Wednesday,
9th June, 1886

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXV

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

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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 Viceregal Lodge, Simla, on Wednesday, the 9th June 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 the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

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 Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

Colonel the Hon'ble O. R. Newmarch.

The Hon'ble J. W. Quinton.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

Colonel the Hon'ble W. G. Davies, C.S.I.

The Hon'ble Rana Shankar Bakhsh Singh Bahadur, C.I.E.

OUDH RENT BILL.

The Hon'ble MR. QUINTON moved that the Bill to consolidate and amend the law relating to rent in Oudh be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin, the Hon'ble Mr. Hunter, the Hon'ble Rana Shankar Bakhsh Singh Bahadur and the Mover. He said :—

"I had intended, in accordance with the wishes of the Government of India and that of the North-Western Provinces and Oudh, to make this Motion during the last Calcutta session, but was prevented from carrying out my intention by the unfortunate illness of our hon'ble colleague Raja Amir-ud-dowlah Bahadur. It was obviously desirable that in discussing the principles and provisions of this Bill the Council should have the assistance of a representative of the taluqdars, whose interests are largely affected by it. And in fairness to them the Motion was suspended in the hope that the illness of Raja Amir-ud-dowlah would be but of short duration. Unhappily my hon'ble friend is still unable to attend our meetings. In his temporary absence the Legislative Council has been reinforced

by the addition of Rana Shankar Baksh Singh, Vice-President of the Taluqdars Association and owner of a large taluqa in Southern Oudh, whose knowledge and experience will, I have no doubt, be of great value to us in carrying the Bill through its remaining stgaes. I hope also that we may still have the benefit of Raja Amir-ud-dowlah's attendance either here or at the consultations on the Bill which Sir Alfred Lyall hopes to hold at Lucknow before it is finally read.

"The interval that has elapsed has given members an opportunity of making themselves acquainted with the contents of the lengthy papers which have been printed and circulated, and of appreciating the motives and reasons which have induced Government to recommend legislation on behalf of the Oudh tenantry. It has also enabled the taluqdars to assemble and discuss the measure, and to inform the Local Government of their views respecting it. When moving for leave to introduce the Bill I dwelt at some length on the necessity for legislation of the nature proposed, and even at the risk of repetition I shall again briefly invite the attention of Council to the prominent facts which in the opinion of the Government leave it no option in the matter.

"The province of Oudh is very densely populated; the bulk of the population live by agriculture, manufactures being few and inconsiderable; 79 per cent. of the cultivated area is occupied by tenants-at-will holding farms averaging something under five acres, and liable to annual enhancement of rent and to eviction at the mere will of the landlord; and of the total number of cultivators only one in 200 enjoys any protection against these incidents of tenure. The landlords consist of 346 taluqdars and 180,000 proprietors of the zamindari class. Tenants with rights of occupancy under the Oudh Rent Act are 8,117, and tenants-at-will 1,800,000. During the last 15 years there has been a rise of rents which varies in different districts but averages for the province 24 per cent., the average rise of prices during the same period having been about the same. The power of ejectment has been freely exercised by the landlords, the number of notices having risen from 23,600 in 1876 to 92,602 in the current year. An examination of 28,477 tenancies in different districts made three years ago showed that of that number there were only 5 per cent. in which the component fields and the rent had remained materially unchanged during the last fifteen years, and that in 46 per cent. the tenants were all new-comers. The provisions of the existing law which allowed tenants to claim compensation for improvements on enhancement of their rent have remained a dead-letter, and those which gave a similar right on ejectments have been largely evaded by contracts.

"When bringing these facts to the notice of Council I stated that they showed that the cultivation of the soil was carried on by a body of raiyats holding under a tenure which might be described as a yearly tenancy in its simplest and most rudimentary form, and I declined to waste your time by attempting to prove, what is notorious to all who have thoughtfully considered the subject, that this form of tenure when the pressure of population is severe is the one most discouraging to agricultural efficiency and most likely to lead to the impoverishment and degradation of the cultivators of the soil.

"It has, however, been urged as an objection to the Bill that the condition of the tenantry has, on our own showing, improved, and that we have made out no case to justify legislation. On this point, I am quite prepaerd to join issue.

"As regards the improvement in the condition of the tenantry, special causes have been at work to bring about this result, the continued operation of which can no longer be relied upon. The substitution of the British for the Native Government after the pacification of the province enabled every man to enjoy the fruits of his industry in peace, and thereby gave a great stimulus to production. Good roads were everywhere opened out, and of late years railways have brought tracts hitherto practically inaccessible within reach of the markets of the East and West. The cultivation of waste land has extended with great rapidity. The latest returns available give reason for believing that the increase since settlement is some 20 per cent. These causes have efficiently promoted the prosperity of the province, and have enabled the tenantry, whose rents were largely regulated by custom, to share in it.

"But, as I have already stated, they cannot be expected to give rise to the same progress in the future as they have done in the past.

"The establishment of our Government substituted for the good old rule of each party taking and keeping what he could a strict reign of law, which affords security to landlords as well as tenants, but arms the former with the whole power of an irresistible Land Act, and, as always happens in such cases, gives the advantage in the struggle to the richer and stronger of the two parties. A generation has grown up accustomed to the benefits of British Government; the main lines of roads and railways throughout the province have been completed; the area of culturable waste land is rapidly diminishing and customary rents are fast disappearing. We have reached the summit of the watershed, and have to guard against a facile descent in the opposite direction. Moreover, the progress testified

to by no means excludes exceptional cases of great hardship, which tend to increase in number.

"Here I may fitly reproduce a passage from the report of Mr. (now Sir) H. Davis quoted by Mr. Strachey when introducing the present Oudh Rent Act in 1867 :—

'The doctrine that rents paid by labourers raising their wages from the soil cannot safely be exposed to competition, as expounded by Mr. J. S. Mill, is now generally accepted by political economists. It is seen that a rapidly increasing population is soon straitened for food, that they will contend fiercely among themselves for the payment of the rent of land from which alone in a purely agricultural country they can extract it; that such contention, whilst nominally and transiently raising rents, must lead to impoverishment and reduced wages; that with increasing poverty the secondary wants necessarily diminish, self-respect vanishes whilst the multiplication of numbers is accelerated; that the end is to the landlord a shrunken rent-roll and deteriorated property; to the country a degraded and desperate peasantry. It is admitted, on the other hand, that rents paid by capital may safely be left to competition that sensitive fund giving timely and early warning of over-exaction to the investor. Contending, not for bread, but for the fair interest of his money, he, unlike the starving cultivator, can and will separate from the soil. Whence is suggested an answer to the question often asked "why allow competition for grain and not for the rent of land paid by peasants?" Because competition for grain has no tendency to multiply the number of mouths to be fed; but by adjusting its price in proportion to the supply, rather puts people on their thrift; whereas competition for rackrent leases, by encouraging false confidence, by eventually lowering wages and by minimising the prudential checks, has a direct tendency to stimulate the increase of population and in course of time to lessen the fund for its support.'

"This is a forcible statement of an economic deduction the soundness of which is unassailable. If any one wants an inductive proof of the proposition, he has but to study the history of the land question in Ireland for the last 50 years, and to consider the results there brought about by the operation of competition rents on a teeming agricultural population.

"I would ask Your Excellency and hon'ble members bearing in mind this theoretical argument to weigh the facts stated in the following passages from Major Erskine's report :—

'126. Although I am able to say that the condition and prosperity of the cultivating classes as a body have not yet been injuriously affected under the Administration of Act XIX of 1868, I cannot regard the numbers of those classes, the size of their farms, the incidence of the rent they pay and the insecurity of their tenure without feeling that, as the inevitable multiplication of their numbers proceeds and competition for the land becomes more keen, their condition will under the present law deteriorate, and that it is advisable to take some

action on their behalf. And I am strongly of opinion that any remedial measures which are adopted should be such as will protect all cultivating tenants as a body, and not merely those of certain castes or classes, those who are descended from former proprietors or those who have been in occupation for certain periods arbitrarily fixed. Interference is justified on the broad ground that it is imperatively necessary in the interests of the general community that the complete efficiency of the agricultural industry be maintained, and that that efficiency is under present conditions seriously threatened.

'127. The ordinary tenant now holds from year to year; he is liable to be called on each year to agree to an enhancement of his rent on pain of summary eviction if he refuses the enhancement; and he is moreover liable to summary eviction at the end of any year as the mere caprice of the landlord. The landlord need not give him notice to quit until the 15th April; and, unless he is in a position to contest the notice, he must vacate the land by the 15th May or he may be forcibly removed. From all parts of the province it is said that landlords throw obstacles in the way of tenants seeking to make improvements, and withhold their consent to the construction of these works until the tenant contracts himself more or less out of the porvisions of the Rent Act which secure him compensation. When the rent is a produce-rent, it is regulated by custom; but when it is payable in money it is mainly determined by competition, by which I do not of course mean that the lease of the tenancy or field is put up to auction (though even that is spoken of by the Deputy Commissioner of Unao), but that the landlord ordinarily takes as high a rent as he can get: it is to be feared that, except in rare instances, the landlord does not trouble himself to ascertain the relative productive capacity of his fields and to fix the rent of each on this basis; he treats the tenancy as a whole, and demands what he thinks the tenant will pay or what he thinks another man will give.

'128. Under a system which places him in such circumstances as are above described the Oudh peasant has little incentive to exercise self-denial, prudence and thrift. It may be true that even with greater security of tenure he would still be deficient in those characteristics; that he would still adhere to his old habits; indulge without restraint his sexual instincts and embarrass himself by extravagant expenditure on marriages, etc.; but at least he should be put in a position in which it would be to his plain advantage to be prudent and economical. Such a position he does not now occupy.'

"It has also been argued that the evils for the removal of which we propose to legislate are apprehended, not actual, and that until they come into existence legislation is unwarranted.

"If the evils were in themselves slight, or if the apprehensions of their approach rested on insufficient grounds, then no doubt there would be some force in arguments; but I hope I have satisfied the Council that neither of these conditions exist in the present case, and that we have only too strong grounds to dread the approach of serious evils, and to believe that, if we do not interpose, their arrival at no distant date is a matter of certainty.

"If this be so, it is surely the duty of Government to take timely measures, to keep out the deluge before the country is submerged—to lay by a store in the present plenteous years against the famine which awaits us. In homely phrase, prevention is better than cure. And measures adequate to ward off the disaster will fall far short of those necessary to remedy the calamities caused by it if we allow it to fall upon us.

"In this connection I would read to the Council an extract from a memorandum by Mr. Quinn, written when Commissioner of Sitapore, which is refered to in Major Erskine's report. Mr. Quinn is an officer of sound judgment and long experience in Oudh, and the division from which he wrote consists of one district the lowest as regards density of population, and of two in which the population to the square mile is under the provincial average :—

'I myself am convinced that the keen competition for land which is essential to rack-renting is only commencing, but will rapidly develop. Twenty years hence the whole of the culturable land in Oudh will probably be under cultivation. An ejected cultivator will then become a ruined man. I would earnestly protest against waiting till the cultivator has reached the destitute condition of the Bengal (he might more fitly have said *Behar*) raiyat, and till landlords have come to live up to an unduly inflated income. Now, when class animosities have not sprung up betwen landlord and tenant, and when the cultivator is still fairly prosperous, is the time for such a moderate reform of the rent law as may ward off the evils which the backward state of Oudh has alone hitherto kept in check.'

"In Southern Oudh, where population is more dense and the area of waste land is much smaller, the state of things dreaded by Mr. Quinn is within very measurable distance, competition rents are rapidly superseding those regulated by custom, and in one district there has been a rise of 49 per cent. in rents in 15 years.

"No candid observer of these facts can accuse the Government of precipitation in initiating the present proposals.

"I stated in my speech on the introduction of the Bill that most of the taluqdars were 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 that I had grounds for anticipating that they would acquiesce in a measure of this kind. Since that speech was made the taluqdàrs have met and considered the Bill, and in their corporate capacity have accepted its main principles. This acceptance was intimated to His Honour the Lieutenant-Governor in a reception of taluqdars held by him at Lucknow in the end of April, and was formally notified to the Secretary to Government in a letter of the 24th of that

month, giving cover to a memorial which will be found at page 9 of No. 2 of the printed papers on the Bill. As the memorials is short, I shall make no apology for reading it :—

'May it please your Honour,—We, the taluqdars of Oudh, beg to submit a translation of the proceedings of a Meeting of the Committee of our Association held on the 22nd April, 1886, in deliberation on the Oudh draft Rent Bill, from which it will appear that we accept in their entirety the rules of seven years' lease and of the limitation of enhancement to 6¼ per cent. We, however, beg to suggest that land given on clearance lease, *banjar*, *jungle*, new alluvial land, *parti*, and land subsequently to this Bill rendered culturable by landlords at their own expense, should be exempted from the provisions of the above clauses.

'We would also, with due respect and deference, draw Your Honour's attention to sections 38 and 129 of the Bill, which, in our estimation, contain provisions derogatory to our position and rights, and which also are, in our opinion, unnecessary for the protection of our tenants. These sections we wish to see removed from the Bill.

'We further respectfully beg to be allowed to point out what seem to us certain defects and errors in the Bill, which we consider should be removed, and also to suggest some useful provisions which may be inserted therein.'

"It confirms what I then stated—and before going on with my argument I may add that on the points to which exception is taken we are prepared to allow the fullest weight to the objections consistent with securing the objects at which we aim, namely, moderate stability of tenures for the cultivator, and a reasonable assurance that the power of enhancement will not be pushed so far as to make that stability a nullity, for no tenure is worth fixing if the enhancement is severe.

"I have thus, I hope, successfully met the objection as to the absence of any necessity for legislating on behalf of the Oudh tenantry. I now turn to the provisions of the Bill as introduced.

"With the Statement of Objects and Reasons will be found printed a letter from the Local Government, giving reasons for the form which the Bill assumes, and for the various minor alterations proposed in the present Rent Act. I shall not trouble Council with recapitulating these on this occasion. They will be fully discussed in Select Committee, and such of them as are finally agreed upon can be referred to so far as is necessary when the Report is presented and taken into consideration.

"I confine myself now to the more important changes, the first of which is that the tenant should have rest for seven years. For that period, dating from

the last change in his rent or the last alteration in the area of his holding, we propose to bar enhancements of rent and the issue of notices of ejectment. The present Rent Act does not provide for the issue of notices of enhancement, and the consequence is that notices of ejectment are largely issued for the purpose of securing enhancement as well as for eviction—a fact which must be borne in mind in weighing the annual statistics respecting them. I have already stated that the number of these notices has risen from 25,744 in 1869, the year in which the present Act came into force, to 92,602 in the current year. I shall not trouble Council with the figures for each year, though I have them by me, but state simply that the total number issued in 18 years has been 1,869,964, which would give more than one for every cultivator in the province. This, however, conveys a very inadequate idea of the effect of the notices, for there are districts in which the issues have been comparatively few, and estates where they are little known and here it is right that I should state that by far the largest proportion of notices, has been issued on coparcenary properties, and that tenants on taluqdari estate, speaking generally, have been much less subjected to this form of pressure. Zamindari or coparcenary estates constituted two-fifths of the area of the province and hence it may be conjectured to what an extent landlords of this class have availed themselves of the power of exaction of eviction with which the law arms them.

"Further, the enquiries reported on by Major Erskine clearly brought out the fact that the number of notices issued was no satisfactory gauge of the degree to which rents were enhanced under their operation. A few notices on the boldest recusants are sufficient to induce the bulk of the cultivators to comply with the landlord's demands. In one large village of Kurmi tenants, the most careful and industrious class of cultivators in Oudh, in which a special enquiry was made in 1881, the Government demand was Rs. 400. The rent-roll had been brought up to Rs. 1,027. A stranger got possession, and by the issue of only 18 notices, and availing himself of dissensions among the cultivators, succeeded in raising the rents of nearly all the tenants from 10 to 20 per cent. The Deputy Commissioner of another district writes in an annual report:—

'The results of the notices appear to have been much the same as last year. Over the greater portion of the Atraula tahsil enhancement of rent is practically made without having recourse to process by notice. The raiyat is actually able to pay something more than he pays at present; the landlord's karinda visits a village and calls on all the raiyats to sign a new kistbundi at enhanced rates; they all refuse at first; then gradually by dint of vigorous harassment and no doubt occasional violence a few are forced to give in, after which most

of the rest follow like sheep, inwardly resolving not to pay a penny more than they used to do. A few independent souls hold out, and are marked down for next notice season. The bulk of the agricultural population in this district are timid and spiritless and extremely ignorant peasants.'

"I could adduce much more testimony did time allow in support of my proposition that the number of tenants affected by the notices of enhancement largely exceeds that of those on whom those notices were served, large though that be.

"On the other side the tenants did not fail to avail themselves, so far as in them lay, of the means of resistance in their power against these attacks of their landlord. The law allows of a tenant giving a notice of relinquishment, and a considerable number of these were issued year by year. Where there were most disturbances at the instance of the landlords there were most relinquishment on the part of the tenants. The district most distinguished for the action of the landlords in ejectment are those which show the greatest number of tenant's relinquishments. This, however, was a weak defence, and failed when it was most wanted, as in bad years the proportion of relinquishments to ejectment invariably fell, and the landlord was master of the situation. The Commissioner of Rai Bareli writes :—

'The proportion of rents enhanced by notices of ejectment to rents abated by notices of relinquishment is as ten to one.'

"It requires no lengthy argument to prove that the existence and continuance of such a struggle between two parties so unequally matched must prove fatal to the prosperity of the localities where it prevails, and that the first step be taken for the protection of the weaker and the ultimate good of both is to make the war to cease. This, as I have stated, is the first point aimed at by the Bill in the provisions fixing a statutory tenancy for seven years. That period is an arbitrary one, but it has been fixed in what seemed to be the interests of both parties, and has met with no serious opposition. Like all such arbitrary periods, it may be too long to please one party and too short to please another; it may be impossible to say why it should not be six or eight rather than seven; but it was not arrived at without mature consideration, and I need not detain the Council with the reasons which led the Government to adopt it.

"The next point to be considered is what is to happen at the end of the seven years. Are we to allow the present law to come into force again, and had landlords with appetites whetted by seven years' abstinence to enhance and eject

ad libitum. This is obviously impossible, and the mode in which protection should be afforded to tenants has been the subject of long and anxious consideration. It might have been proposed that rents should not be enhanced for the term of settlement, and that the landlord's power of ejectment except for non-payment of rent and breach of the conditions of tenure should be carefully swept away. This course, however, was not for a moment contemplated, and, as in Oudh it is beyond the sphere of practical politics, it may at once be dismissed from our consideration.

"Many authorities were in favour of allowing only such enhancements of rent as might be judicially determined by Courts or officers specially empowered to settle rents. This view has in theory much in its favour. The decisions of Courts of Justice are looked upon, if not as the perfection of human reason, yet as the fairest means attainable of doing right in the controversies between man and man. The Courts, however, must decide on evidence furnished to them by the parties, and are shut out from sources of information which, in cases like those involving the fixation of rents over large areas, are essential to the right determination of particular cases and vital as regards the welfare of the agricultural community. Officers specially appointed for the task may indeed after careful study and practical experience acquire such a knowledge of the different soils prevailing in selected localities and of the amount and nature of their produce as may render their decisions less dangerous than those of Courts giving judgment in isolated cases but they must fail in allowing due weight to the countless diversities which make uniform rates of rent inapplicable to all the fields in a village, circle or other arbitrarily assumed area. No satisfactory standard has yet been devised for determining the fairness of a given rent; and in the North-Western Provinces, where the Settlement officer's assessment rates, which are easily ascertained, are generally used for this purpose, I can vouch from experience that no more difficult task is thrown upon the Revenue Courts than the trial of enhancement cases. No doubt, valuations of land and produce for the purpose of fixing rent are not uncommon in England and elsewhere, and, where farms are large and capital abundant, furnish a rough and ready means of settling disputes between landlord and tenant. Profits in such countries are large enough to allow a margin for errors in calculation on one side or the other; but in Oudh there is no such margin. The average size of the farms is but five acres, upon which the first burden must be the support of the cultivator and his family; and when the funds necessary for this are deducted, the balance available for the rent is too small to allow of room for miscalculations or error. Any increase to it, however trifling, can only be

made at the expense of the subsistence fund, the diminution of which means the deterioration of the peasant, upon whom in the last resort the support of society depends. The system of determining rent at the present day in this part of India by estimating the money value of a proportion of the gross produce received its deathblow in the lengthened discussions on the Bengal Tenancy Act a year or so ago, and I hope it is unnecessary for me to take up time by arguing against it.

"Another difficulty attendant on the introduction of this system of judicial rents into Oudh I shall just touch on; that is the provision of machinery adequate and competent for the task. Existing establishments have been cut down to the lowest scale, and are working under high pressure; so that it would be obviously impossible for them to undertake the duty of settling rents in hundreds of thousands of cases at the close of the seven year period, and it would be equally impossible for Government to provide at once from other provinces as sufficient number of officers qualified to conduct an operation so delicate and so gigantic even if the successor of my hon'ble friend Sir A. Colvin saw his way to make the necessary financial provision for them—a contingency which the outlook at present scarcely warrants our contemplating.

"All projects for fixing rents judicially being thus abandoned, Government were driven to the alternative of leaving those most interested to adjust rents by mutual agreement, subject to a certain maximum imposed for the protection of the weaker party to the contract. That maximum is an increase of 6¼ per cent. on the existing rent. This gives the landlord an opportunity of revising his rents four times within the currency of a 30 years' settlement, and would enable him under the most favourable circumstances to raise his rents about 27 per cent. during that period, while it would at the same time afford him some assurance as to the principle on which the Government demand would be adjusted at the next settlement of land-revenue. Assessments would be based not on conjectural valuations of produce, but on rents actually paid.

"The proposal to fix the limit of enhancement at a proportion of existing rents is not free from objections; like all arbitrary limitations it is open to criticism, but, if we are to wait until we can find a solution of the Oudh tenant-right question against which no objection can be brought, the amelioration of the condition of the tenantry must be deferred to the Greek kalends. The practical question is not what is a theoretically perfect system, but what changes in the present system, effective for the object we have in view, is open to the fewest and weakest objections

"This limitation of enhancement proposed is based on a principle universally admitted, that sudden and harsh enhancements are injurious and should be restrained; and existing rents are taken as a starting point, because under the almost unrestricted influence of competition through a series of years and after a general and steady advancement of rents they are understood to be on the whole very closely approximate to the full market-rates, and to bear probably a more uniform relation to the net produce than could be attained by any official revision of them however carefully conducted. It is very probable that the landowner will at the expiry of each statutory period avail himself of his legal right of enhancement *should the circumstances of the market admit it*, but this is an incident of tenure not unknown in the most prosperous examples of British farming.

"The arrangement also possesses the undeniable advantage of certainty, thereby affording to the tenant at the same time security against sudden and excessive enhancement and a stimulus to devote his utmost skill and industry to the improvement of his holding during the seven years for which the law guarantees him undisturbed possession of it.

"The Government, however, are not unaware that change of circumstances may render useless or mischievous a hard-and-fast rule as to the maximum rate of enhancement, and in view of this we have taken power enabling the Local Government to vary within periods of not less than seven years the limits of the enhancement to which tenants with rights of occupancy are liable. I pointed in my speech on the introduction of the Bill to some causes which might render a fixed maximum oppressive or inadequate, and recent experience in Ireland, if such were necessary, warns us that a few bad seasons may have such an effect on rents fixed on what seemed at the time to be equitable principles. The power is no doubt an important one to be entrusted to the executive Government, but it would be put in force only on exceptional occasions, and its exercise would be carefully watched. It is not desirable that on every occasion where circumstances may call for a variation of the limit of enhancement the intervention of the legislature should be restored to, and the whole question of the relations between landlord and tenant be thereby again opened up. It must also be borne in mind that Government has a substantial interest in holding the balance fairly between them on this point. As the interdependence of land-revenue and rents is becoming closer every year any large reduction of rents must affect the Government revenue. I now pass on to the subject of ejectment.

"Enhancement and ejectment hang together. As I have pointed out on a previous occasion, provisions for protecting the tenant from enhancement are of little use if the power of ejectment at his will and pleasure is left to the landlord. A tenant in an agricultural community such as we have to deal with will agree to any demand which does not involve starvation sooner than part with what affords the means of subsistence for himself and his family; and the unrestricted power of ejectment is really a power to rackrent. That this power has not everywhere produced its natural consequences hitherto is due to the moderation of the majority of the landlords, and to the fact of the pressure of the population on the land not having reached its extreme limit in all parts of the province. But this state of things is passing away, and the moderation of landlords will be subjected to a strain too great to be resisted. Moreover, cases are but too numerous where the power, chiefly I am bound to say among the smaller landlords, has been unsparingly exercised, and also where the lessees of absentee proprietors have not failed to push to the utmost the advantage which the law gives them. Limitations on the power of ejectment are therefore a necessary consequence of those on enhancement.

"The Bill proposes in the first instance to render more effective the provisions of the existing law regarding the payment of compensation for tenants' improvements. On this point I need not now dwell. The new section has been drawn on the lines of that passed for Bengal last year, and is likely to excite little controversy. The principles on which it is based were thoroughly discussed in this Council on more than one occasion, and have encountered no opposition.

"The mere payment, however of compensation for improvements is not a sufficient deterrent, as in the cases where it will operate the landlord is sure of receiving again a return for the money expended by him. Something further is required to prevent landlords from using the power of ejectment harshly or capriciously to the detriment of their tenants generally, and this the Bill furnishes in the shape of compensation for disturbance. A landlord who ejects a tenant willing to pay the statutory enhanced rent at the end of the seven years' period of occupancy must pay the tenant so ejected one year's rent. Compensation for disturbance is not altogether a new idea in India. In No. 1 of the printed papers hon'ble members will find an account by Mr. J. B. Lyall of a system based on this principle which was introduced and worked by him for a time with the assent of the zamindars in the Kangra district. Three years ago this Council accepted the principle and embodied it in the Central Provinces Tenancy Act. I have referred to my

friend the Officiating Chief Commissioner as to the working of the provision. He tells me that the time that has elapsed since the Act came into force has been too short to allow of the law on this point being made much use of, or to admit of any valuable opinion being formed as to its operation. The principle was also contained in the Bengal Tenancy Bill as introduced, and was dropped out only at the last moment, having been found to be not required for occupancy-tenants. The non-occupancy-tenants were believed to be only a minority of the cultivators of Bengal, and it was considered that they would derive sufficient protection from the system of judicial leases established by the Act. In Oudh, circumstances, I need scarcely point out, are certainly different. The whole of the Oudh cultivators are practically tenants-at-will, and the Bill makes no distinction between classes among them, and establishes no favoured grade—a principle which has been steadily kept in view in maturing the present proposals. Compensation for disturbance has thus been for some time under discussion in this country, and Government has failed to discover any more effective means of checking evictions made with the view of securing harsh and unreasonable enhancements.

"A low scale of compensation for disturbance will not operate strongly, it is true, in checking enhancements where there is a keen competition for land, and the landlord can look forward to receiving at once from the incoming tenant a bonus sufficient to recoup the compensation paid to the tenant who vacates; but, unless under very favourable conditions, it must act in some degree as a deterrent to a landlord who wishes to proceed to enhancement by way of eviction. The necessity of paying down cash the recovery of which may be open to some doubt will in such cases make a landlord pause, and the knowledge that if ejected he will not be turned out on the world as a pauper will promote the self-respcet of the tenant and nerve him to apply his skill and industry to making the most of his holding.

"This is, however, one of the points in the Bill to which objection is made by the Taluqdars' Association.

"In the discussions on this Bill the Government have shown themselves desirous as far as possible to meet the objections of the taluqdars, and if my hon'ble friend can bring before the Select Committee any modification of our plan of compensation for disturbance, or any substitute for it which is likely to prove equally effective for checking capricious evictions, I can assure him of the fullest and most favourable consideration for it.

"I may, however, state here some considerations which have occurred to me respecting the objections to our proposals urged by the taluqdars. Their

objection, as I understand, is not so much to the imposition of a penalty on the exercise of their power of ejectment as to the indignity of being obliged to pay money to a tenant from whose presence they are anxious to free their estate. There is doubtless force in this objection in the case of a good landlord who desires for the benefit of his property to get rid of a bad tenant. But all landlords are not good and all tenants are not bad. And we are legislating to prevent bad landlords from doing what good landlords have not hitherto felt inclined or compelled to do. A bad tenant would in most cases be slack in the payment of his rent, and we have introduced a new provision into the Bill which will enable a landlord at any time to get rid of a tenant who cannot or will not pay up arrears of rent decreed against him. This is a considerable extension of the powers of realising arrears of rent by ejectment possessed by landlords under the existing law, and will, I hope, be taken as outweighing in some degree the obligation of paying compensation for disturbance to tenants ejected on other grounds.

"It is also urged that the right of compensation for disturbance at the close of the seven years' tenancy implies a right of occupancy in the land against the will of the landlord, and that the recognition of any such right in the tenants derogates from the rights guaranteed to the taluqdars. This applies only to taluqdari estates, and has no bearing on two-fifths of the land of Oudh, which is not held by taluqdari landlords; and I would appeal to my hon'ble friend to consider before he pushes home the argument, whatever be its worth, whether, having acknowledged most candidly the necessity for affording tenants stability of tenure for a period of seven years and protection from excessive enhancements at the end of that period, the taluqdars of Oudh are prepared to nullify the provisions on this last head by insisting on opposing for the benefit of bad landlords measures by which alone those provisions can be made a reality.

"The Bill as it stands enables any landlord to get rid of the obligation of paying compensation for disturbance by granting leases for a longer period than seven years, which, coupled with the power of requiring the prompt ejectment of a tenant who fails to pay arrears of rent decreed against him, limits the range and mitigates the stringency of the provisions objected to.

"My Lord, I feel I have trespassed on the patience of the Council to an unconscionable extent, and I shall add only one word as to the objection taken to section 129 of the Bill, which reserves power to the Local Government to revise and settle rents under certain conditions. I explained on a former occasion that this section was drafted in order to define the liability of the taluqdars under the

sanads by virtue of which they hold their estates. I showed that even in case of small zamindars the grant of such powers was not unprecedented, that it would really be a relief to good landlords to know exactly what they might and might not do without incurring the risk of penalty, and that it was supported by a warm friend of the taluqdars. Their Association, however, objects strongly to the grant of this power to the Local Government ; and as the enforcement of the conditions of the sanad is of the highest political importance and one on which no doubt as to the views of the Government of India and indeed of Her Majesty's Government at home should be allowed to remain, I shall leave the objection to be dealt with by the members of the Executive Council who follow me."

The HON'BLE RANA SHANKAR BAKSH then addressed the Council in vernacular, a translation of his speech being read by the Secretary as follows :—

" My Lord,—As a Member of this Hon'ble Council, I feel it my duty to express my humble views on the broad and difficult questions involved in the Oudh Rent Bill, which is now before Your Excellency's Council. But I shall confine myself to a few remarks which will not take up much of the valuable time of the hon'ble members.

" From the results of formal and elaborate enquiries which have from time to time been made into a tenant-right in Oudh, it has been universally admitted that the landlords in Oudh have never practised extortion towards their tenants. In support of this I respectfully refer Your Lordship to the Minute of His Honour the Lieutenant-Governor, North-Western Provinces and Oudh, dated 28th December 1882 ; to letter No. 135, dated 1st June 1883, from Major Erskine, the Special Commissioner ; and to letter No. 3939, dated 21st December 1882, from the Secretary to the Government, North-Western Provinces and Oudh. In the face of such high authorities exonerating the taluqdars from the charge of rackrenting and oppression, I humbly submit that I am quite unable to understand how such a charge can for a moment be supposed to be true or well-founded, and how the notorious Sahlamao case can be cited in support thereof.

" The sanads granted to the taluqdars, when read with the letters of the 10th and 19th October, 1859, leave no doubt as to the fact of the protection therein afforded being confined, with certain conditions, to those under-proprietors who occupied an intermediate position between the superior proprietors or taluqdars and tenants-at-will, and who were actually found to possess an occupancy-right in 1855. But in obedience to the will of Government, and with the sole view of

benefiting these intermediate holders, the taluqdars have loyally submitted to the extension of the period, during which their claims may be heard, to twelve years. This is sufficiently proved by the following legislative enactments and official circulars to which I humbly draw the special attention of this Hon'ble Council :—

"By Act XVI of 1865 the period in question was extended from the 13th February, 1844, to the 13th February, 1856.

"By Act XXVI of 1866 under-proprietary rights in *sir*, etc., were conceded to sub-lessees and under-proprietors.

"By Act XIII of 1866 the right of redemption of mortgage was allowed contrary to the express provisions of the sanad.

"By Circular IV of 1867 compensations was made to ex-proprietors in the shape of an under-proprietary title.

"By section 5, Act XIX of 1868, a right of occupancy was conferred on exproprietors in the *khudkasht* land.

"Having mentioned briefly some of the most valuable concessions made by the taluqdars in favour of their tenants, I proceed to examine the boarder question of an alleged 'tenant-right' in Oudh. On this important question I think I cannot do better than draw the attention of this Hon'ble Council to the elaborate and complete enquiries made in 1865, which resulted in the famous despatch of Her Majesty's Secretary of State dated 10th February, 1865, wherein it was finally settled and authoritatively declared that no tenant-right had ever existed in Oudh ; that is, tenants-at-will possessed no right whatever in the land they cultivated. But the taluqdars of Oudh, in deference to the wishes of Government and with the sole view of gaining their goodwill and promoting the welfare of their tenants, have, of their own accord, by a Resolution of the Committee of the British Indian Association held on the 22nd April, 1886, agreed to make two fresh valuable concessions in favour of the latter, and cheerfully accepted the rules of seven years' lease, and of the limitation of enhancements, subject to the following very important exceptions :—

"(*a*) *nautore* (land given on clearance lease) ;
"(*b*) *banjar* ;
"(*c*) jungle ;
"(*d*) new alluvial land ;
"(*e*) *parti* ;
"(*f*) land rendered culturable by the landlord at his own expense.

"Thus, my Lord, the taluqdars of Oudh have on every occasion proved their loyalty and devotion to the British Government, have always earnestly endeavoured to gain its goodwill, and have always shown moderation and liberality to their tenants and those who hold under them. Under these circumstances, I respectively submit that the charge of rackrenting and oppression brought against them is far from being just and reasonable. But, as experience has shown that section 43, Act XIX of 1868, has not worked as well as could be desired, and that some amendment should be made therein in the interests of all concerned, I do not feel myself justified in saying that I hold a different opinion.

"Now, with Your Lordship's permission, I propose to examine some other provisions of the Oudh Rent Bill which, in my humble opinion, are open to serious objections.

"Among these I would, with due deference, draw Your Lordship's attention to the provisions of section 38 (A), regarding compensation for disturbance, and of section 129, authorizing the Local Government to interfere in cases of great mismanagement. These sections, I humbly submit, should be entirely expunged from the Bill because 'compensation' presupposes the existence of a right in lieu whereof something is given; and as no tenant-right is proved to have ever existed in Oudh, nor can any be created, it does not appear for what the proposed compensation is to be given. If this compensation is for ejectment, it involves the loss of the proprietary rights of the landlords and will inevitably have the effect of depriving them thereof. It will be a very great hardship to the landlord if after being debarred from ejecting his tenant for seven years, and enhancing his rent beyond one anna in the rupee on the expiration of that period, he is compelled to pay one year's rent to the tenant so ejected. Such a measure would almost be intolerable to the landlord. As an illustration of this I would humbly ask Your Lordship to look into the case of a tenant who has to pay an annual rent of one hundred rupees, and who, on being ejected after the expiration of the statutory period of seven years, is paid that amount, and the land is let to another tenant on a rent of Rs. 100 *plus* Rs. 6-4. During the next seven years the landlord will realize from the new tenant Rs. 43-12 only, which is less than one-half of the amount he has paid to the old one as compensation for disturbance; that is to say, out of a total rent of Rs. 100 the landord will lose Rs. 56-4, and will have no prospect of realizing that amount from any one by any means, nor will he be able to recoup himself during the next fourteen years for the loss thus sustained. The compensation for disturbance rule, which is a very hard-and-fast rule indeed, will in the long run, deprive the landlord of his power of ejectment altogether, and will

give the tenant a right to hold the land for a practically unlimited period. Upon those who cannot afford to pay any compensation at all, it will have the effect of permanently transferring their properties to their tenants. It is the duty of this Hon'ble Council to have due regard for the rights and interests of all classes for whom it proposes to legislate.

"Another effect of this compensation for disturbance rule will be that it will be an irresistible temptation to tenants to shift their holdings as frequently as they can, and will set them wandering about in quest of better land and a more lenient landlord from whom they could squeeze a larger amount as compensation for disturbance. One of the main objects of this Bill, as I understand it, is to give fixity of tenure to the cultivator, and to induce him to devote more time and labour to the cultivation of his holding. This object, I humbly submit, will be utterly defeated by the rule in question, which, diverting the tenant's attention from the cultivation of his holding, will fix it on compensation. This, as a matter of fact, will lead to the deterioration of the soil, and will leave no chance of its improvement. What justification is there, I would respectfully ask, for depriving the party justly entitled of a portion of his right and giving it to another party which does not possess the shadow of a right ? Will it be just and reasonable to deprive the landlord of the only means of getting rid of a bad tenant by making this objectionable rule applicable to all classes of tenants ? The ejectment of recalcitrant tenants should, like that of defaulters, be made a rule rather than an exception.

"Now, with due respect and deference, I beg to draw the attention of this Hon'ble Council to the provision of section 129. I will not dwell upon the reasons and motives which have prompted the insertion of this section in the present Bill. I will leave it to the hon'ble members to consider and decide whether it is necessary to retain this section after adequate provisions have been made for fixing the terms of the lease and limiting the enhancement of rent. The term of the lease having been fixed and the rate of enhancement limited, I humbly submit that this section seems to me to be entirely unnecessary and undesirable and should be expunged from the Bill.

"In conclusion, I humbly pray that sufficient time may be allowed to the taluqdars for submitting their objections to certain provisions of this Bill, and suggesting some useful provisions for insertion therein, and explaining the exceptions subject to which they have accepted the rules of seven years' lease and of the enhancement of rent. I beg leave to support the Motion that the Oudh Rent Bill be committed to the Select Committee for consideration and report."

The HON'BLE SIR STEUART BAYLEY said :—" I think, my Lord, that the Council are to be congratulated in the circumstances under which they are now proceeding with this Bill, as the announcement which we have just heard from the hon'ble member who represents the Taluqdars' Association, that they accept the two main principles of the Bill, renders unnecessary a great deal or irritating controversy as to the legislation of 1868 and the circumstances of the inquiries which led up to it. There is a great deal to be said on both sides of the question, but it cannot be said without raising a certain amount of unpleasantness, and for that reason I am very glad that it has not come to be discussed. With regard to the legislation of 1868 itself, I have only to make one observation, and that is that Sir John Strachey, who introduced the Bill himself, looked forward to the time when under the stress of unlimited competition it would be necessary to take fresh legislative action in order to strengthen the tenants' position ; and he was careful to point out that the hands of the Government of India were as much unfettered in intervening in questions between the landlord and tenant in Oudh as in any province in India, except in regard to the one point as to the conditions under which the rights of occupancy should be exercised. He mentioned this, and he significantly added that it would be desirable that there should be no misunderstanding on that point. Nor need I now, after the exhaustive explanation which the hon'ble mover of the Bill has given us, enter at any length into the present condition of affairs, which has rendered legislation necessary. The Council are well aware that the province of Oudh is a purely agricultural country, that it is very thickly populated, and that, of the tenant-cultivators, over 99 per cent. are cottier tenants-at-will, liable to be ejected every year on a notice of one month. The inquiries instituted, and which lasted for several years, were very exhaustive, and the result, as the papers before you show, was that there was an unanimous opinion on the part of the district officers that, in view of the rapid rise in rents, of the rapid increase in notices of ejectment and of the general status of the cultivators which I have just pointed out, it would be absolutely necessary to strengthen their position with a view to giving stability to cultivation and encouraging improvements. Those were the conditions which led to the introduction of the Bill.

" Turning now to the speech of the hon'ble member who represents the taluqdars,—a speech which follows the main lines of the memorial of the 23rd April, submitted by them,—I have first to remark that I think the Government ought to acknowledge heartily the loyalty and moderation with which the body of taluqdars have advanced half-way to meet the wishes of the Government ; and I think

that, on our part, we ought to give very careful consideration in consequence to whatever objections they may urge to the special provisions of the Bill, and that as far as possible, with due reference to the security which it is the main object of the Bill to obtain for the cultivators, we ought to do our utmost to meet their wishes. The two points to which both in the memorial and in the hon'ble gentleman's speech the greatest attention is given are sections 38 and 129. Section 38 provides that, when a landlord elects to eject a tenant at the expiry of his lease without giving him the option of staying on at an enhanced rent, he shall give that tenant compensation for disturbance equal to one year's rent. Section 129 provides that, when the agricultural condition of an estate is greatly deteriorated owing to gross mismanagement, the Government shall have the power to send in an officer to settle the rents, and the rents so settled shall be stable for a period of ten years.

"I will, with the permission of the Council, deal with the latter of those two sections first. The history and object of that section, as has been explained by my hon'ble friend Mr. Quinton, was to give effect in a modified form and in a legal method to a well known provision of the taluqdar's sanad. That provision is to the effect that they should be retained in possession of their estates so long as they maintained the agricultural prosperity of those estates and secured those holding under them in the possession of their rights. This clause in the sanad has been the subject of a great deal of discussion. Sir Charles Wingfield, who was the strongest upholder of taluqdari rights, refers to it distinctly as a condition which warrants the Government in interfering in order to prevent oppression; and Sir George Couper in one of his letters speaks of it as the Magna Charta of the Oudh rights. Well, no doubt that condition in the sanad does give Government the power of interfering to prevent oppression, but the terms are somewhat vague and indefinite, and the penalty—no less than confiscation or sequestration is so enormous that it is not to be wondered at that the Government have been very reluctant to take executive action under that condition. As a matter of fact, it has only once been acted upon. It therefore appeared possible that, instead of leaving this tremendous "bludgeon clause" hanging over the heads of the taluqdars, a modified penalty to be exercised under the definite provisions of the law might be found to meet all the requirements of the condition, and might not be unacceptable from that point of view as a definite and milder penalty to the taluqdars. For my own part I cannot confess to feeling any surprise that, on consideration, the taluqdars have preferred to go on living under the same indefinite terror, to which they have become accustomed, rather than to accept a more definite

although very much milder, penalty about which they could only predicate that in occasional cases it might be reverted to with less reluctance than the severe one. Speaking for myself, I should say that this Bill gives generally such protection to the raiyats as to render it unnecessary to have recourse to special and exceptional action in regard to individual ill-doers. Consequently, if the proposal is accepted by the Local Government, I shall without regret see the section expunged by the Select Committee.

"The question of compensation for disturbance is a much more difficult one. It is discussed very fuly and carefully in Sir Alfred Lyall's letter of the 21st December, 1883; it runs in and out throughout the whole corrsespondence, is perpetually cropping up, and argued first from one point of view and then from another; and when you think it is put aside for the moment, you find that every question comes back to this as the main prop on which almost all the other provisions of the Bill hinge. The point is this—in order to give stability to the cultivator and encourage him to make improvements, Sir Alfred Lyall has laid very great stress upon the necessity of giving the sitting tenant at the end of his seven years' lease option of holding on as the enhanced rate. I should explain that under the accepted provisions of the Bill he gets under a seven years' lease and a limit on the enhancement. Sir Alfred Lyall then says that the sitting tenant ought to have the first option of a new lease at the enhanced rate. But, if side by side with that provision you leave it in the power of the landlord to eject a tenant without compensation, what becomes of the safeguard that Sir Alfred Lyall thinks aboslutely necessary? The condition that the sitting tenant shall have the first option of the renewed lease at an enhanced rate is nullified; as a matter of fact you come up to almost unrestricted competition. On the other hand, the position taken up by the taluqdars is very strong. I cannot quite follow my hon'ble friend in the first of his arguments that, because a tenant has no occupancy-right, therefore the offer of compensation is a distinct deduction and derogation from the proprietary right of the landlord. It is true that the decision of the Government was that the tenant has not, and never had, an occupancy-right which could be enforced; but it is well known—and I do not think that the fact will be disputed anywhere—that the tenant in Oudh, as elsewhere, has by custom an hereditary occupation. That was the opinion of Lord Lawrence's Government in their letter to the Chief Commissioner of the 16th February 1866, in which it is said:—

'3. The evidence adduced tends to show that under the Native Government of Oudh there was vested in the raiyat no right of occupancy which could be successfully maintained against the will of the landlord.

'4. It is at the same time held by no means certain that the landlord had a legal right to oust a raiyat who continued to pay the customary rent, and there existed a prevailing usage by which the occupant-cultivator did, in point of fact, generally maintain the hereditary possession of their lands at the customary rents.

'5. It is unnecessary here to enquire whether this usage was the remnant of a former right of occupancy surviving thus imperfectly a long reign of anarchy, or whether it sprung spontaneously out of the mutual relations and necessities of landlord and raiyat. It is admitted very generally to exist, and in some quarters with such strength and distinctness as closely to resemble an actual right.'

"Well, it is admitted the raiyat's status is a question of custom and not of right, but, admitting this, I cannot see that compensation involves any real weakening of what is generally understood as the landlord's proprietary rights. Apart, however, from this objection, I think that from the landlord's point of view there is objection to be taken very strongly on two other sides of the question. The landlord might very properly say 'Why, if I want to get rid of a recalcitrant tenant, should I be fined for it?' Or, even if he does not look at the matter from that point of view, he may very strongly say 'Why, when I find it essential to the peace of the neighbourhood, owing to the carelessness of a man or to his disposition to cause trouble, or even owing to caste prejudices—if I find it necessary for my own peace and perhaps to retain my other tenants—if I find it necessary to oust him—why should I have to make him a present of a year's rent?' This really becomes a premium on turbulence and misconduct, and from that point of view I must confess there is a great deal to be said in favour of the objection; and Sir Alfred Lyall, in the letter from which I have quoted, had not failed to notice the point. He discussed it and tried to find a remedy; the remedy which he proposed, or rather discussed, was that when it became a question of getting rid of a recalcitrant tenant, a landlord should be able to get rid of him by satisfying the Revenue Courts that he had sufficient reason for so doing. Sir Alfred Lyall in discussing the matter came to the conclusion that in the first place this would involve a great deal of unpleasant litigation—litigation which would probably cost the landlord quite as much as the year's rent which he was asked to pay as compensation for disturbance, and which, if the cost were thrown on the raiyat, would ruin him; and further he objected that the particular grounds for getting rid of the man were such that the question would be one in which no Court could come to a satisfactory decision. He consequently rejected that suggestion and fell back upon the proposal now made in the Bill. The point is one on which there is a great deal to be said on both sides, and on which I confess I should like to reserve my final opinion. I think that, while we ought to attach

very great importance to the object Sir Alfred Lyall has in view, the particular method here brought forward in the Bill is one to which an equal importance does not attach; that is to say, if this security can be attained by any other method, or if after full consideration the local officers and the Local Government think that the Bill gives sufficient security without any further safeguards, then I for my part should be very willing to be guided by their advice.

"The other points discussed in the memorial are mainly questions which must be viewed in the light that may be thrown upon them by local custom; they are consequently questions upon which I am not prepared at present to give any opinion at all, and they will be more properly discussed in Select Committee. I am glad to learn from what my hon'ble friend has mentioned that before the question comes before the Select Committee it is the intention of the Lieutenant-Governor of the North-Western Provinces and Oudh to meet the taluqdars at Lucknow, and to go into the question again fully with them. Under these circumstances I think the Select Committee will have the best possible advice; their task will be very much simplified, and they will be able to arrive at a much more satisfactory decision than they otherwise could have done.

"Finally, I have only to say that, believing as I do that this Bill is calculated to do much for the agricultural prosperity of the province, I think that Sir Alfred Lyall is to be congratulated on having initiated it. I think also that he is to be congratulated on the confidence in his justice and farsightedness which he has inspired in the taluqdars, and which has influenced them in accepting the two main principles of the Bill, although no doubt they derogate somewhat from their present powers."

His Excellency THE PRESIDENT said:—

"I shall only trouble the Council with a very few observations, and I cannot preface them in a manner more consonant to my own feelings and to the sentiments which I know to prevail amongst my colleagues than by congratulating them and myself upon the acquisition of our new member, who has already shown by the ability with which he has expressed his views what a useful and worthy accession he is likely to prove to the Legislative Council of the Government of India.

"At our last meeting in Calcutta I explained that the reason why we did not then proceed with the Bill was the unavoidable absence of our colleague, the Hon'ble Raja Amir Hosan, who was prevented from taking his place among us

by serve illness. I added, however, that the Local Government, in order to save time, intended to publish a draft of the Bill, and to collect the opinions of competent authorities upon it. Raja Amir Hosan is, to our great regret, still disabled from attending here, but a very well-qualified representative of the taluqdars, the Vice-President of their Association, has been appointed to assist us by his advice. The Bill has now been examined by the taluqdars, and we are in possession of their views; and I am glad to learn that in the main principles of the Bill they have expressed their acquiescence. I myself am fully convinced of the expediency of legislation on the lines of this Bill, and, while congratulating the taluqdars on the moderation they have shown, I am glad to understand from the previous speakers that there is a disposition to meet, as far as possible, the wishes of the Association on minor points.

"There is one special matter, however, upon which I should like to say a word in reply to what has fallen from my hon'ble colleague Rana Shankar Baksh Singh, and that is the question of compensation for disturbance. I understand that the taluqdars are inclined to consider that, were a claim of this sort to be conceded to the tenants, it would be tantamount to an acknowledgment of a right of permanent occupancy in their favour. Now, this is a matter which has for many years past occupied my attention, and I must confess that in my opinion no such consequences can be held to flow from it. When a yearly tenant is unexpectedly evicted from his holding, the injury he sustains is not limited to the loss of his improvements, but it entails a further loss occasioned by the disturbance introduced into his plan of life and his industrial undertakings. As a landlord I have myself always recognized the equitable claim of the tenant-at-will to compensation on this account, especially under a system of agriculture such as that which prevails in Oudh and in my own country, but I never held nor admitted that it implied either a proprietary or an occupancy right. When, moreover, we remember that this claim only amounts to one year's rent (in Ireland it was assessed at between four and seven years), and that it can be neutralized by the grant of an eight years' lease, I do not think that its recognition by the legislature can be complained of by any one. I admit, however, that the interests of the landlord in regard to the tenant's disturbance claim should be safeguarded by allowing him to plead certain considerations as an offset or justification. However, I will not dilate further on this particular point, because it falls more properly within the competence of the Committee to which this Bill has been referred. I will only conclude by saying that there is now no reason for further delay, and the Bill will proceed in due course through the regular stages. Between this and the time

when the Select Committee will meet, the criticisms of the public on the Bill will be invited, and it will be examined anew by the Association of the taluqdars and discussed with His Honour the Lieutenant-Governor and Chief Commissioner, who will visit Lucknow for the purpose."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. QUINTON also moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1881, be taken into consideration. He said:—

"When I obtained leave in Calcutta to introduce this Bill and that to which the following Motion refers in February last and refer them to a Select Committee, I stated at length the reasons which in the opinion of the North-Western Provinces Government rendered legislation necessary. I have not had the advantage of attending the meetings of the Select Committee, but the criticisms received have been duly considered and the Bills have emerged from the crucible with no alterations of importance.

"Under these circumstances I feel justified in asking the Council to pass them to-day."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. QUINTON also moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-revenue Act, 1873, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill be passed.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble SIR S. BAYLEY introduced the Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir A. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Calcutta Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

DEBTORS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the law relating to imprisonment for debt. He said:—

"I am reminded by the audience who are facing me that the Council is practically sitting to-day as a local legislature for the territories under the administration of the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh—territories to which a separate legislature has not been given under the provisions of the Indian Councils Act,—and accordingly this is, I think, a suitable opportunity for the introduction of a measure the immediate application of which will be confined to those territories.

"In moving recently for leave to introduce the Indian Bankruptcy Bill I referred to the important subject of imprisonment for debt, and, whilst frankly stating my personal opinion that the present law is a bad law, I went on to say that in the present state of Indian public opinion I was not prepared to propose any amendment of it which should apply to the whole of India. But I took care to reserve my opinion on the question whether the Government would not be justified in proposing legislation confined in its scope to a particular province where the balance of authoritative opinion was in favour of such legislation. It is a measure of such limited application that I am now asking leave to introduce.

"The present state of the law is this. Under the Civil Procedure Code a decree or order for the payment of money may be enforced by the imprisonment of the judgment-debtor. The Court has a discretionary power to refuse execution at the same time against both person and property, but has no discretionary

power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time and is otherwise in order, be admitted, and then the Court must order execution of the decree *according to the nature of the application*. The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary, and 'cause to the contrary' as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

"But to this general law there is one remarkable local exception. In the four districts of the Dekkhan to which the Dekkhan Agriculturists' Relief Act applies, arrest and imprisonment for debt have been altogether abolished in the case of the class of persons described in the Act as agriculturists. 'No agriculturist,' says the Act, 'shall be arrested or imprisoned in execution of a decree for money.' The Act has now been in operation for more than six years, and the periodical reports of its working show that this simple and trenchant provision has worked well, and has been attended with beneficial results. Now the Dekkhan Relief Act is, substantially, an amendment of the Civil Procedure Code, confine in its scope to a specified, but extensive and important, set of transactions; and I have always considered that such of its provisions as are found by experience to work well ought eventually to be generalized and embodied in the Code. The experience already gained of this particular provision is, I think, at least sufficient to justify us in trying it on a more extensive scale.

"It will have been seen that, under the general provisions of the Civil Procedure Code, the discretion as to whether a debtor shall be arrested and imprisoned or not rests not with the Court but with the creditor. It may be clear that the debtor has property available for attachment, and that a warrant of arrest has been applied for from vindictive or other improper motives, and yet, if the creditor asks for a warrant of arrest, a warrant must issue. The debtor may be a woman, she may even belong to the class of women who by the law of this country are exempted from public appearance in Court, and yet, if the creditor says that he wishes to send her to prison, to prison she must go.

"Now, in the year 1881 a case occurred which illustrated the working of this provision of the law and attracted a good deal of public attention. The case was one in which a *paradanashin* lady in Calcutta was arrested and imprisoned in execution of a decree for money obtained against her. Some correspondence

with respect to the case took place between the Government of India and the Government of Bengal, and eventually, as a result of the correspondence, a circular was in November, 1881, addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *pardanashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

"The replies to the circular disclosed much difference of opinion with respect to the advisabiltiy of maintaining for India the present system of imprisonment for debt, and the usual arguments, with which most of us are familiar, were duly marshalled on either side.

"The arguments on which the upholders of the present system relied fall into two classes; first, arguments which, if valid at all, are valid for England as well as for India; and, secondly, arguments based on the special circumstances and conditions of India.

"To arguments of the first class belongs the assertion that 'to remove from the Statute-book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country.' These general predictions are dangerous. Precisely the same objection was made in England, first to the abolition of arrest on mesne process, and afterwards to the abolition of arrest on final process. It is the kind of objection which, as logicians would say, *solvitur ambulando*. The power of arrest was removed, and neither commerce nor trade shewed any symptoms of paralysis.

"Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

"As to the first ground, I will only say that two wrongs do not make a right. If it is wrong, as I hold it is, to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defects of Indian property law, he finds difficulty in giving a satisfactory security over his property

"In the argument based on the prevalence of, and difficulty of detecting, fraud there is undoubtedly much force, though, after having in the course of my professional career studied most of the reports and evidence bearing on the law of debtor and creditor in England and conversed with a large number of persons who has a practical experience of its working, I am inclined to doubt whether the moral complexion of the Indian debtor is really so much darker than that of his English brother, and whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment simply because fraudulent debtors are numerous and difficult to detect, appears to me something like making homicide by misadventure punishable by death, simply because the crime of murder is rife and hard to prove.

"There are, in my opinion, two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessaries of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. These principles appear to me to be as applicable to India as to England—to an uncivilized as to a civilized country. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessaries of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But my belief is that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

"It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his

release is, for some reason or other, very rarely used. There is, or was until recently, a strong concurrence of opinion to the effect that the Insolvency chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference. The legislation of 1879 has done something towards the improvement of the Insolvency chapter of the Code. But I believe that the experience of those who have been concerned in the working of that chapter will bear me out in saying that notwithstanding those improvements the number of orders passed under it falls very far short of what might be expected under a thoroughly satisfactory and workable law. And whilst this is so it would be unfair to point to the provisions of the chapter as a justification of a law which, but for those provisions, would be admittedly unjust and defective.

"My own strong opinion, on the evidence before me, is that imprisonment for debt, as such, ought to be abolished in India as it has been abolished in England and other civilized countries, but that in India as in England imprisonment should be retained as a punishment in those cases where indebtedness involves an element of fraud.

"If I thought that the objections to the present law were merely theoretical, if the conclusions at which I have arrived were based merely on *à priori* reasoning and were not supported by practical experience, I should hesitate to bring forward proposals about the expediency of which doubts are entertained by a large number of the Indian judicial authorities. But this is not the case. The evidence collected by the Dekkhan Riots Commission is sufficient to show, if other evidence were wanting, that the existing law is not only defective in theory but oppressive in practice, and my opinions are shared by those whose authority to speak on Indian subjects no one could question. Looking round this table, I can appeal to Sir S. Bayley, who, writing in April 1882 as Resident at Hyderabad and with the experience which he had acquired in Bengal and Assam, was of opinion that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear on a debtor, and that this is especially the case in an agricultural country where land is generally given as security for debt; to Sir Theodore Hope, who, in the speech which he made in 1879 in introducing the Dekkhan Agriculturists' Relief Bill, stated the case against the

present system more forcibly and concisely than it had ever been stated before; to Sir Auckland Colvin, who was himself a member of the Dekkhan Riots Commission; and to Sir Charles Aitchison, who intimated very clearly in 1882 that, but for 'the weight of learned opinion' by which he was embarrassed, the Punjab Government would then have been ranked among the decided opponents of the present law.

"With Sir T. Hope's permission I will read to the Council some extracts from his admirable and exhaustive speech on the Dekkhan Relief Bill. In referring to the provisions of the Bill with respect to the mode of enforcing execution of a decree, he expressed himself as follows:—

'As to execution against the person by arrest and imprisonment, I rejoice to state that it is now considered expedient to abolish it altogether. Imprisonment will still be inflicted as a punishment for fraud detected on insolvency; but that is a totally different thing. The maintenance of imprisonment for debt, as found in the Indian law, is equally indefensible in principle and in practice. As to principle, the Dekkhan Riots Commission make clear that point, utilising the opinions of John Stuart Mill. Their appendices teem with evidence in detail as to the extortion and wrong of which the warrant of arrest becomes in practice the engine. Unacknowledged payments, fresh bonds for sums unadvanced, life-long slavery and even female dishonour may all be obtained—the first three constantly, by the mere production of the warrant of arrest without enforcement. They say, for instance, that in 1874, "it would seem probable that somewhere about 150,000 warrants had been used as threats only." The outcry against imprisonment from officers well qualified to judge of it has been uniform and persistent. Its abolition is unanimously recommended by the Dekkhan Riots Commission. Mr. Pedder and Miss Nightingale have in *The Nineteenth Century* brought the evils it causes prominently before the British public. Sir Erskine Perry gives its abolition his "unqualified approval" in a note dated December 1st, 1877. Judicial officers and pleaders take the same view as the Executive. Were it even defensible in theory, which we have seen that it is not the abuses to which, in a country like Western India at least, it is proved to lead in practice afford sufficient ground for its condemnation in the districts to which the Bill is to apply. * * * Imprisonment was, at best, a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. Under the draft Bill, it will be quite unnecessary for these pruposes, and reserved for cases of flagrant fraud or dishonesty in insolvents. In this altered position I trust that no hesitation will now be felt by the Council in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilized world.'

"These are the opinions of an officer whose experience was derived mainly from the Bombay Presidency. Let me add equally weighty testimony from

another part of India. This is what was said by the Lieutenant-Governor of the North-Western Provinces in 1882 :—

'5. Sir A. C. Lyall has long been of opinion that the powers of subjecting a debtor to arrest and imprisonment should not be entrusted to the decreeholder, but to the Courts only; and, in leaving with the Courts the authority to imprison, he would limit its exercise to cases in which clear proof should be shown of fraud or dishonest evasion of payment on the part of the judgment-debtor. The existing practice of placing in the creditor's hands the power of selecting his own method of coercion is, Sir A. C. Lyall believes, a relic of the old semi-barbarous debt laws which has now been eliminated from almost every civilised code of judicial procedure. The retention of this process in our Indian code would, upon this principle, be justified only by showing that it was specially required by the circumstances and conditions of the administration of the debt law in this country; and Sir Alfred Lyall does not think that any such imperative reasons for retaining it can be adduced.

'6. It has been argued that, by restricting the process of arrest to cases of proved dishonesty or contumacious refusal to pay debts, the debtor would be given an opportunity for getting out of the way, and thus evading arrest if the Court should determine to order it. But, in the first place, the position of an absconder from process is a very uncomfortable one; so that only the class of debtors who now run away from the creditor are likely to run away from the Court; and, in the second place, the additional risk that would be imposed on the creditor in his realisation of bad debts seems quite worth incurring for the purpose of relaxing the severity with which the present system operates against all debtors, honest and dishonest, indiscriminately. Of the persons arrested, only a comparatively small number seem to be actually imprisoned after arrest; and this fact has been taken to prove that most of these debtors were able to pay but refused to do so till arrested. But it is at least quite as probable an explanation that the debtor, when arrested, preferred, rather than go to jail, to accept any terms which his creditor chose to dictate to him, and to save himself from prolonged imprisonement by executing or renewing bonds on hard or ruinous conditions, or by mortgaging or selling all his property, including property exempt by law from attachment under a Civil Court decree. The effect of arrest, in neutralising the legal exemption from attachment, seems indeed to merit particular attention. For although section 266 of the Code of Civil Procedure provides that certain things shall be exempt from attachment under a decree, the provision can be practically of little use when the creditor can, by exercising or threatening to exercise his power of arrest, compel the debtor to give up any property whatsoever that he may possess. The Judicial Commissioner of Oudh has cited, as an instance of the difficulty which creditors would experience in realising their debts if the power of arrest were abolished, the case of a debtor who holds a pension, which the law forbids the Court to attach, but who owns no other tangible property. It is argued that such a man may be made to pay his debt while the law allows him to be arrested, but might defy his creditor if the power of arrest were removed. But, according to this view of the case, it is clear that the power of arrest now operates in a great degree to annul the exemption from attachment assigned by law to the pension, since the creditor, though he

cannot directly attach the pension, can imprison the pensioner till he comes to terms that may be equivalent to its transfer.

'7. There may be cases falling under section 259 of the Code of Civil Procedure in which it may be necessary to reserve power to the Court to order the imprisonment of a judgment-debtor who has wilfully disobeyed the Court's specific order, for instance, in the case of a suit for the recovery of a wife. (I will remark here, parenthetically, that I wish to reserve my opinion as to the expediency of a law which enables a husband to obtain the imprisonment of a contumacious or runaway wife, but this question does not arise on the present Bill, which is confined to money debts. To proceed with my quotation.) But all such cases would fall under the rule of dishonest or contumacious evasion; and it would be quite sufficient to invest the Court with discretion and authority sufficient to enforce its own specific mandates. And the reservation of the power of personal coercion to the Courts would prevent the process being employed, as there is reason to believe it occasionally is employed to gratify a vindictive feeling on the part of the creditor, as in cases where there has been a quarrel, or where a debtor, knowing himself to be insolvent, has favoured another creditor at the expense or to the disadvantage of the decree holder.

'8. Sir A. C. Lyall would therefore advocate the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and would allow the Courts to order arrest only on proof of fraudulent and contumacious attempt to defeat the operation of a decree.

'9. It is possible that the abolition of the power of arrest would make the recovery of debts somewhat less easy; but, granting this, the law is not bound to go beyond a certain limit in aiding creditors, and in Sir A. C. Lyall's opinion it goes too far when it leaves to creditors uncontrolled power of imprisoning their debtors. Imprisonment is especially hard on the cultivator and woking man, whom it deprives of their means of subsistence and of providing for their families and these are the classes who probably are most frequently imprisoned.'

"There is no branch of the law which more intimately affects the welfare of the poorer classes throughout India than the law of debtor and creditor; and if the Government of India entertains an opinion that that law is seriously defective it would incur a grave responsibility if it were to hesitate or unduly delay to give its opinion practical effect.

"Why then, I may be asked, did not the Government of India undertake legislation in 1882 or 1883? The answer is that it would have been inconvenient and inexpedient to do so at a time when analogous legislation was still under discussion in Parliament. The English legislation of 1869 proceeded on the sound principle that provisions for the relief of the honest debtor should be accompanied

by provisions for the punishment of the fraudulent debtor. The Debtors Act of 1869, which abolished imprisonment for debt, as such, contains two Parts, of which one is headed '*Abolition of Imprisonment for Debt*' and the other '*Punishment of Fraudulent Debtors.*' Concurrently with it was passed the Bankruptcy Act of 1869 which remodelled the system of bankruptcy for England, and with reference to which the penal provisions of the Debtors Act are framed. Now in 1882 and 1883 the English bankruptcy law was in the legislative crucible, and it appeared to me that, much as the Indian insolvency law stood in need of amendment, it would be desirable to defer proposals for its amendment until the new English law had been passed, and some little experience of its working had been obtained, and that then, and not till then, would be the proper time for dealing with the cognate subject of imprisonment for debt. As soon as the new English Bankruptcy Act had become law I set about the preparation of a corresponding measure for India, but the preliminary steps occupied some time, and it was not until a fortnight ago that I was able to introduce the Indian Bankruptcy Bill into this Council. The main provisions of that Bill will operate only within the Presidency-towns and a few other like places, but it contains one Part, the Part headed 'Fraudulent Debtors and Creditors,' which applies to the whole of British India. This part is taken from the English Debtors Act of 1869, as amended by the English Bankruptcy Act of 1883. When read with the Indian Penal Code, it will be found to contain those full and strong powers for the arrest and punishment of fraudulent creditors and debtors which are the essential adjuncts of every proper bankruptcy law. Therefore I am now in a position to say that I have already brought forward those proposals for the amendment of the penal law which in the opinion of the Parliament of 1869 were the proper supplement and corollary of proposals for the relief of the innocent debtor.

"I may add that the interval which has elapsed since 1883 has not been wholly unfruitful of results. I was anxious to fortify myself with information about the law of imprisonment for debt in foreign countries, and through the kindness of Sir H. Maine I obtained from Her Majesty's representatives abroad a series of interesting reports on that subject. A summary of those reports has been published, and fully bears out the statement made by Sir T. Hope in 1879 that the existing Indian system is 'in opposition to the legislation of the civilized world.'

"I have described the steps which were taken with reference to this subject in 1881, and have explained why legislation was not initiated as an immediate consequence of those steps. It remains for me to explain the nature of the

proposals which on behalf of the Government of India I am bringing forward now. Having regard to the authority and experience of some of those who are opposed to a change in the law, and bearing in mind the immense diversity of circumstances and conditions which prevails throughout this vast peninsula, we thought that, while we should not be justified in further delaying legislation, our most prudent course would be to confine its application in the first instance to some one proivince where the balance of authority, administrative and judicial, is clearly, and strongly in its favour. There is such a province. I have read to the Council the opinion that was expressed by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh in 1882, and I am in a position to say that the opinion which Sir A. Lyall held then he holds after four years' further experience now. His opinion was briefly but emphatically endorsed by the Hon'ble Judges of the Allahabad High Court, who were, and are, strongly in favour of abolishing imprisonment for debt as such.

"Under these circumstances I propose that the measure which I am asking for leave to introduce should apply in the first instance only to the North-Western Provinces and Oudh, but that it should be capable of extension hereafter to other provinces by the Local Governments with the previous sanction of the Governor General in Council. From the opinions which were received from Lower Burma in 1882, and again with reference to the draft Bankruptcy Bill which was published last year, there appears to be a strong feeling in that province in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But on the whole I think it is preferable that the primary application of the measure should be confined to the territories under one Local Government only, and that its effect there should be ascertained before the Act is extended to other parts of the country. The Bill follows generally the principles of the English Act of 1869, by enacting that a Civil Court shall not imprison for debt except in certain specified cases, and that in those cases imprisonment is to be treated not as a measure of coercion but as a punishment. The excepted cases are—

"(*a*) where the order is for payment of a fine;

"(*b*) where the defaulter is a trustee or person acting in a fiduciary capacity, and the decree or order requires him, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself;

"(*c*) where the Court is satisfied that, since incurring the liability in respect of which the decree or order was made, the defaulter has fraudulently

transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation thereto, with the object or effect of impeding the enforcement of the decree or order by the attachment and sale of his property;

"(*d*) where the Court is satisfied that the defaulter either has, or has had since the date of the decree or order, the means to pay the money, and has refused or without reasonable cause neglected, or refuses or neglects, to pay the same.

"In these excepted cases the debtor may be sentenced to imprisonment for a term not exceeding six months: he is to be imprisoned in the civil jail, but is nevertheless to be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment, and his creditor is not to be liable to pay subsistence-money for his maintenance in prison. It appears to me that these consequences logically follow from the theory that imprisonment is inflicted as a penalty and not as a screw. The liability of the judgment-creditor to maintain his debtor when in jail existed under the old insolvency law in England, and the Act which imposed it was once described as giving the creditor 'the power of imprisoning and tormenting his debtor at the expense of 3*s*. 6*d*. per week.' I regard it as a bad qualification of a bad law, and think that the law and the qualification should disappear together.

"These are, very briefly, the main provisions of the Bill. For its subsidiary provisions I must refer the Council to the Bill itself and to the Statement of Objects and Reasons, both of which I propose to publish at once. The Bill is comparatively short and simple, but the subject with which it deals is as important as any that have ever engaged the attention of the Indian legislature."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and such other languages as the Local Governments think fit.

The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871. He said:—

"Certain allowances, locally known as Amanat Wasikas, Zamanat Wasikas and Loan Wasikas, are paid by the British Government, to the descendents of

certain relatives and dependants of the Babu Begam and the Vazirs and Kings of Oudh. Till the year 1880 no doubt was entertained that these allowances were pensions within the meaning of the Pensions Act, 1871. In that year it became desirable on financial grounds to commute one of the largest of them, and, a dispute having arisen as to the person entitled to receive the capitalized amount of the allowance the Government had to consider whether it could safely pay the amount under cover of the Pensions Act to the person who appeared to be best entitled. The Hon'ble the Advocate General inclined to the opinion that a Wasika was a pension within the meaning of the Act, but thought there was a good deal to be said in favour of the opposite view. As the sum involved was so very large that the Government would not have been justified in incurring any risk in disposing of it a special Bill was introduced into the Legislative Council and passed as the Taj Mahals Pension Act, 1881.

"This step, which the Government was compelled to take for its own protection, necessarily suggested a doubt as to the applicability of the Pensions Act to Wasikas.

"As it is expedient on political considerations that there should be no room for question as to the applicability of the Act to Wasikas, the Government has decided to introduce this Bill to remove the doubts created by the legislation of 1881."

The Motion was put and agreed to.

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

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 23rd June, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 11th June 1886.

Note.—The Meeting fixed for the 2nd June, 1886, was subsequently postponed to the 9th idem.

S. G. P. I.—No 454 L. D.—10-5-12—50.