

*Friday,
29th January, 1886*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXV

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ABSTRACT OF THE PROCEEDINGS
OF
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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 Vict., cap. 67.

The Council met at Government House on Friday, the 29th January, 1886.

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., V.C., R.A.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble T. E. Hughes, R.A.
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 J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble Amir-ud-dowlah Saeed-ul-mulk Rajah Mohamed Ameer Hosan Khán Bahádur Mumtaz Jung.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

LICENSE-TAX AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill for imposing a tax on income derived from sources other than agriculture be taken into consideration. He said :—

“ The Report of the Select Committee has been for a week before the public, and I observe from the comments in the newspapers and elsewhere that the provisions of the Bill as now modified have been generally taken into consideration. The Report enters fully into the modifications proposed by the Committee, and it is, I think, unnecessary that I should take up the time of the Council without sufficient reason, by going over ground which has already been thoroughly traversed in the Report. I will therefore now limit myself

to drawing attention briefly to the principal points in which the Committee has modified the provisions of the Bill. First, in the third clause of section 5 we have provided an exemption with regard to the houses of persons occupied in the pursuit of agriculture, so that houses actually in the occupation of landholders or agriculturists in connection with the land which they hold or cultivate, and which is necessary to them in the exercise of their calling, will not be liable to the tax. Secondly, we have exempted any portion, not exceeding one-sixth, of the income of a person liable to the tax, when such portion of his income is devoted to the purpose of securing a deferred annuity or an insurance upon his life, following in this respect the practice in England. The provision making a distinction between the assessable minimum amount of incomes from official salaries and other incomes has also, in deference to the views of the Select Committee, been struck out. There appeared to the Government, as originally advised, sufficient reason for making this distinction, but in view of the general disapproval which has been expressed regarding it, it was thought unwise to retain the provision in the face of the opposition it was likely to meet with. We have also omitted the provision requiring that private employers shall deduct the tax from the salaries paid to their employes. We found that great objection was taken to this provision by the mercantile community and other classes of employers, who represented that there would be considerable difficulty in practice in carrying it out, and that it would impose upon them much annoyance and inconvenience, while at the same time they expressed their perfect willingness to submit lists of their employes and of the salaries paid to them, so as to facilitate as much as possible the assessments of their incomes. Here, again, we were able, while retaining an option in the matter, where it could be worked by mutual agreement, to meet the wishes of the Select Committee. With regard to the taxation of shipping companies, it was represented by the Hon'ble Mr. Steel that the carrying out of that provision of the Bill was impracticable, that it never had worked in practice, and that its retention would only lead to a great deal of annoyance without any good result. We assured ourselves that it never had worked, that we had on previous occasions got nothing from it, and we satisfied ourselves of the force of the objections raised as to its impracticability. We felt ourselves the more bound to give our respectful attention to the objections and remonstrances urged on us in this respect, inasmuch as they came from a quarter whence great support and assistance had been afforded us, so that we could rest fully assured that the criticism was made in no captious or idle spirit. Our hon'ble colleague Mr. Steel, speaking on behalf of the community whom he represents, advised us that

1886.]

[Sir A. Colvin; Mr. Steel.]

while they were anxious to support the measure now before us as a whole, on this particular point we were, they thought, in error; and that were the section retained in the Bill great annoyance would probably be caused to shipping agents without any prospect whatever of advantage to the Government. We have accordingly altered the draft Bill to obviate this objection, The only other provision to which I consider it necessary to draw the attention of the Council is that which relates to appeals from assessments made under the Act. Under the original draft of the Bill no appeal was allowed from any assessment, but the Commissioner of the division might at his discretion entertain an appeal in any case in which he thought fit to do so. But it was pointed out to us that, with regard to assessments upon the larger incomes, it would certainly prove inconvenient not to allow an appeal; it was admitted that in the smaller assessments an unlimited right of appeal was objectionable, because experience had proved it to be of no practical utility; but in the case of the larger incomes it was represented that appeals must, from the nature of the case, be comparatively few, while, on the other hand, there could be brought before the appellate authority, in such cases, materials and data in support of the appeal which were not possible in the case of assessments for the less important amounts. As the main object in originally drafting the Bill had been to prevent the accumulation of a large mass of appeals against small assessments, submitted rather *pro forma* than because the appellant was in a position to urge anything in the form of proof, or the appellate authority in a position to exercise a sounder judgment than the officer assessing, we were prepared to meet the objection urged on us by enacting that an appeal should be allowed on the larger assessments, while, in regard to other assessments, we retained the provisions of the License-tax Acts, which have been found to work satisfactorily. We have accordingly modified the provision so as to admit of the revision upon appeal of assessments amounting to Rs. 250 and upwards. I think these remarks will suffice to draw attention to the points of main importance in the Bill as it has been amended by the Select Committee."

The Hon'ble MR. STEEL said :—" I cannot allow this opportunity to pass without expressing the obligations which are due to the hon'ble member in charge of this Bill for the fair and reasonable spirit in which he has carried it through the Select Committee. Some of its provisions were of a nature which might have occasioned much irritation if the objections to them had been met in a less conciliatory manner. The hon'ble member has described the changes which have been made in the Bill. The special exemption of Government servants with salaries under Rs. 100 per month would have

[*Mr. Steel; Bábu P. M. Mukerji; Rao Sahab V. N. Mandlik.*] [29TH JANUARY,

caused jealousy and offence; and, as it appeared to be supported by no sufficient reason, its excision has been a great improvement to the Bill. The Committee have been able to make another change in the Bill which is of considerable importance as satisfying objections from all parts of India. I mean the exclusion of those clauses which were designed to bring under the operation of the Bill shipping owned elsewhere than in British India but trading between foreign countries and Indian ports. The original clauses of the Bill were strenuously opposed by the agents who have charge of such shipping in India. They pointed out the impossibility that any one in India could ascertain or fairly assess the profits made by such shipping; that even the owner in England or elsewhere could make no proper return of the share of his profits liable to taxation, much less the agent in India; that the clauses, if applicable at all, must apply to any vessel touching at an Indian port; that the clause which enabled a Collector to call upon an agent for information which he could not possess was unfair and oppressive. These arguments had due weight with the Committee, who further satisfied themselves that similar clauses in former Acts had been absolutely inoperative and produced no revenue. Under these circumstances the concession made by the Committee has cost nothing to the revenue, while it has relieved ship-agents from the apprehension that some zealous Collector might endeavour to fasten upon them an onerous obligation impossible to be fulfilled. The Hon'ble Mr. Mukerji has given notice of his intention to propose that the duration of the Bill shall be limited to one year. I will not anticipate his remarks, but I will take this opportunity to say that, whatever be the result of his amendment, the payers of income-tax will now fairly claim that under the present Bill they will contribute at least their full share; and, when any remission of taxation is possible, they will expect that their case shall be considered on its merits along with all other claims for relief which may be put forward."

The Hon'ble PEÁRI MOHAN MUKERJI said :—"I only wish to refer to one point, and that is section 29. It will be seen that, unless otherwise provided by the rules to be framed by the Act, the tax will be collected in one instalment for the whole year from all persons except those holding salaried offices under Government or in private employment. I think it will be more equitable to collect the tax by quarterly instalments."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"I have noted, in the remarks which I have appended to the Report of the Select Committee, the subjects upon which I differ from the majority of my colleagues and on which I now wish slightly to touch with the permission of Your Lordship. I think the machinery of the Act, so far as it could be im-

1886.]

[*Rao Saheb V. N. Mandlik.*]

proved,—and this I speak from my experience of the first Income-tax Act, in the working of which I had the honour to be associated,—has been improved by the Select Committee, guided by the Hon'ble the Financial Member. But when I have said that, I think I have said nearly all that I can say in favour of the present measure. I had wished that the way had been seen to confine its operation to one or two years, and this on grounds already indicated in the remarks which I submitted to the Council on the first occasion; because, if that had been done, the measure would have been received with greater satisfaction by the people, and I should not have said much on this occasion. I think the remarks which were submitted to the Council by the Hon'ble Mr. Hope raised issues which were very wide, and with some of which I do not propose to deal at this stage. In my speech on the last occasion I simply took for granted the necessity of some new tax as pleaded by the Hon'ble the Financial Minister. I think the country is quite ready to meet his views so far. If the money is wanted for one year or two years, there is the Bill. But beyond that, if you seek to make this a permanent Bill, I say it would be going in the teeth of the past history of the country. I think the remarks which have fallen from the Hon'ble Mr. Steel are just in regard to all measures of direct taxation like that now before us. Some Native Chief may have tried to introduce taxation like this; but for all that I do say that it is unsuited to the country. Past history is against it, and I should not like to see the introduction of such a tax as this, because it will introduce two currents of economic life amongst the vast populations of India, and which ought not to exist; and whatever may be the reason for bringing other races and other classes of people under such measures of taxation, I think the Government of India should prefer those broader lines of financial policy on which I hope the Financial Member will always base his work; and I therefore think it will be better to limit the duration of this tax to the necessities of the occasion and not make it a part of the permanent resources of the empire. The allusion which the Hon'ble Mr. Hope made to the opinion of Mr. Gladstone is, I am sorry to say, not quite pertinent, because it did not refer to the duration of the tax; for, after reference to the volumes of Hansard's Debates, hon'ble members will see that it referred to what may be called the cutting up bit by bit of the scheme or a sort of tinkering of an Income-tax Bill. He did not wish it to be tinkered from time to time, but either to be taken as a whole, or abandoned as a whole. That Mr. Gladstone was strongly opposed to such a tax may be gathered from his condemnation of its character; for he expressed in very clear and decided terms his verdict on that occasion, and further he limited the duration of the tax to only seven definite years. The

[*Rao Saheb V. N. Mandlik; Sir A. Colvin.*] [29TH JANUARY,

circumstances and the revenue-systems of England and of India are very different—I may say entirely different. The main sources of our revenue are the land and opium. Into the rest I have no time to go. We had a house-tax, and it has been abolished. The Government of India has wisely remitted a very large number of annoying taxes since 1839 and 1844, and imposed others in their places; and I am quite sure that it can rest its action on its broad and equitable foundations; for, at any moment, when the necessity arises, all classes of the people will cheerfully submit to be taxed to the utmost. There is only one point on which I have to make one or two observations in this place, and that is with reference to the tax on houses. The house-tax is well known in this country, but it is not a tax on the income of the householder. I say this from my own experience and a knowledge of the past history of this country. But in order to verify my conclusions I have referred to various sources of information during the last week, with reference to the house-tax in British India and some of the principal Native States throughout the country, and I am satisfied that it is a house-tax and nothing more. It is a tax rather on the value of sites, and the incidence of the tax varies in some States like Kolhapur, in the Southern Marátha country, from two annas to five rupees. We were referred to the capitation-tax in Burma. It existed in two towns in 1852, and was abolished by our Government, which enacted a revenue-tax instead and limited it in a careful manner by regulating it according to the size of the site. I do not think therefore—and I say it with very great respect—that we ought to fall back now on the policy of an obsolete Native Prince cited to us as a model by which to guide our measures of taxation. We proceed on entirely different principles. The resources from which we derive our revenue can be examined in the broad light of day by the criticisms of an enlightened public, and I do not think the Government of British India has anything to fear if it follows the broad lines of a definite policy in such matters. I have differed in one or two things from the Hon'ble the Financial Member. I think that on the whole, for an emergency like this, we have struck out a pretty good rough and ready machinery, and I am only sorry that he should not be able to see his way to make this present Bill a limited one—I mean limited in its duration—and perhaps see his way to abolish it altogether.”

The Hon'ble SIR A. COLVIN said :—“ I am extremely glad to hear from the Hon'ble Mr. Steel that the efforts of the official members of the Government in Select Committee to meet and conciliate the objections brought forward by himself and his colleagues have met with satisfaction. I think it is also due to them to say that in passing this Bill through Select Committee our

1886.]

[Sir A. Colvin.]

own proposals have been met by our colleagues in a similar spirit, and that we have derived from their suggestions the greatest assistance and support. I may, perhaps, be allowed to go further and say that the generous support accorded to the Government in a matter of so delicate a nature, in a burning question of this kind which in former days was the subject of prolonged and bitter controversy, has been to us matter of deep satisfaction; and that the burden laid on me (for no man in my position can propose to increase taxation otherwise than with great reluctance) was greatly lightened when I found that those whom we were compelled to call to our assistance acknowledged the propriety of what we did, and gave us their ungrudging support and assistance in carrying out the measure which we placed before them. Both in the community represented by my hon'ble friend Mr. Steel and in the Native communities represented by my hon'ble friends Bábú Peári Mohan Mukerji and the Hon'ble Rao Saheb Mandlik, I think that it is only right that I should say that our proposals seem to me to have met with a degree of fair and unbiassed consideration which to me has been extremely gratifying. On a point of this sort it is inevitable that differences of opinion must be held and expressed; every man will form his own judgment, and the judgments of many will differ; but the balance of opinion, as far as I have been able to learn, is that the Government is justified in what it has proposed, that the mode in which the measure before us is to be carried out is open to the minimum of objection which can be brought against a measure of this kind, and that our critics, many of whom are called upon in their own persons to contribute, will do so loyally and willingly, if not gladly. With regard to the duration of the tax, the Hon'ble Mr. Steel has put the case in an extremely fair way, namely, that if the Government finds itself in a position to make remissions of revenue hereafter, the question of the income-tax should be put on the same footing and receive the same consideration as any other question of remission of revenue. I quite accept that understanding, and endorse it. With regard to what has been said by the Hon'ble Mr. Mandlik on this point, however, and further as to the propriety of taxing house-property, I will reserve my remarks until the amendments on the point, of which notice has been given by the Hon'ble Peári Mohan Mukerji, are brought forward; but, with regard to section 29, I would point out that the section provides that the tax shall be payable at the time appointed in that behalf in or under this Act, leaving a discretion to the Government in framing the rules to prescribe in what instalments the tax shall be collected, and I may assure my hon'ble friend that this is one of the points which, on framing the rules, will receive the careful attention of the Government."

[*Mr. Hope; Rao Saheb V. N. Mandlik.*] [29TH JANUARY,

The Hon'ble MR. HOPE said :—" I had not intended to trouble the Council with any remarks on this occasion, but am obliged to do so as my hon'ble friend Rao Saheb Mandlik has thought fit to refer to what I said on our former discussion as to the propriety of making the tax a permanent one. I regret that the aphorism that 'two of a trade can never agree' should receive a fresh illustration in the fact that the hon'ble member and myself, who both of us, in one sense or another, may be taken to be representatives of the Western Presidency, are at issue on some points relating to the legislation before us. The hon'ble member has been so good as to consider that my reference to Mr. Gladstone was not pertinent, because Mr. Gladstone, in the very debate from which I quoted his remarks, ended by advocating the duration of the tax for seven years only. I need scarcely say that, in a matter of that kind, I should be the last to pick out a particular sentence or particular view of any great statesman without considering his opinion as a whole. But I think it will be sufficient on the present occasion to say that, although Mr. Gladstone on that occasion advocated the passing of that measure for only seven years, just as Mr. Wilson in this Council advocated its operation for only five years when he first brought an income-tax into the financial system of the country, Mr. Gladstone has now found, by the operation of experience, that the expectation that the income-tax would be a temporary measure has been delusive; and therefore, in advocating the permanent incorporation of direct taxation into the financial system of this country, I may say that I am only following in the footsteps of that great financier whom my hon'ble friend and I myself both agree in respecting. Another point to which I shall briefly allude is that we cannot at the present day draw any profit from the example of what my friend called obsolete Indian Princes. I am very much surprised to hear that Indian Princes are considered to be obsolete."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK begged to explain that he had said "an obsolete Indian Prince."

The Hon'ble MR. HOPE continued :—" I am much obliged for the correction. But still, I am afraid that if such a remark had fallen from His Excellency the Viceroy, or from one of the Members of the Government in this Council, it might have been held to be of the very gravest political importance. I trust that it does not portend evil to the Princes of India in the event of our native friends acquiring that larger share in the government of this country which they are so anxious to obtain. To pass to a more serious vein, I may point out why I laid stress on the fact that Native Princes of the present day are at the present moment levying taxation of this particular description. We do hear on various occasions of the oppression and abuses in their revenue-

1886.] [*Mr. Hope; Bábi P. M. Mukerji; Rao Sahab V. N. Mandlik.*]

systems, but as to direct taxation, though I have had considerable experience in Native States, I do not recollect a single case of the failure of their system, and it was in view of that fact I stated that their system of direct taxation was worthy of our imitation."

The Motion was put and agreed to.

The Hon'ble PEARI MOHAN MUKERJI moved that the words "and in each subsequent year" in section 4 be omitted. He said:—"The Hon'ble the Financial Member told the Council when introducing the Bill that the proposed imposition was necessary to meet an extraordinary emergency, and that 'there was but one year to be tided over'. I fail therefore to see the necessity of giving a permanent character to a measure of taxation which, in spite of the soundness of its principle, is very unpopular in this country by reason of its attendant evils. The necessity of limiting the duration of the measure is the greater, as the announcement of Your Excellency's intention to appoint a Financial Commission has led the country to hope that several important questions connected with Indian finance would ere long be carefully sifted and satisfactorily settled. There can be no reasonable objection to a fiscal measure which seeks to make capitalists, professional gentlemen, gentlemen in the public and private services and tradespeople contribute their fair share of the cost of the administration; but I humbly submit that it is wholly premature to declare at present that an income-tax should be levied in the proposed form and at the proposed rate for all time to come, when we have every expectation that, before the ensuing year comes to an end, the proposed Commission will have been enabled to show considerable gain by retrenchment of expenditure, by re-adjustment of Provincial contracts, and perhaps also by a revision of the import-duties. The Hon'ble the Financial Member has very clearly pointed out that, if all direct taxation were abolished, the abolition of the cesses on land should follow as a matter of simple justice. Following up that reasoning, what justification, I ask, can there be for levying a cess of more than three per cent. from the poorest cultivator in the country and exempting from all direct taxation the trader or the moneylender who earns Rs. 499 a year? The enquiries which Your Excellency purposes to institute will enable Your Excellency's Government at the end of a year to enact a more equitable measure of taxation—one which will press equally on all classes of the community, excepting such as are too poor to bear the burden of direct taxation."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"My Lord, my remarks on this Motion will be brief. I know that I am in a very

LICENSE-TAX AMENDMENT.

[Rao Sahab V. N. Mandlik; Sir A. Colvin.] [29TH JANUARY,

small minority, but I wish to support the Motion of my hon'ble friend, first because I have some remarks to make, but secondly and principally because it affords to me an opportunity of giving a personal explanation which otherwise, by the rules of this Council, I shall not be able to give. The Hon'ble Mr. Hope has advocated the linking together of two systems of taxation which are inconsistent with each other: the British system is entirely different from that under the Native Princes. A comparison is thus instituted between two incommensurable quantities. There are many excellent Native Princes who do not require any certificate from me. There are others whose own deeds will duly expose them if they are bad; and they will suffer. But this is not the time nor the place to discuss the merits or demerits of the revenue-systems of the Native States, and I deprecated such discussion in the few observations I submitted to this Council. That I honour Mr. Gladstone is not a new thing. About his merits all are agreed. I know he has not been able to repeal the income-tax in 1860, but the income-tax in England (so far as I have been able to verify my references in Hansard) is brought forward before the House of Commons, speaking generally, *pro forma* (if one likes to say so); and it is annually voted upon; so that the analogy of the English practice does not help us here in the least. As regards Mr. Gladstone's opinion about the income-tax, it is decisive. He says on the same occasion as follows:—

'The public feeling of its inequality is a fact most important in itself. The inquisition it entails is a most serious disadvantage. And the frauds to which it leads are an evil which it is not possible to characterise in terms too strong.'

"With this opinion before me and with the evidence before this Council, and before the Committees of the House of Commons on Indian finance in 1871, 1872 and 1873, I take leave to say that, whilst I shall heartily support a measure which is required by the Government of India for its administration, as the Financial Member now says it is, for a limited period, I shall not be a party to support the proposal for a permanent Act on grounds which will not bear examination; and it is in this view that I said *the* antiquated Prince, and in saying so I meant no slur on him or on any Prince whatever. I am quite prepared to do as I would be done by; and I think I could not place a higher standard of examination or criticism, before this Council, of any question whatsoever."

The Hon'ble SIR A. COLVIN said:—"The hon'ble mover of the amendment has reminded me that in the speech I made when asking for leave to introduce this Bill I said that a year had to be tided over, and he has drawn from that the inference that if the ensuing year is tided over we shall have no further financial difficulties. I think he will see, if he refers to my speech,

1886.]

[*Sir A. Colvin.*]

that when I made that statement I was speaking with special reference to the question of interference during their currency with the Provincial contracts. I had said that we had an extraordinary charge put upon us in connection with the measures for the defence of the country and the depreciation in the value of silver, part of which only would fall on us in the ensuing year. I added that in the ensuing year, for the reasons given, to touch the Provincial contracts was undesirable; but I was careful to add that the charges connected with the defence of the country would not reach their maximum in 1886-87, and that, whatever more we may hereafter require, we must in the ensuing year have about £700,000 from this tax. I was careful to say that we might hereafter want more; we should certainly not want less. I thought I had explained sufficiently that I was far from saying that our necessities would probably be limited to the term of one calendar year, but, on the contrary, that we are compelled to incur expenditure arising from difficulties more especially connected with silver, the duration of which we are not at present in a position to define, and that against those growing difficulties might be set any further increase to our revenues at the revision of the Provincial contracts, which it would be premature, for the reasons I gave, to touch at present. My hon'ble friend has proposed that the duration of the tax shall be limited to one year and not to all time to come. If, on the one hand, I have refrained from proposing that the tax should be of an age, and not for all time, on the other, I have certainly never dreamed of proposing that any tax shall be levied for all time to come—for the limitless hereafter. All that we can say, looking at the situation before us, is that on the horizon which can be covered by our eyes there does not appear that little cloud of relief to which my hon'ble friend is impatient to draw attention. Further I cannot go. There are, as is well known, very valid objections to introducing a measure of this sort for the limited term of one year. In the course of the caution which fell from the Hon'ble Mr. Evans as to watching carefully the machinery for assessing the tax, amongst other things he drew attention to the necessity for regularity in the order and mode of assessment, regularity in the necessity of which we completely concur, but which can only be attained by applying the same precautions and reasonable prospect of continuity in assessing this tax as are taken in respect of other measures for raising revenue. My hon'ble friend the mover of the amendment has made a comparison between the cess of three per cent. paid by the poorest cultivator and the exemption from all taxation of the trader or money-lender who earned Rs. 499 per annum. I do not know whether in doing so it is his object to do away with this exemption, but in any case, the cultivator, I may remind him, pays his cess on his rent,

[*Sir A. Colvin; Bábú P. M. Mukerji.*] [29TH JANUARY,

not on his income. Speaking broadly, though not on that account inaccurately, I should say that the equivalent of what the cultivator pays as local rating in the form of cesses on his land is paid by the small tradesman in the form of municipal taxation or some local impost, and that in practice the one may be taken to balance the other. The man who is not assessed to the income-tax pays in either case in the form of a cess or of other local rate, or of a municipal tax. I do not think I have to say anything further with regard to this special amendment. I may repeat that our necessities are not bounded by the year immediately before us, and it is very desirable that we should do nothing to interfere with the regular and careful introduction of the Act, which will certainly be prejudiced if we were to let it be thought that it will be abandoned at the end of the year. To subject the whole community periodically to convulsion is obviously undesirable, and it is therefore objectionable to keep open the discussion and agitation as to the principles and merits of direct and indirect taxation by annually coming to this Council Chamber for the passing of a new Bill. Believing that there is no immediate probability of lightening the burden of taxation, I am strongly of opinion that on the ground of the public convenience it is undesirable to put any limitation of time to the operation of this Bill. I have only to add with reference to the allusion which has been made to the possible revision of the import-duties by the Committee which will be convened for the consideration of economies, that the proposed Committee will be a Committee to enquire into the possibility of diminishing expenditure, not of raising income; it will be a Committee to devise economies, not to advise upon financial policy. It is to be a special Committee of enquiry into expenditure, not of finance in its larger sense: and I judge it necessary to say this here, as, from his remarks, I gather that my hon'ble friend has somewhat misinterpreted the intention of Government in nominating a Committee."

The Hon'ble PEÁRI MOHAN MUKERJI said :—" I wish to point out that the cesses on land are in no way equivalent to the municipal taxes paid in towns. Even in rural villages the people have to pay the *chaukidári-tax* and other taxes which are equivalent to municipal taxes. The cesses on land are, properly speaking, direct taxes on income; and if the proposed tax is to be perpetuated it will perpetuate the existence of at least two unequal taxes in the country. What I submit is that, after the matter has been closely examined by the Commission, let there be a uniform and equitable tax throughout the country, and not different taxes affecting different classes of the community."

The Motion was put and negatived.

1886.]

[*Bábu P. M. Mukerji; Sir A. Colvin.*]

The Hon'ble PEÁRI MOHAN MUKERJI also moved that for the words " five hundred " in section 5, clause (j), the words " one thousand " be substituted. He said :—" In moving this amendment I do not forget that, while the lowest taxable income in England is £150, the cost of living there is three times as great as it is in this country, and that a maximum of exemption fixed in this country at Rs. 500 is, therefore, a just limit according to the English standard of taxation. If I could be sure that no person whose income is less than Rs. 500 would be placed under the operation of the measure, I should have no cause of complaint. But considering the position and character of the people, considering how powerless they are to resist an unjust assessment, and how a maximum limit of Rs. 500 reduces itself in practical operation to a limit of Rs. 200 or Rs. 300, I venture to hope that this Hon'ble Council will see the necessity of raising the minimum of taxable income to Rs. 1,000. I have no data before me enabling me to inform the Council what difference the proposed amendment will make in the aggregate outturn of the measure; but if it be deemed desirable that the tax-collector should not visit the houses of those who are unable to assert their rights and who can secure just exemption from taxation only at a heavy price, and that inquisition should be avoided at any cost, I submit that the minimum limit of taxable income should be raised to Rs. 1,000."

The Hon'ble SIR A. COLVIN said :—" In regard to this amendment I do not think it will be necessary for me to detain the Council very long. But I may recall one consideration which may tend to mitigate to some extent the apprehension, which the hon'ble member feels, that persons whose incomes are less than Rs. 500 a year may run the risk of being assessed. I may, perhaps, be allowed to point out, in passing, that the difference between Rs. 500 and Rs. 1,000 is pretty large, and the precaution which the proposed amendment aims at is perhaps a little excessive if the object of my hon'ble friend is merely to prevent the inclusion in the registers of any person who should not be assessed at all. But, however this may be, the consideration to which I have referred will be found in the expression used by Your Lordship in the opening of these debates when it was said that what we are engaged in doing was in adding an upper storey to a building which had been already commenced. Incomes between Rs. 500 and Rs. 1,000 with rare exceptions have for the last eight years been assessed under the license-tax. The lower storey will remain very much as we found it. There will be some re-adjustment of the rate of assessment between Rs. 500 and Rs. 1,000, which will be caused by certain changes and modifications we have made with the object, in the case of these

[Sir A. Colvin;—Bábú P. M. Mukerji.] [29TH JANUARY,

incomes, of giving greater relief. But I should imagine that during the last eight years men whose incomes are between Rs. 500 and Rs. 1,000 and who have been placed on the register will find the chance of their assessments being increased very limited; while those whose incomes are less than Rs. 500 have, it may be reasonably supposed, during the past eight years, been determined. All that we are doing with the lower storey is to open out a fresh door by which persons following certain other professions may be admitted, but with the great mass who have already tenanted it, or with those for whom it does not profess to find accommodation, we have practically no concern. Our object, moreover, in the introduction of the present Bill is to bring in a larger income, and it would therefore need stronger reasons than that urged by my hon'ble friend to cause us to raise the assessable minimum. By doing so we should find ourselves practically cutting off at one end what we added at the other, and we should suffer proportionately. I cannot at present say precisely what the precise result would be to the yield of our proposed measure were we to adopt the amendment, but it would be considerable. I can assure my hon'ble friend, however, that so long as I have the honour to preside over the Financial Department, under whose auspices the proposed income-tax will be worked, my attention will be given to the working of the Act, so as, as far as possible, to prevent its operating with injustice or hardship on the smaller incomes, and the classes of assesseees the least capable of looking after themselves, classes for whom, if he will believe me, I can assure him I have as much sympathy as my hon'ble friend himself."

The Motion was put and negatived.

The Hon'ble PEÁRI MOHAN MUKERJI also moved that section 24 be omitted. He said :—"The income which owners of buildings in a city or village derive by letting the buildings on hire will come under assessment under Part IV of the second schedule. To this provision I have no objection. But section 24 refers only to houses which are not let on hire and which are occupied by the owners themselves. It seeks to impose a tax not on an income actually derived but on an imaginary income which could be derived if the houses were let on hire. I confess I fail to appreciate the reasoning on which this provision is based. Buildings used by their owners as dwelling-houses yield no income whatever. In the case of poor descendants of families who were once rich, they do not afford even a criterion of the means of the occupiers. A provision to tax such buildings as sources of income is wholly incomprehensible to a community among whom living in one's own house is the general rule and living in hired houses a rare exception. On the same reasoning might a demand

1886.]

[*Dābū P. M. Mukerji; Mr. Evans.*]

be made for income-tax upon owners of steamboats, carriages and horses, of jewels and of other personal property capable of yielding income if let on hire. Apart, however, from the question of principle, the assessment of houses presents practical difficulties of no ordinary character. In most places there is no standard for determining the annual value of houses, and the assessments must, therefore, be most arbitrarily made. People will be subjected to no end of inquisition, hardship and harassment. The Cess Act of 1871 provided for the assessment of houses outside the limits of municipalities, but the work was found to be attended with so much difficulty to the assessor and oppression to the assessee that it was given up in despair. The amount assessed in these provinces in 1873-74 was Rs. 66,342, but it was at a cost of Rs. 66,942. In 1876 District-officers were requested to exercise their direct supervision in the work of assessment, because, observed the Bengal Government, 'left to the working of pancháyats and underlings, it may be a great oppression to the people, while the present results are anything but satisfactory.' In 1877 the Bengal Government observed in their Administration Report, 'the house-cess is not, however, suited to the circumstances of the country, and its abolition is contemplated.' When we have found it desirable to encourage thrift by exempting from taxation portions of salaries paid for securing deferred annuities, and to exempt owners of seagoing vessels by reason of the difficulty of the assessment of their profits, which are presumably enormous, and with reference to which, by the way, the Madras Chamber of Commerce, after pointing out the difficulty of assessment, claimed only allowances for losses incurred on some voyages, I fail to see the justice of bringing under the operation of the Act a description of property which yields no income to the owner and the assessment of which must necessarily be oppressive and inequitable. I submit, my Lord, that every argument bearing upon the question points to the justice and expediency of exempting from taxation all houses not let on hire."

The Hon'ble MR. EVANS said :—" I wish to say one word on this amendment. I do not agree with the hon'ble member who has just spoken on the principle of the amendment, but there is no doubt some force in what he said in regard to the immense difficulty of assessing Hindu family dwelling-houses. So great was the difficulty felt in Calcutta that the Municipality, having found it impossible to ascertain what such houses would let for, have actually insisted on assessing the rate at a percentage on the cost of the building, seeing that they could not do it in any other way. They had been pulled up by the High Court for going beyond their powers, although there is no appeal from anything done under the Act. It will be for the Hon'ble the Financial Member

[*Mr. Evans; Rao Sahab V. N. Mandlik; Sir A. Colvin.*] [29TH JANUARY,

to consider what instructions he should give regarding the assessment of such houses in villages for which tenants cannot be found at any price; and as to which it will be very difficult to find the value at which they may be reasonably expected to let."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" My Lord, in my dissent recorded at the foot of the Select Committee's Report, I had objected to the application of this section except to large towns. I have since made particular inquiries, and I think some of the grounds which my hon'ble friend Bábú Peári Mohan has urged are applicable even to very large towns, such as Puna for instance. There are in such towns large buildings which have cost thousands and even lákhs, and which can be had, some of them, for Rs. 30 or 40 a month. If the first cost of a building is to be taken as a measure for taxation, the new tax will be simply ruinous. Seeing that, in municipalities, taxation is already at too high a figure (something over five crores is, I believe, the total of municipal and local taxation in 1882-83), I think it is very desirable, if the Hon'ble the Financial Member can see his way to do so, to omit this clause altogether, as he has already done in the case of agricultural buildings and the houses of landholders and tenants. And seeing that house-property is already taxed in Bombay at Rs. 15-12 per cent., and under the Calcutta Municipal Act of 1876 the maximum rates amount to 21 per cent., I think it very desirable that the Financial Department should act on the principle, already recognized in this Bill, that when a man is once taxed he should not be subjected to another tax in the same capacity."

The Hon'ble SIR A. COLVIN said :—" The section to which my hon'ble friend, the mover of the amendment, has taken objection is no new section. It has found its place in all preceding Bills of this kind, and the principle of rating which has been adopted is the principle prevailing in England, and hitherto recognized in India; so that we have in our favour every precedent, as far as I know, without exception. And in spite of what my hon'ble friend has said I can see no reason for not levying a tax upon the assumed rental of houses occupied by their owners, which appear to me as liable to assessment as incomes derived from any other form of property. If a man invests his capital in house-property, I fail to see why, though he occupy such house himself, the income which he derives, indirectly though it may appear to be, from his investment, should not be subjected to assessment. The Hon'ble Mr. Evans has taken exception to the difficulty of assessing a particular kind of house-property. That appears to me a fair point to bring home to the Government,

1886.]

[*Sir A. Colvin; Mr. Evans.*]

and it will receive careful consideration in framing the rules. I have not the least doubt that His Honour the Lieutenant-Governor will give this point his careful consideration. But, although there may be some difficulty in working the rules, I do not think we shall be justified in adding another exemption to those already contained in the Bill. Where a rule of assessment is impracticable, and has, as in the shipping case just referred to, been proved impracticable, we may well be expected to abandon it; but a mere difficulty of working must be met, not by exemption, but by care in administration. If the difficulty alluded to by my hon'ble friend Mr. Evans is connected with the joint property of zamindárs living upon their estates, such property is expressly exempted under the Bill, inasmuch as it is a building which the receiver of rent by reason of his connection with the land requires as a dwelling-house."

[The Hon'ble MR. EVANS—"I do not mean the dwelling-houses of zamindárs, but of mahájans."]

The Hon'ble SIR A. COLVIN continued:—"Then the difficulty must be provided for in the rules, and we have to thank our hon'ble colleague for having warned us of it. As to the exemption asked for, in spite of the experiences quoted by my hon'ble friend the mover, which do not refer to measures similar to that now before us, but to a local law, with the working of which I may admit I am not familiar, in spite I say of experiences which seem to me to refer to other circumstances and to be not very much to the point, in view of the experience gained from other parts of India, we should certainly not be justified in making the exemption asked for. I have never hitherto heard that in Bengal the former Income-tax Acts were worked so objectionably under this head as to demand exemption of houses occupied by their owners. From other provinces no complaints were made. It is matter, not of principle, but of practice. The ascertainment of the letting value is matter for the rules to be made under the Act, but I cannot admit that this class of houses is to be assumed, for the purposes of the proposed Act, to have no letting value at all. We have universal precedent both in England and in India in regard to the assessment of house-property; while here in India, in the hitherto working of measures of this nature, this has not been a difficulty brought to our notice as in any way demanding exemption. So far as difficulties of assessment are concerned, the objection is one which requires our attention, and in framing the rules great care will be taken to avoid the injustice and annoyance which the hon'ble member anticipates."

The Motion was put and negatived.

114 LICENSE-TAX AMENDMENT; NORTHERN INDIA FERRIES;
CONTRACT; MIRZAPUR STONE MAHÁL.

[*Sir A. Colvin; Mr. Hope; Mr. Ilbert.*] [29TH JANUARY,

The Hon'ble SIR A. COLVIN then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

NORTHERN INDIA FERRIES ACT, 1878, AMENDMENT BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to amend the Northern India Ferries Act, 1878, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN CONTRACT ACT, 1872, SECTION 265, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend section 265 of the Indian Contract Act, 1872, be taken into consideration. He said :—" This is a Bill to amend a section of the Contract Act which has given the Courts a good deal of trouble. It relates to the winding-up of the business of a firm after the termination of the partnership. The authorities whom we have consulted are by no means in accord as to the precise form which the amendment should assume, but the Select Committee came to the conclusion that there are practically only two alternatives—either to repeal the section altogether as out of place in an Act which professes to deal with substantive law and not with procedure, or to recast it in such a way as to bring it into conformity with one of the forms of plaint in the Civil Procedure Code. We have preferred the latter alternative as less likely to cause misconception than mere repeal."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MIRZAPUR STONE MAHÁL BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Com-

1886.]

[*Mr. Ilbert; Sir A. Colvin.*]

mittee on the Bill to declare and amend the law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the law relating to Government Securities. He said :—" In the Report submitted in October last by the Select Committee on the Bill which became Act XIX of 1885, it was stated that the question of applying the rule of survivorship to Government securities issued after as well as before the first day of April, 1886, would be further considered during the Calcutta session. The question has now been fully discussed, and the Government of India has decided to propose the maintenance of the rule of survivorship which has hitherto obtained. Effect will be given to this decision by the repeal of the words in section 3, sub-section (1), Act XIX of 1885, which restrict the operation of that section to Government securities issued before the first day of April, 1886.

" By sections 4 and 5 it is proposed to introduce into the law relating to Government securities provisions enabling holders for the time being of public offices to hold those securities, and prohibiting the making of indorsements on allonges annexed to them.

" Section 4 of the Bill, in providing that Government securities may be made and indorsed payable to the holder for the time being of an office, follows the English Bills of Exchange Act, and will put an end to the public inconvenience which is caused by the present uncertainty as to the state of the law in India.

" As regards section 5, the risk of fraud which attends the practice of writing indorsements upon allonges is held to justify the prohibition of annexing them to instruments which, like Government securities, are readily renewable.

[Sir A. Colvin; Mr. Quinton.]

[29TH JANUARY,

“ The last section of the Bill merely empowers the Governor General in Council to make authoritative rules for the maintenance of existing practice with respect to the record and acknowledgment of payment of interest and to the renewal of securities which have become covered with indorsements.”

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to consolidate and amend the law relating to rent in Oudh. He said :—

“ Nearly 18 years have elapsed since the Oudh Rent Act was passed, and it may be well that I should recall to the recollection of this Council the circumstances under which it was carried before I state the provisions of it which in the opinion of the Local Government and the Government of India now call for amendment. The passing of the Act was the final step in a long controversy which had raged in and out of the province for several years previously. It gave legal effect to certain concessions mutually made by the parties to that dispute. It granted hereditary rights of occupancy on beneficial terms to an ex-proprietary body,—tillers of the lands once owned by themselves or by their ancestors,—and it left the remaining tenants throughout Oudh in the position of tenants-at-will, liable to pay such rent as their landlords might demand, and subject to ejectment from their holdings on a month's notice.

“ The Government of the day had scanty materials by which to judge of the probable effects of these provisions. There had been no regular census of the population, and the regular settlements of the Province were still being made. It was understood, however, by the Government of India that the provisions respecting tenants with a right of occupancy would embrace in their aggregate a large body of the cultivators of the Province, and of those classes especially which claim most strongly the sympathy and interest of the British Government. The harshness of the provisions respecting tenants other than those possessed of rights of occupancy was believed to be more apparent than real, inasmuch as the Chief Commissioner so late as 1865 had put on record that in three-fourths of Oudh there was a deficiency of cultivators, that they were so valuable that no landlord would seek to get rid of a good one, and that even in parts where population is more abundant no symptom that the cultivators needed protection had then been manifested. Further, the Act purported to extend a certain amount of protection to every improving

1886.]

[*Mr. Quinton.*]

tenant by giving him a right to compensation for his outlay on improvements whenever his rent was enhanced or when he was evicted from his holding—a statutory right then novel in this country, and lastly, the terms of the taluqdárs' sanad or written grants of their estates were supposed to furnish a sufficient guarantee against oppressive treatment of tenants in taluqdárf estates.

"I may remind the Council that all proprietary rights in the soil of Oudh were confiscated by a proclamation of Lord Canning after the mutiny, and that their estates were granted to the taluqdárs afresh on certain conditions; among them the following:—

'It is also a condition of this grant that you will, so far as is in your power, promote the agricultural prosperity of your estate,' and 'as long as the above conditions are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the abovementioned estate.'

"These conditions, in the opinion of Sir Charles Wingfield, the most staunch supporter of the rights of the taluqdárs, would of themselves furnish the Government with a warrant for stepping in to prevent oppression of their cultivators by taluqdárf landlords.

"So much as to the provisions of the law as it stands, and as to the beliefs and intentions of those who framed it respecting its probable effects. I now proceed to show how far the working of the law has accorded with these expectations. For this, materials are not wanting. The last census, which was taken in 1881, gives full statistics respecting the agricultural classes of Oudh. The Rent Act authorizes the issue of notices of ejection, through the agency of the revenue-offices, and the great increase in the number of these, which rose by rapid jumps from 23,600 in 1876 to 90,200 in 1882, attracted some years ago the attention of the Chief Commissioner and the Government of India. Enquiries were from time to time instituted which led to no very definite result. During the course of one of these enquiries a case came to light in which Sir George Couper had felt it necessary to interfere, in the terms of the sanad, to check what appeared to be harsh and unjustifiable raising of rents in the case of one particular estate; but on re-consideration there seemed to be room for condoning the error and restoring the taluqdár to his possessory management.

"The case, however, disclosed circumstances which, being acknowledged to be not uncommon in Oudh, necessitated a comprehensive enquiry into the general condition of the tenantry throughout the Province, which was accordingly ordered by the Government of India. The method of enquiry was that in each district 50 or 60 villages should be selected which should include ex-

amples of the principal forms of tenure. Each village was to be visited by the Deputy Commissioner or an Assistant not below the grade of Extra Assistant Commissioner, and, with the help of the rent-rolls filed at settlement and since, an exhaustive examination was to be made of the changes in rental and occupation which occurred in the 12 or 15 years since the settlements were made. To secure uniformity and thoroughness in the investigations, Major Erskine, Commissioner of Sitapur, an officer of great revenue experience in Oudh, was appointed Special Commissioner to supervise the operations. The enquiries were carried out on the plan prescribed in the cold weather of 1882-83, and in June, 1883, Major Erskine submitted the proceedings of the District-officers, together with proposals for the amendment of the law, framed by him after consultation with all classes interested, in a very thoughtful, able and lucid report, which has elicited the commendation of the Lieutenant-Governor, the Government of India and the Secretary of State. The district reports had also been submitted to the consideration of a Committee assembled at Lucknow of which Mr. J. B. Lyall, then Financial Commissioner of the Punjab, now Resident of Mysore, was president, and Mr. W. C. Bennett, Director of Agriculture and Commerce in the North-Western Provinces, a member; and both these officers, who are, I need scarcely observe, specially qualified to discuss the subject, have left on record valuable notes respecting it.

“Major Erskine’s proposals have since been under the consideration of the Governments in India and at Home, and it is on them that the provisions of the Bill which I am asking leave to introduce are mainly based.

“It will be sufficient for the present occasion if I give briefly the results gathered from the several sources of information just enumerated. The population of the Province is, in round numbers, 11½ millions, of whom 72½ per cent. live by agriculture. These latter may again be divided into landowners who are only 4 per cent., cultivators who are 70, and labourers who are 26 per cent., of the agricultural population. Landowners are roughly divided into two classes—*taluqdárs* and others, chiefly co-parcenary communities. *Taluqdárs* are 346 in number out of 180,000 landowners, and hold 59 per cent. of the area of the Province. Tenants with rights of occupancy under the Oudh Rent Act are 8,117, and tenants-at-will, in round numbers, 1,800,000. The percentage of tenants with rights of occupancy to tenants-at-will is .5, or one in every 200. I do not refer to intermediate tenures between the proprietors and actual cultivators. They are not numerous, and do not concern the subject with which I am dealing.

1886.]

[*Mr. Quinton.*]

“As to the density of the population—Oudh is divided into 12 districts; in only two of these is the pressure of population under 400 to the square mile of the total area; in three it is between 400 and 500; and in seven it ranges from 500 to 700. For the whole Province the average is 469·7. In the North-Western Provinces the corresponding figures are 399·7. The density of the population is thus almost as great as that of Belgium (485), the most densely populated kingdom in Europe, and greater than that of England and Wales (456)—countries where I need scarcely observe manufacturing industries pre-eminently flourish. The cultivated area divided amongst the agricultural families would give to each a farm of five acres.

“These statistics will place the present members of this Council in a better position for estimating the probable effects of the legislation of 1868 upon the Province than their predecessors held at that time. We see from them that the Province is occupied by a dense population depending almost entirely on agriculture for its support; that the protection accorded to occupancy-tenants has reached only a minute class, and that the main body of the cultivators as regards fixity of tenure and enhancement of rent depend entirely on the will of a small body of landlords.

“The protection which it was hoped would be afforded to the tenants-at-will generally by the provisions regarding the right to compensation for improvements, and on taluqdári estates by the conditions of the sanad, have proved illusory. There has not, so far as I can ascertain, been a single case of such compensation ordered by the Courts on the enhancement of a tenant's rent, and landlords have largely evaded the law either by refusing to allow improvements to be made by the tenant or by requiring him to contract himself out of his right to compensation. The sanad is a weapon of such tremendous power that it must be held in reserve for extreme cases, and Government is naturally reluctant to use it without very grave cause. As a matter of fact, it has been used only once.

“The law, as I have already stated, permits a landlord to turn out a tenant who cannot claim rights of occupancy at the close of any year on a month's notice. It also places no limit on the enhancement of rent which a landlord may exact from such a tenant. If the latter does not agree to the landlord's demands, he must make room for another who will. These powers accorded to landlords have not been allowed to remain a dead-letter. Major Erskine reports that out of 28,477 tenancies which were the subject of examination there were only 5 per cent. in which the component fields and the rent had remained materially unchanged during the preceding 15 years; in 12 per

cent. of the whole number there had been little change in the fields, but the rents had been materially enhanced; in 36 per cent. both fields and rent had been materially altered; and in 46 per cent. the tenants were new-comers. The figures, be it remembered, refer not to a single tract of country, but to tenancies in different districts all over the Province, and leave little doubt that fixity of tenure is rare, and that there is much shifting and changing among tenants.

"As regards enhancement of rent, Major Erskine estimates that during the same period of 15 years there has been throughout the Province an increase of 24 per cent., the rate of rise varying from 13 per cent. in one district to 49 in another. He considers, however, that in many cases the rise is shown to be greater than it really is, owing to landlords having intentionally understated their rents at settlement. There is no doubt that the improvement of communications and the opening out of new markets have enabled the Province to share in the general rise of prices of agricultural produce. It is calculated that since the last settlement prices have risen from 25 to 30 per cent. with which it thus appears that the average rise of rents corresponds pretty closely. This doctrine of averages, however, in such cases must not be pressed too closely. It would be poor consolation for the cultivator in Pertabgurh (a district not traversed by a railway), whose rent has been raised 49 per cent. in 15 years, to be told that prices throughout the Province have risen by 25 or 30 per cent. in the same period. It must also be borne in mind that the full benefit of the rise of prices does not always reach the tenant, and that a large proportion of it is intercepted by the village-banker, to whom the tenant makes over his crop. The mahájan flourishes in Oudh as elsewhere. I may add that there was a general testimony to the fact that rents as a rule were enhanced more with a view to what the tenant could under the threat of eviction be forced to agree to pay than from any estimate of the value of the land and its produce.

"The cultivation of a province which has been not unfitly styled the Garden of India, where there are few manufacturing industries, and where the pressure of population on the soil is very great, is thus carried on by a body of raiyats holding under a tenure which may be described as a yearly tenancy in its simplest and most rudimentary form. I need not waste the time of this Council by bringing forward arguments, with which the discussions of the last few years in England and in India have made us too familiar, to show that this form of tenure under such conditions is the one most discouraging to agricultural efficiency and most likely to lead to the impoverishment and degradation of the cultivators of the soil. The fierce competition for land—

1886.]

[*Mr. Quinton.*]

the sole means of subsistence—engendered by increasing numbers must lead to the depression of the cultivator's condition, and thus produce a state of things detrimental to decent agriculture and damaging to the real interests of both landlord and tenant, and of the community at large. Precarious tenure is fatal to agricultural prosperity.

“ These possibilities were not overlooked by the able men who framed the present law, and Sir John Strachey and Sir Henry Davies, who were its authors, did not conceal their apprehensions that they might ultimately become realities. Ignorance of the fuller information which we now possess, and the hope that the checks provided would have a more extensive and effectual operation than has proved to be the case, no doubt then justified the belief of the Government of India that the scheme to which they gave their sanction sufficiently met the wants of the time. The Government of to-day, however, have grounds for no such confidence. The lion, though not yet upon us, is yearly creeping nigher, and it behoves us to awake and drive him off before it is too late. In this spirit the Government are now prepared to act. They consider that the following points have been established by Major Erskine's enquiry :—

- (1) that though rents had no doubt in many cases been very largely enhanced, yet on the whole the landlords of Oudh have not been guilty of wanton and unjustifiable exaction, and the condition of the people had generally improved;
- (2) but that this condition is seriously threatened by various economic causes : prices have risen, largely owing to improved communications and the export of cereals, but rents have risen with similar rapidity, and while there is little prospect of the rise in prices in the immediate future being maintained at the same rate there is every chance of a continuous rise of rent owing to the increasing competition for land and the unprotected state of the tenantry;
- (3) that in the interests of agricultural efficiency some amendment of the Rent Law is, in the unanimous opinion of the District-officers, considered to be now essential, so as to give to the cultivator greater security of tenure, including some sort of protection from arbitrary eviction and enhancement, more adequate compensation for improvements, and longer notice to quit in case of eviction.

“ The measures best adapted to remedy these evils have been the subject of long and anxious consideration with the Local Government and the Government

of India. All the most experienced revenue-officers of the Province have been consulted over and over again; ripe knowledge from a distant Province has been summoned to council; taluqdárs and landholders of other classes have been constantly referred to; and the results are embodied in the Bill which I am asking leave to introduce.

“ The object kept in view in framing the proposals which I am about to explain was to provide a remedy adequate to redress the evils which I have attempted to describe with the minimum of disturbance of the present state of things, and to avoid introducing revolutionary changes in the agricultural economy of the Province which, by appearing to run counter to previous engagements, might afford grounds for imputations on the good faith of the British Government, might excite unnecessary alarm in the landowning classes, and set them and their tenantry at arm’s length.

“ I have accordingly not to recommend to the Council the introduction in any shape of a heritable right of occupancy acquired by prescription and enjoyed by a privileged class of tenants such as is recognized by the law of older provinces. Great as are the advantages of that form of tenure—and I myself believe that they are very great—the introduction of it into Oudh forms no portion of the scheme embodied in the Bill. It was contended by a very influential school of officers in the early days of Oudh administration that such rights, though in many cases dormant, did exist, and that they should be ratified and strengthened by law. A full enquiry was made into this question during the viceroyalty of Lord Lawrence, and a somewhat bitter controversy was waged round it, the outcome of which was that the Government of India and the Secretary of State accepted the conclusion that no such rights existed at the annexation of the Province by the British Government which could be maintained by the tenant against the will of the landlord. Consequently the Government of that day resolved not to insist on the *introduction* of such rights into the Province against the will of the larger and more important sections of the landlords, who alleged that such a measure would violate the rights guaranteed to them by their sanads. This decision there is now no intention of reversing. Sir Alfred Lyall and the Government of India believe that measures much less drastic and much less distasteful will probably suffice to prevent the disastrous consequences which are to be apprehended from the present state of the law, and are of opinion that such measures should receive a full and fair trial before they are condemned as inadequate.

“ The Statement of Objects and Reasons appended to the Bill will explain in detail the alterations which the Bill proposes to make in the law; on this

1886.]

[Mr. Quinton.]

occasion I shall confine myself to stating the principles on which they are based, and giving an outline of them.

“Transactions between landlords and tenants in Oudh are now regulated almost universally by contract, qualified in some slight degree by custom—a qualification which is becoming weaker year by year. Now, my Lord, seated as I am between most distinguished representatives of commerce on the one hand and law on the other, I am not about to undervalue the benefits which flow to society from freedom of contract between man and man, or the unwisdom of unnecessarily interfering with it. But, like many other dogmas which claim infallibility under all circumstances, which demand implicit belief *semper ubique et ab omnibus*, this principle has been proved by experience to require some qualification in its practical application.

“Unrestricted freedom of contract between two parties one of whom is at the mercy of the other is a very barren gain to the weaker side; and I need not take up the time of this Council in again traversing the ground, every inch of which was fought over last year, in order to show that 1,800,000 tenants holding on yearly tenancies, liable to be evicted at the end of every year and to unlimited annual enhancements of rent, with no other resource than agriculture to look to, are not on equal terms with 180,000 landlords whose hands the law arms with weapons of such potency. Contracts between parties so unequally matched place the tenants, as the weaker party, at a great and manifest disadvantage, not reconcilable with equity, and although good landlords have used, and will use, their power with forbearance, yet we must expect, according to all experience, that such powers will be largely and perhaps intolerably misused. I speak here of the necessary tendencies of the law, and am far from wishing to imply that the conduct of the landlords of Oudh has already brought about such a state of things; on the contrary, I most willingly admit that it is owing in some degree to their forbearance that things are not already much worse than they are, and that the general rule—though I fear there are numerous exceptions to it—is still good feeling between them and their tenantry. But not the less economic causes over which they have little control are daily gaining strength and pushing them on to make the most of the advantages which the law gives them. The Government therefore considers that it is time to intervene on behalf of the weaker party, and to place him on more even terms with the stronger in making his bargain.

“The first restriction to be placed on freedom of contract in the interest of all concerned is a limitation to the power of eviction at the close of every

year. So long as this remains all other precautions or safeguards are useless. A tenant threatened with a measure which involves the loss of all means of support for himself and his family will agree to anything; and to enforce contracts made under such circumstances is merely to allow the law to be used as an instrument for accelerating his ruin. I believe I am correct in saying that the failure of Mr. Gladstone's first Irish Land Act was due mainly to the fact that the power of eviction, and therefore of securing annual enhancements of rent, was left to the landlords.

"This rock we wish to avoid, and the first provision we make is that all tenants now in occupation of land in Oudh—the small class of occupancy-tenants who are already protected by law excepted—should have a statutory right of occupancy for seven years, from the date of the last settlement of the rent or holding, at the rent which they are now paying in the land they hold at the date of the passing of the Act. At the end of that period we propose to allow the landlord to enhance the rent of the sitting tenant to such sum as he and the tenant may agree upon within a limit of one anna in the rupee, or $6\frac{1}{4}$ per cent. on the rent previously paid. At any time after the expiration of the statutory period a landlord who has not made terms with the sitting tenant may proceed either by notice of enhancement or by notice of ejection at his discretion. If he proceeds by notice of enhancement, the enhancement must be within the limit above given. If the tenant accepts, a new period begins. If the tenant refuses the proposed enhancement, the holding will become vacant, but no higher rent can be recovered from the next tenant than $6\frac{1}{4}$ per cent. above the old rent on the same holding. If the landlord proceeds by ejection, leaving the tenant no option of re-entry, compensation for disturbance will be given up to one year's rent at the rate last paid, and the limitation of $6\frac{1}{4}$ per cent. will apply to the rent recoverable from the next tenant. In both cases tenants will be entitled to receive before dispossession any compensation due to them for improvements. The right of renewal is to be personal to the tenant in occupancy. On the death of a tenant in occupancy his heir will be entitled to hold on on the same terms to the expiration of the statutory period enjoyable by his predecessor, but must then, should the landlord so wish, vacate the holding on payment of the compensation for improvements found to be due to him.

"We propose further to deprive the tenant of the power of contracting himself out of these rights. I have already briefly touched on the necessity for this, and may be obliged to deal with it at greater length when the provisions of the Bill are discussed in detail; I need not now dwell further on it.

1886.]

[*Mr. Quinton.*]

“ The scheme is thus based on contract, but on contract limited and restricted in those directions where the absence of such restrictions has proved most mischievous. A landlord may let out his land on the best terms he can get, provided that the term for which he lets it shall not be less than seven years or the rent more than $6\frac{1}{2}$ per cent. above that previously paid. He may turn out the tenant at the end of seven years, but if he does so he must pay him a moderate compensation for disturbance. The heirs of a deceased tenant, on the expiration of the statutory term, have no rights as against the landlord, except to compensation for improvements; and the landlord, when the holding is vacated under such circumstances, can let the land to any one he pleases for the statutory term without any restriction as to the amount of rent.

“ This scheme for the protection of the Oudh tenantry is not based, like most of our legislation respecting the relations of landlord and tenant, upon existing rights, but on the grounds of general utility and expediency, and it has been framed so as to involve the minimum amount of disturbance in the existing law that is consistent with what Government believes to be the requirements of the case. Experience only can tell precisely how far it will be effectual, and its very moderation exposes it to the risk of being evaded or broken through by determined and unscrupulous proceedings. It purports to avert, by regulative measures, the necessity of resorting to more rigorous expedients, but Government desires to reserve in its hands two weapons to be used in case of such necessity arising.

“ They would take power, first, to vary the limits of enhancement, in any district or part of a district where this is found necessary, at long intervals. There has been, as already stated, a large increase in rents since settlement, which is no doubt to a certain extent justified by the rise in prices. Existing rents have therefore been accepted as the basis for future enhancements, but the causes which have justified the enhancement since the settlement may cease to operate, or operate much less actively in the future than they have done of late years. It may well be that the tendency to rise in prices may receive a material check, and, if so, the authorisation of an enhancement up to the limits now fixed would be most unfair to the tenants and bring about the very results which we wish to avoid. On the other hand, it is conceivable that in certain localities, if not generally, circumstances may arise which would warrant a landlord in demanding rents in excess of the limits of enhancement now laid down. For these reasons the Bill proposes that the Local Government should have power, from time to time, within periods of not less than seven years, in any district or part of a district to vary the limits of enhancement.

" This provision would operate generally or over large areas, and at long intervals, and would not avail to check cases of exceptional harshness or oppression in which an astute landlord might succeed in evading the provisions of the ordinary law or in converting them into an instrument of exaction to the ruin of his tenantry. To meet such cases we propose to retain and legally define the sanad liability to be enforced as an *ultima ratio*. The Bill accordingly provides that whenever the Lieutenant-Governor and Chief Commissioner is satisfied that an estate is suffering from grave mismanagement, which has since the present year materially deteriorated the condition of the tenantry or diminished the area of cultivation, he may, with the previous sanction of the Governor General in Council, appoint an officer for the revision of the rents of the estate and their authoritative settlement for a period not exceeding ten years.

" My Lord, the grant of such powers is not unprecedented. Only last year, with the approval of the Secretary of State, of the Government of India and of this Council, a section of a much more stringent character was inserted in the Bengal Tenancy Act, which enabled the Local Government, with the previous sanction of the Governor General in Council, when satisfied that it was necessary to do so in the interest of the public order or of the local welfare, to invest a revenue-officer with power to settle all rents, and to reduce existing rents which he considered to be unfair and inequitable. Zamindári landlords have therefore no ground of complaint that any exceptional treatment is being dealt out to them. As to the taluqdárs, I have already read out to the Council some of the conditions on which they hold their estates, and explained how the sanad is too crushing a thunderbolt to be launched against any but outrageous offenders. The proposals now made will give the Government a statutory power to enforce one of the conditions of the sanad which must always be considered of the highest importance, but, on the other hand, will furnish the taluqdárs with more clear and definite information than they at present possess of the grounds on which Government will in future feel it a duty to step in between them and their tenantry, and of the worst that can happen to them from such interference should it be found to be necessary. At present the very vagueness of the conditions of their sanads exposes them to the arbitrary will in this matter of the Executive Government of the day, and, by reason of the economic changes which are taking place, occasions for the interference of Government are likely to be much more numerous in the future than they have been in the past. It will really be a relief to good landlords among them to know exactly what they may and may not do without incurring the risk of penalty. Colonel Erskine, whom the taluqdárs justly look upon as an old and

1886.]

[*Mr. Quinton.*]

firm supporter of their rights and privileges, proposed a much more drastic measure of the same nature, and recommended it in the following terms :—

‘ I have made the proposal because, although I hope and believe that it will be very long before the Government feels called upon to exercise the great power which it would confer, I think it very important that this power should be secured to Government. Without it the Government may find it necessary to resort to more stringent legislation than I now advocate in order to restrain a few bad landlords from doing what the many good ones would never do; whereas, if the power be in its hands, it will be able to proceed against the real offender without interfering with those whose conduct calls for no interference.’

“ Such are the outlines of the Bill which the Lieutenant-Governor, with the full sanction of the Government of India, has prepared for the better regulation of those points in the relation of landlord and tenant in which the defects of the present system have been found to be most mischievous. It has been submitted after three years of investigation, correspondence and discussion with those concerned, and has been, in substance, communicated to the leading taluqdárs. Most of these gentlemen are understood to admit that under the circumstances some amendment of the existing law, in the direction of the draft Bill, is expedient, necessary and inevitable, and I believe that they acknowledge the measure which I am asking leave to introduce to be reasonable and moderate; and since the Government have adopted it in principle, I have grounds for anticipating that the taluqdárs and zamindárs will acquiesce in a measure that has been framed with all possible regard to the real interests of all classes connected with agriculture and the land in Oudh. In Select Committee, should the Bill reach that stage, the taluqdárs will be represented by my hon’ble friend Rájá Amír Hasan Khán, the President of their Association, and any modifications of detail urged in their behalf will receive our most careful and attentive consideration.”

The Motion was put and agreed to.

The Hon’ble MR. QUINTON also introduced the Bill.

The Council adjourned to Friday, the 5th February, 1886.

S. HARVEY JAMES,

*Officiating Secy. to the Govt. of India,
Legislative Department.*

FORT WILLIAM; }
The 8th February, 1886. }