that a raiyat having orally agreed to pay an enhanced rent, and having given practical effect to the agreement, may at any future time—ten, fifteen or twenty years hence—turn round and, by showing that the rent in 1884 was so much, effectually meet his landlord's claim for arrears, because the latter cannot produce a registered contract enhancing the rent subsequent to 1884, and the raiyat might even possibly sue him successfully for illegal exactions.

"I cannot deny the force of these objections. I had myself supposed that while this section would effectually bar a suit for enhanced rent, if not based on a registered contract, it would not have the effect of overruling the general presumption that existing rents are fair and equitable, and that the Courts in the case supposed, finding satisfactory evidence of a rent having been paid for a number of years, would presume that rent to be fair and equitable, and would not go back to enquire what the rent was in 1884; but I am informed authoritatively that Mr. Evans' construction of the Bill as it stands is correct, and that the effect would be as he supposes.

"Now the Government and the Select Committee do undoubtedly attach immense importance to getting these contracts reduced to writing and registered. I do not deny the difficulty, but I feel that if this difficulty can be overcome, not only will all rent litigation be reduced in quantity and simplified in quality to an incalculable extent, but the educational effect in enabling the raiyat to understand and maintain his rights will be enormous. For my own part I attach more weight to this educational or indirect effect of the section—a great deal—than I do to its direct effect. For these reasons I fully sympathise with the Government of Bengal in their desire to give special prominence to the principle that all contracts for enhanced rent should be in writing and registered. But in asserting this principle I do not think we should overlook the disturbing and immoral effect of allowing the raiyat to repudiate years hence the oral contract which he has accepted and carried out regularly and continuously. My hon'ble friend Mr. Reynolds has pointed out that in the North-Western Provinces a raiyat's rent can be enhanced by

agreement, only if that agreement is written and registered. This is true, but the registration in the North-Western Provinces is carried out by the establishment which is especially organised for recording and registering the rights of every raiyat in the country. The enhanced rent would in any case have to be recorded in the Government registers kept by this establishment of village accountants, and it involves but little more trouble to have the agreement itself registered by the same machinery. In Bengal we are, most unfortunately, destitute of this machinery. We have no patwáris, save in Behar, and there we have only a very demoralised kind of patwárí, unchecked and unsupervised by the kánúngo who safeguards the institution in the North-Western Provinces. The conditions therefore are essentially different, and no analogy can be drawn between the facilities which exist for the registration of such contracts in the neighbouring province and the difficulties which must attend it in Bengal; nor do I think this argument justifies us in refusing to provide a remedy for the very serious objections which Mr. Evans has pointed out to the effect of the section as it stands. The remedy should, I think, be sought on the direction indicated by the hon'ble gentleman in his speech, namely, that where an oral contract has been given effect to by the continuous payment of the enhanced rent for a certain number of years, this performance should have the effect of validating the contract, and I would adopt the analogy of the rule in the case of the 'prevailing rate' and fix the term of three continuous years during which the rent has been actually paid as sufficient performance to validate the contract in the place of registration.

"Turning now to the substantive objection which the hon'ble and learned member opposite has taken to the essential point of the section, that the rent shall only be enhanced by contract to the extent of two annas in the rupee above the previous rent, I need not repeat at length what I said in my opening speech. I pointed out then that the limitation was so easily nullified by a false recital, that if the rent was once accepted by the raiyat, the limitation would be no bar to an unscrupulous landlord; and I admitted that in cases where a landlord after succeeding in a test suit might get his raiyats generally to agree to pay the rent decreed in that suit, it would be injurious to all parties to prevent such an agreement being made and to force the landlord to bring each raiyat separately into Court to confess judgment. But, on the other hand, you have heard what vital importance the Government of Bengal attach to the retention of this clause, especially as a safeguard in those parts of the country where the raiyat's rent is already too high and where his position is so weak that he can be induced to agree to any terms his landlord may impose on him; and

in the face of the urgent advocacy of the Government of Bengal I cannot recommend that this limitation should be dispensed with. There remain the special cases referred to by Mr. Evans where an unduly low rent is paid in consideration of a special crop being grown. I think it is essential to except these cases from the general rule, and I am prepared to introduce a clause to this effect. If therefore the hon'ble gentleman is willing to withdraw his amendment, I will move that section 29 of the Bill shall run as follows:—

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

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

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

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

'Provided as follows:—

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

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

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

The Hon'ble MR. EVANS said he had heard with much pleasure the views of the hon'ble member in charge of the Bill, and he thought that there was substantially very little difference of opinion between him and the hon'ble member even as to the two-anna limit, save that he utterly disapproved of it, while the hon'ble member merely entertained doubts on it. He would therefore withdraw his amendment on the terms proposed by the hon'ble member in

charge of the Bill; but on the distinct understanding that he did not abandon his opposition to the limit on enhancement out of Court as useless and pernicious. He would not have withdrawn his amendment so far as it concerned this point had not the Maháráját of Durbhunga been about to move a special amendment for striking out this clause.

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

The Hon'ble MR. EVANS remarked that this was the amendment he referred to and he had said all he wished to say on the subject. He should strongly support the amendment.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said I have the honour to support the amendment moved by the Hon'ble the Máhárájá of Durbhunga. Both the Rent Commission and the Government of India took the position that Government had the right of determining the rates of rent payable by tenants to their landlords. The Rent Commission observed in paragraph 44 of their report :—

'Government never intended in 1793 to abdicate the function of determining the proportion of produce payable by the raiyat, a function cast upon them by the ancient law of the country,'

and the Government of India stated in their despatch to the Secretary of State, dated the 21st of March, 1882 :—

'In his well-known minute of the 3rd February, 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zamíndárs had never been denied or disputed.'

"But Lord Cornwallis never said such a thing. The position taken by the Government of India was not only disputed, but had been conclusively disproved by the landholders. His Honour the Lieutenant-Governor apologetically quoted yesterday extracts from contemporary State literature in support of the alleged right of Government to determine rates of rent, but there was no need of any apology for his quotations. I shall presently show that contemporary State literature left no doubt whatever on the question, but before so doing I wish that it should be borne in mind that there were two parties in connexion with the proposal for a permanent settlement of the land-revenue, one for it and one against it, and that no point could be established by referring to the vacillating opinions of the parties expressed before the settlement was

made. The reference, for instance, made by His Honour to the opinions of Warren Hastings was most unfortunate. All know that his conduct towards the landholders in having deprived them of their estates and let them out in farms evoked a severe censure from the Court of Directors, that it formed one of the grounds of his impeachment before the House of Commons, and a Parliamentary Statute, 24 George III, cap. 24, was passed, among other purposes, for the object of undoing the acts of Warren Hastings in this respect, and restoring their estates to the landholders after due enquiry. A correct insight into the nature and effects of the Permanent Settlement can be got only from the Regulations themselves and from the writings of Lord Cornwallis and of Sir John Shore, who, after a most searching and careful inquiry into the rights of landholders and tenants, came to the conclusions recorded in their minutes. The settlement was not an idea suddenly conceived and forthwith put into execution. For years before it was actually made there was an elaborate enquiry into the nature of the status and rights of zamíndárs and of their raiyats, and the conclusion to which the Government came was that 'the regulation of the rents of the raiyats is properly a transaction between the zamíndár and his tenant and not of the Government'—Shore's minute dated 18th September, 1789. In another part of the same minute he said:—

'The Institutes of Akbar show that the relative proportions of the produce settled between the cultivator and the Government; yet in Bengal I can find no instance of Government regulating these proportions.'

"The rent which the zamíndárs received from their raiyats was the parganá or established rent. It was nothing more nor less than the highest competition-rent. This is proved beyond all doubt by the minute of Lord Cornwallis, which was quoted by the Government of India in their despatch to the Secretary of State. His Lordship said:—

'Whoever cultivates the land, the zamíndár can receive no more than the established rent, which in most cases is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.'

"Again, the Preamble of Regulation II of 1793 showed that Government left 'it to the people themselves to distribute the portion payable by individuals,' and that 'Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.' The hon'ble mover of the Bill observed, on the occasion when the Bill was introduced, that the right

of Government to interfere in the matter of determination of the rents payable by raiyats was clearly recognised by the Marquis of Hastings, and the hon'ble member gave to the Council extracts from His Lordship's minutes in support of his view; but, although the Marquis of Hastings was no friend of the zamíndári settlement, the opinion he formed of that settlement after he had been in the country for a number of years varied considerably from the opinion which the hon'ble member communicated to the Council. I shall read to your Lordship an extract from the writings of the Marquis of Hastings contained in Bengal Revenue Selections, Volume III, page 340.

'The whole foundation of our Bengal Revenue Code resting on the recognition of private property in the soil, and the relinquishment by Government of any right in land occupied by individuals beyond that of assessing and collecting the public revenue, it may be assumed that the sadr málguzár, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the absolute property of all land in which no other individual possessed a fixed and permanent interest, and which may have been held and managed by such málguzár, his representatives or assignees. Lands occupied by contract cultivators, accounting for their rents immediately to the sadr málguzár, were thus to be regarded as the full property of such málguzár, subject to the stipulations of the contract. It was also doubtless intended to recognize the full property of the zámíndárs in unclaimed waste lands lying within the limits of their mahál.'

"The question was again discussed in 1827 in connexion with Mr. Harrington's 'Bill for maintaining the rights of khúdkhast, chupperbund and other resident raiyats.' I think it necessary to read the opinion upon it by Mr. Ross, one of the Judges of the then Sadr Court.

'The clause, if enacted as it now stands, would probably be construed by the Courts as intending to confer an istimrári right upon every resident raiyat who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had not varied during that period—a construction which could not fail to be productive of injustice to the zamíndárs, by encouraging their raiyats to claim rights which they had never actually possessed, and which they had never been considered to be entitled to.'

"And, as regards the rights of resident raiyats generally, Mr. Ross made the following valuable observations:—

'That all resident raiyats are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed regulation, is, I think, also questionable: such a right is not claimed, I believe, by mere raiyats, whether resident or non-resident, in the Upper Provinces; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country.'

"The question before the Council was fully discussed, and I hope finally settled, by a Select Committee of the House of Commons in 1832. A large number of gentlemen who occupied eminent positions in the service of the Government of India or who had retired from that service, men like John Kay, Holt Mackenzie, James Mill and a host of others, were examined, the whole field of State literature was ransacked, and the conclusion to which they came was that—

'Unless the Government should, either by public or private purchase, acquire the zamíndári tenure, it would, under the existing Regulations, be deemed a breach of faith, without the consent of the zamíndárs, to interfere directly between the zamíndárs and the raiyats for the purpose of fixing the amount of land-tax demandable from the latter under the settlement of 1792-93.'

"It is for Your Lordship and this Hon'ble Council to determine whether in the face of such authoritative opinions, the distinct disclaimer of the right to interfere contained in the Regulations, and of the conclusions arrived at by the paramount authority in the realm, a limitation to enhancement of rent of the nature contained in the Bill is at all warrantable.

"The question might be considered in another aspect. It appears from Sir John Shore's minute, dated the 8th of December, 1789, that the rates of rent which obtained at the time of the Permanent Settlement ranged from half to three-fifths of the value of the produce of the land. This statement is confirmed by the fifth report of the House of Commons, and I find from copies of settlement papers of 1783, obtained from the Collector's Office of the 24-Parganás, that the rates of rent per bíghá of land are variously stated at Rs. 2-10, Rs. 2-13, Rs. 2-14, Rs. 3-3, and so forth. The highest rents which obtain at present in the 24-Parganás barely show an increase of 50 per cent. over the rents which obtained in 1783. Considering that the prices of produce have trebled and quadrupled during this interval, it is clear that the zamíndárs have used with the greatest moderation their powers as to settlement of rent, and that the rates which obtain at present are far below the rates which they are entitled to get. A limitation like the one in question would therefore deprive them of their just dues, although they have hitherto exercised their powers with laudable moderation, and the tenants are very far from being rackrented, the undisputed fact being that the rates of rent vary from one-twentieth to one-third of the value of produce in these provinces.

"The injustice of the limitation is also clear from the fact that the re-settlements annually made by the Bengal Government in their khás mahúls and

temporarily-settled estates show that the rates of increase are much greater than two annas in the rupee. I find that in 1883-84 the re-settlements show an increase of Rs. 24,210 over Rs. 88,799, or 4½ annas in the rupee; in 1882-83 an increase of Rs. 31,968 over Rs. 92,021, or 5½ annas in the rupee; in 1880-81 an increase of Rs. 1,31,805 over Rs. 2,84,682, or 7 annas in the rupee; and in 1879-80 an increase of Rs. 64,504 over Rs. 1,72,804, or 6 annas in the rupee. I do not for a moment wish this Hon'ble Council to understand that the increases shown by these re-settlements were anything but fair and equitable: I have every reason to believe, on the contrary, that the enhancements of rent were very moderate.

"Looking at the economic aspect of the question, I wish hon'ble members will bear in mind that there is no pressure of population on land in these provinces. The total area of the different districts, including those of Orissa and excepting Nuddea, Jalpaiguri and Darjeeling, about which full information is not forthcoming, is 128,344 square miles, as shown by the returns submitted by the Board of Revenue; and I find from the Hon'ble Dr. Hunter's statistical accounts that the total cultivated area in these districts is 79,307 square miles, showing a difference of 49,037 square miles or somewhat more than one-fourth of the area of these provinces as still uncultivated. The effect of the limitation would, therefore, be to check the extension of cultivation, and lower, in an abstract sense, rents which are at present very low already. Low rents are neither good for the raiyats nor good for the country. Experience has everywhere shown that they act as a damper on the condition of the tenants and are a great drawback to their prosperity. Our own country has furnished instances of the fact. I shall read to this Hon'ble Council an extract from a paper connected with Dekkhan Raiyats' Relief Bill:—

'There is undeniable evidence in the report before us that the very improvements introduced under our rule, such as fixity of tenures and lowering of assessments, have been the principal causes of the great destitution which the Commissioners have found to exist.'

"The history of the proposed limitation is also significant. The draft Bill of the Rent Commission contained no restriction whatever to freedom of contract in this respect and to enhancements out of Court. It found no place also in the Bill drafted by the Hon'ble Mr. Reynolds, the Bill which was submitted by the Bengal Government, and the Bill which was forwarded to Her Majesty's Secretary of State for his sanction. For the first time a limitation of six annas in the rupee was inserted in the Bill which was introduced in Council in March, 1883, and it was reduced to four annas in the rupee by the Select Committee last year.

An attempt was made when the question came up in its turn to reduce the limitation to two annas in the rupee, but the motion was rejected by the majority of the Select Committee, the mover finding himself in the minority of one only. At a subsequent meeting the question was all of a sudden taken up, although it was not on the notice-paper, and the limitation was fixed at two annas in the rupee.

"I shall conclude by noticing one or two observations which have fallen from hon'ble members. In expressing his intention of moving that the restriction to enhancement of rent by suit in Court should not exceed four annas in the rupee, the Hon'ble Mr. Amír Alí has virtually condemned the two-anna limit by contract as unjust and inequitable. The remark made by more than one hon'ble member to the effect that the limitation in question would not check the acts of unscrupulous zamíndárs is an additional argument why the honest should not suffer by it. His Honour the Lieutenant-Governor has observed that the case would have been different if the legislature had to deal with a class of tenants better capable of understanding their rights and entering into sentient contracts than the Bengal raiyats; but I hope after Your Lordship has gained some experience of the country, and before Your Lordship leaves our shores, you will carry with you the conviction that in intelligence and in a thorough knowledge of their civil rights and duties, not less of their social and religious duties, the raiyats of Bengal and Behar might compare favourably with their fellows in any other country."

The Hon'ble SIR STEUART BAYLEY said that he would answer very briefly. He would have to recall the attention of the Council to the question which was now before them, and which was really remote from the learned disquisition in which the hon'ble member had just been reviewing a number of various subjects, beginning with the iniquity of Warren Hastings and ending with the religious duties of the Behar raiyats. The question before them was whether the clause limiting enhancement out of Court to two annas in the rupee should stand. In its practical aspect the question had already been debated on Mr. Evans' motion, and he had nothing more to say on this score. The Permanent Settlement had really nothing whatever to say to it, and he thought he might say that the Council had sufficiently satisfied itself before the second reading of the Bill that the authors of the Permanent Settlement were themselves convinced of the right of the State to interfere to limit the raiyat's rent; that in limiting that rent to the parganá rate they did so interfere; that they expressly reserved their right to interfere further if necessary, and whether they had

done so or not no settlement could possibly so bind a subsequent Government as to take away from it the inherent right to fulfil its primary duty of giving protection to the main body of its subjects. He would only further say that he must oppose the motion.

The Hon'ble MR. REYNOLDS remarked that he had no wish to detain the Council, but could only say again that the clause was one which the Government of Bengal had decided to adopt, and to which they attached great importance, and it was one of the few safeguards left in the Bill against undue enhancements. He did not think the Council should agree to strike out the clause.

The amendment being put, the Council divided :—

Ayes.	*Noes.*
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.	The Hon'ble J. W. Quinton.
The Hon'ble G. H. P. Evans.	The Hon'ble H. St. A. Goodrich.
The Hon'ble Peári Mohan Mukerji.	The Hon'ble H. J. Reynolds.
The Hon'ble T. M. Gibbon.	The Hon'ble W. W. Hunter.
	The Hon'ble T. C. Hope.
	The Hon'ble Sir S. C. Bayley.
	The Hon'ble C. P. Ilbert.
	Lieutenant-General the Hon'ble T. F. Wilson.
	The Hon'ble J. Gibbs.
	His Excellency the Commander-in-Chief.
	His Honour the Lieutenant-Governor.

So the amendment was negatived.

The Council adjourned to Friday, the 6th March, 1885.

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

SIMLA;
The 28th April, 1885.

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