Wednesday,
23rd 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 23rd June, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., M.G.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.
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.
The Hon'ble Colonel O. R. Newmarch.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Colonel W. G. Davies, C.S.I.

DEBTORS BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the law relating to Imprisonment for Debt be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton, the Hon'ble Peari Mohan Mukerji, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover.

The Hon'ble SIR THEODORE HOPE said :—

"Having for many years devoted a good deal of my time and attention to the improvement in various ways of our cumbrous and unsuitable Civil Procedure Code, and especially to the question of imprisonment for debt, I need scarcely say that I hailed with the every greatest pleasure the disposition to deal with that most important subject which was indicated in the recent speech of our hon'ble colleague the Law Member on the Bankruptcy Bill; and although the few words which then fell from him indicated that the measure which he contemplated was at most but a limited one, still I waited with great interest for the development of his scheme, and his exposition of the grounds of the conclusion at which he had arrived. Having had the advantage on the last occasion of our meeting of hearing the case put out in full, I hope that I may be permitted to say that his argument in favour of the abolition of imprisonment for debt altogether appears to me to be

unanswerable, and his reply to the objections brought against that measure to be complete. It seemed to me that the whole question could not be better summed up than in the two statements which my hon'ble friend put before us, namely, 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'; and further that, 'if the Government of India entertains an opinion that the law is seriously defective, it would incur a grave responsibility if it were to hesitate or unduly delay to give its opinion practical effect.'

"Now, following such an effective exposition of the whole case as that, I viewed with more regret than ever my hon'ble friend's conclusion that the measure ought at present to be confined to one administration only in the whole of British India; but I must confess that my heart altogether sank within me as I listened to his final opinion that the effect of that application to one Local Government only ought to be ascertained before the Act was extended to any other parts of the country. I would invite the Council to consider how very great must be the delay involved in such a postponement, and what a considerable period must elapse before the working of the Act in the province to which alone it is to be extended can be ascertained in such a clear and satisfactory manner as to satisfy objectors in other parts of India. This question, I may remind the Council, is not even one dating from the year 1879, when, as our hon'ble colleague the Law Member reminded us the other day, I brought it before this Council in connection with the Dekkhan Raiyats Bill. It goes back farther than that. Two years previously the battle raged, and in 1877 I succeeded in cayrring an amendment of the Civil Procedure Code Bill, connected with the subject, which now is to be found as section 336 of that Code—that it to say, nearly ten years have elapsed since this question began to be placed actively before this Council from time to time. Now, the Dekkhan Raiyats Act of 1879, as my hon'ble colleague has stated, has fully justified the expectations entertained at the time as regards its provisions relating to imprisonment for debt. That Act, I am glad to say, has gradually been living down both the theoretical objections and practical obstruction with which it was at first for a long time assailed. Each year's report has established more clearly the soundness of its principles and the beneficial effect of its fundamental provisions; and no report that I have seen has been more convincing on this point than the very last one which we have received. But, notwithstanding all this, seven years have elapsed before that experience has been considered sufficiently strong—has carried sufficient weight—to enable the question of imprisonment for debt to

be again brought before this Council. The evil, however, is no less than it is characterized and is one that is very severely felt. I hold in my hand a vernacular petition which I received a few days ago from twenty-one debtors confined in one of the civil jails of the Bombay Presidency. These persons, we may all be glad to see, take an interest in the proceedings of this Council. At any rate, they have addressed me in the vernacular, saying how glad they are that their woes have at last come to the notice of the Supreme Government, and praying that they may receive early relief. I need scarcely say that they are careful to suggest likewise that whatever measure is brought in may have retrospective effect! Now, how much longer, I would ask, is the state of things, or the injustice, as I might more rightly term it, pointed out in this petition to be allowed to continue? It appears to me that we may very well consider whether such delay as would be involved in waiting for the experience of the application of the Act to the North-Western Provinces before it is followed to be extended to any other parts of the country is really necessary or not. I should say that the other Governments might just as well accept the experience which they have already got from the seven years' working of the Bombay Act as wait for the several years' more experience of the North-Western Provinces. I would farther ask whether they are more likely to be convinced by the experience in the latter case which is yet to come than by the experience in the former case which they have already acquired; if they do not believe in the experience derived in the one case, what reason have we to assume that they are likely to believe it in the other? They will probably some of them at least, be convinced by nothing except by that actual experience in their own case which is proverbially said to be the only effective mode of convincing the majority of us. Now, I gather that my hon'ble colleague has been unwillingly led to the conclusion, which he felt himself bound to enunciate, as regards this postponement, and that this recommendation for postponement, which I understand he deplores as much as I do, has been brought about by the authority and experience of the opponents whom he finds arrayed against this measure. As far as I am aware, this adverse authority and experience is chiefly to be found in the papers relating to the inquiry which took pace in 1881-82. I have again looked into a considerable proportion of these—and I should like with the permission of Your Excellency, just to read one of the opinions upon which this decision for delay may be held to be based—that is, the opinion given on 12th February, 1882, by the Hon'ble Sir Charles Sargent, the Chief Justice of my own Presidency of Bombay. Sir Charles Sargent wrote as follows:—

'I think it would be highly unadvisable to abolish imprisonment for debt. There is no reason to suppose it offends the public conscience, and undoubtedly, in numerous cases, affords

the only means to the judgment-creditor of obtaining satisfaction of his decree. It should be remembered that the position of a judgment-creditor in this country is one of peculiar difficulty. The legal incidents of the undivided Hindu family, the minute distribution of property ocasioned by the Muhammadan law of descent, and, though last, not least, the practice of creating *benami* titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of his judgment-creditor to attach his property. In numerous instances the only hope of obtaining payment of a judgment-debt lies in the possibility of putting pressure on the debtor and his relations by the arrest of the former.'

That is to say, the Chief Justice of Bombay considers that a certain mode of recovering private debts is justifiable because it is revolting to the general feelings of those to whom it is even indirectly applied, and that a judgment-creditor may properly recover his claims by subjecting his debtor to a process so distressing that a man's relations, although entirely unconnected with his private affairs will be forced to come forward and subscribe for his release. I do not think that I need dilate further on the value of such arguments as that. I regret to see that this opinion was endorsed by four other Judges of the Bombay High Court, who disposed of the whole matter in less than half a page of print. Only one other judge, Mr. Justice West, with that caution which might be expected from his well-known ability and experience, abstained from committing himself so far, and said that it would be desirable before going farther to institute a careful inquiry into the present working of the system.

"I will now come to the practical conclusion of the remarks which I have ventured to offer, and that is, that I trust that the declaration which our hon'ble colleague made in the course of his speech may not be taken to be an absolute one, and that I trust, moreover, that all the Local Governments will consider the promulgation of this Bill as an invitation to reconsider the whole question upon its abstract merits as they have now been so clearly put forward by our hon'ble colleague, and also upon the actual results of the seven years' Bombay experience now available to them. I would fain hope that His Honour the Lieutenant-Governor of the Punjab may be induced by such fresh consideration to hesitate no longer in throwing over that 'weight of learned opinion' by which in 1882 he felt himself to be embarrassed; that others may also follow the same course; and that upon such support the Hon'ble Law Member himself may take heart of grace, and may be able at any rate to see his way in the Select Committee to following the precedent adopted in the Indian Forest Act, and other Acts of allowing the Act to apply at once to as many localities as may express a desire for it, and leaving the others to follow whenever circumstances or their own opinions may justify its application.

"By this means—and, as it seems to me, this means alone—can this Council and Your Excellency, its President, be relieved of the painful alternative of continuing in the greater portion of British India a system which is admittedly opposed to the law of other civilized nations of the world, and which the Law member lately characterised as 'bad for the debtor, bad for the creditor and bad for the country altogether.'"

The Hon'ble SIR STEUART BAYLEY said:—"I hope not to detain the Council any length of time with what I have got to say about this Bill, but, my hon'ble friend who introduced it having referred to the view which I expressed when Resident of Hyderabad in favour of the principle now introduced, I wish to add that I have since that date had the opportunity of examining the matter a good deal more closely and in the light of the correspondence which was gathered together in 1883. That correspondence included the opinions of selected judicial officer and administrative officers in all parts of India; and though the majority of opinions was against the abolition of imprisonment for debt pure and simple, there was a very strong element in favour of such modified abolition as Mr. Ilbert has introduced into this Bill; and I can only say that the result of a more lengthened study of the subject has been to confirm me strongly in the conviction that the principle on which this Bill is based is a right and a sound principle. I think the public are perhaps likely to be led away by the use of the expression 'the abolition of imprisonment for debt,' though its meaning is sufficiently clear when you go into the Bill. The Bill does not absolutely and universally abolish imprisonment for debt even in those districts to which it will be applied. What the Bill does propose to do is to take away from the creditor the absolute and irresponsible power that he now has of imprisoning his debtor at his own will and pleasure. As the law now stands in regard to any debtor, whether he be honest or dishonest, whether it be a *pardanashin* lady, or the father of a family upon whose support they depend, or whether it be a widow with young children, if the creditor applies to the Court for a warrant of arrest the Court has no discretion but to place itself as a passive instrument in the hands of the creditor to carry out his wishes. The Court cannot say in one case 'there seems no dishonesty but merely misfortune, and the debtor should not go to jail'; the Court cannot say in another case 'the debtor has property, you should proceed against his property before you proceed against his person'; the Court, as I have said, is simply a passive instrument in the hands of the creditor. Well, what the Bill proposes to do is to remove the absolute power from the hands of the creditor and to give discretion to the Court and at the same time it instructs the Court that it is to use this discretion in the

matter of imprisonment only when the debtor is either fraudulent or recalcitrant, that is to say, when he makes away with or hides his property or when he obstinately refuses to pay. Most of the supporters of the law as it at present stands take up the position that in cases of fraud or in cases of recalcitrancy the creditor has really no other means than that of imprisoning the person of his debtor, for getting back the money that is due to him. On this point the weapon remains as before, that is to say, it remains at the disposal of the creditor, but it is to be used through the Court. It may be said that it would be very difficult to convince a Civil Court of fraud. It cannot, however, be very difficult at all events to satisfy the Court, in the words of the law, in cases where the defaulter, having means to pay, has refused *or without reasonable cause neglected* to pay. That is all that has to be proved; and, judging from the manner in which some similar clauses have been worked at home by County Court Judges, it does not seem that the judicial officers will have much difficulty in satisfying themselves on the point or in working the law so as to give sufficient relief to creditors. We are also told that if this Bill were generally applied it would restrict credit by destroying the value of personal security, and some of the objectors go farther and say that, in agricultural communities especially, agriculturists have nothing to offer but personal security, and that in their case it will make credit so difficult that they will probably not be able to get money when they want it, and that therefore they will not be able to pay the land-revenue. That is one of the strongest arguments against the measure. Well, I think that there is here a little confusion of ideas about personal security. True, the agriculturist without rights of occupancy has no landed security to offer, but what he borrows on is not the security of his person but the security of the coming crop. For generations and generations this security has been given and accepted; it is now left as it was before in the Bill; and I think we may trust that for generations to come that security will be found to be sufficient by the village-mahajan. But I do not wish to minimise the effect which the Bill is likely to have on credit. I think that in a limited class of cases in which people borrow money having absolutely nothing against which the creditor can go, and in which he is bound therefore to trust to the small benefit of putting his debtor in jail,—in those cases I have no doubt that the Bill will restrict credit, and I think that anybody who watches the cases of insolvency in our Presidency-towns will say that in those cases credit is rightly restricted, and that the ultimate, result will be to put the whole relations of that class of cases on a much better footing than they are at present.

"I wish to avoid going over the whole extent of ground traversed in the speech of my hon'ble friend when he introduced the Bill, so I will not emphasise

one strong point, namely, the extraordinary anomaly that imprisonment for debt may be used to defeat certain provisions of the legislature. Those provisions are that the bare necessaries of life are to be left to the debtor, and that in certain cases a debtor's pension should not be touched; but, as Mr. Ilbert pointed out, bringing this threat of imprisonment to bear, you can make a man give up his implements of agriculture, or make him transfer his pension; and then what possibly remains of those provisions which it was the object of the legislature to keep in force? But I do not want to lay some emphasis on the fact that under this Bill the creditor will be very little, if at all, worse off than under the existing law in regard to those who *will not* pay, and that in regard to those who *cannot* pay the provisions of the existing law are a cruel scandal and a discredit to our administration. I suppose that, out of every five hundred warrants for arrest issued, not more than one is ever followed by the arrest of the debtor. They are used *in terrorem*, to make him give fresh bonds, practically to make him bind himself for life; and it is in this respect, as a screw for extorting money either from him, or, as our colleague Sir Theodore Hope has pointed out, from his friends and relatives, that the real power of arrest is useful to the creditor. If I am allowed I should like to read a few sentences from one of the papers that came up in 1883 which shows how this power was stated to be used in the district of Khandeish. The report is by the District and Sessions Judge of Khandeish, and in it he wrote as follows:—

'The liability of the creditor for his debtor's subsistence while in confinement deters the majority of parties applying for execution from seeking this method of redress. It has, more than any other form of enforcement, the effect of lessening the debtor's prospects and means of payment at the very moment when this obligations become most pressing. Further, it spreads the distress, arising from the inability to pay, over a wider circle, leaving those who are dependent on the personal labour or exertions of the debtor in a state of destitution. As a matter of fact, the creditor seldom or never carries into execution the power thus given him over his debtor. He prefers to stop short of the last step; and though he applies for enforcement of execution by imprisonment, he does it only that he may hold the warrant *in terrorem* over his judgment-debtor and, when opportunity offers, exact more advantageous terms for himself.'

"And then he goes on to say:—

'In former years, to judge from reports, this power was frequently exercised by the Saukars to assist the most flagitious designs on the females of the debtors' families. There is ground for hope that this most henious abuse is dying out if not extinct; but still the Saukars appear to aim at involving, if possible, in their claims the mother or wife of the principal debtor. Their reason for doing so is not far to seek, and affords an instance of the most flagrant abuse

that is now made of the law of arrest for debt. It is simply a more ingenious form of the torture and pressure applied to extort from the judgment-debtor the entire surrender of his present and future property and his personal labour. If the Kunbi or the Bheel fears confinement for himself, the prospect is not less alarming to him when it threatens to consign to imprisonment in the district jail an aged mother or a youthful wife. He is willing, rather than summit to such pain and degradation, to consent to almost any terms, however impossible of fulfilment, and, if he is unable to offer to his creditor any property in existence, he consents to resign his own liberty of action by becoming a saldar (or yearly servant) to the creditor or the purchaser of the decree. There is thus ground for believing that the statement made in former reports is literally true, that "in the Satpuras the Bheels are bought and sold as slaves." The shortest personal experience in this district teaches us that the facts are not exaggerated. A number of bonds, even as they appear on appeal, bear not only the signature of the actual borrower but also that of the wife or mother; nor is this practice confined to the Bheel debtors; it is equally common in the use of Kunbis. The execution of a deed by the wife or mother is regarded as an excellant security; under the circumstances none could be more effective for the creditor's purposes. The number of salkhuts (agreements to service for a year) in satisfaction of decrees is a sufficient confirmation of the statement that the personal labour of the indebted classes is a matter of traffic among creditors. Decrees pass from hand to hand, and with them the livestock which represent the only means of satisfying them.'

"Well, I must repeat the fact that under the existing law the Courts of Justice are the mere passive instruments of carrying out oppression of the above kind; that it is a great blot in the existing system; and that it is a duty which the Government of India ought not to postpone longer than is absolutely necessary to remove that blot and put the law on a proper footing. As Mr. Ilbert has informed the Council, we have obtained from the Secretary of State a report from almost every country in which Great Britain has Consular Agents of the state of the law in regard to this subject; and, having looked through that report, I find that in almsost every country of Europe and America the existing law is on the lines on which we propose to base this new Bill. In France and Italy, in Portugal and Spain, in the German States and Austria, in Sweden, Norway and Denmark, in the United States of America mostly, and in most of the States even of Southern America, imprisonment for simple debt is a thing of the past; and in all those countries where imprisonment remains it is as a punishment for conduct either fraudulent or recalcitrant. I am now speaking only of ordinary civil debts. The only countries apparently in which the law stands as it is in India are the Ottoman Empire, Tunis, and some parts of Russia. Well, I have referred to the correspondence which took place in 1883, and, as I have said, the majority of the officers consulted were against any material alteration of the law. I think, notwithstanding what has fallen from my hon'ble friend Sir Theodore Hope, that in

this state of the case the Government of India were justified in not attempting to force in the face of public opinion an advanced measure and to apply it at once to the whole of India. I think they were justified in making it an experimental step and in applying it only to the North-Western Provinces and Oudh, where both the High Court and the Local Government are strongly in favour of it. It occurs to me as possible that the difference of opinion which is so marked in these papers has perhaps for its foundation a not very obscure difference of circumstance ; that those authorities who for the most part had under their eye agricultural operations and the interests of the agriculturists were strongly in favour of altering the law at the earliest possible moment ; whereas those authorities who dealt mostly with cases of a commercial nature did not see their way so readily to making any alteration of the law. Be that as it may, I think that in the face of the opposition shown at that time the Government of India were bound to apply the Bill in the first instance to a limited area where it was shown that there was a sufficient authority in favour of it. I can only say that I most heartily concur in the hope and wish expressed by my hon'ble friend Sir Theodore Hope that other Local Governments will soon follow the example of the North-Western Provinces and Oudh ; and I hope that the reproach will soon be removed from India of having on the subject of imprisonment for debt a law which is more backward than that of States like, let us say, Egypt and Servia in the Old World and like Venezuela and Montevideo in the New."

The Hon'ble MR. ILBERT said :—" I am very much indebted to my hon'ble colleagues for the effective support they have given to the measure which I introduced at the last meeting of this Council. My hon'ble friend Sir Theodore Hope is quite right in supposing that, if I had felt myself at liberty to act in accordance with my own opinion of what the law ought to be, I should have given wider application to the measure ; but in saying, as I did, that I thought it preferable that the primary application of the Bill should be confined to the territories under one particular Local Government, I merely wished to indicate my view as to the course which, in the presence of the body of opinion now before us, it would be most prudent and politic to take. The extent of the application of the Bill is a question which it is within the competency of the Select Committee to consider ; and if the authorities of any other province should, in the light of the further experience which has been acquired since the discussions of 1881-82, and after having seen what are the actual proposals of the Bill,—should these authorities express an opinion that the Bill should be extended at once to that province, I should be extremely glad if the Select Committee could see their way to modifying the Bill accordingly."

The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. ILBERT, on behalf of the Hon'ble Mr. Quinton, also moved that the Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871, be referred to a Select Committee consisting of the Hon'ble Sir A. Colvin, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

INDIAN PORTS ACTS ACT, 1875, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the Indian Ports Act, 1875. He said:—

"The grounds on which it is desired to introduce the measure indicated on the notice-paper is this. Certain steamers are engaged in the coasting trade of the Madras Presidency, but are not 'coasting steamers' within the meaning of the expression as defined in Part III of the Schedule to the Indian Ports Act, 1875. They have therefore to pay port-dues at every port they call at in a group, instead of only paying them at the first port they call at and being free at every other port in the group for a period of thirty days. The owners of these steamers represented to the Government that the levy of these full port-rates at every port the steamers call at is a considerable hardship and is detrimental to the trade which their steamers are fostering, and they have asked that their steamers may be treated as coasting steamers. The Government of India is of opinion that the law, as it stands at present, bears hardly not only on these steamers engaged in the coasting trade, but also on other steamer and sailing vessels. The provisions of the law at present applicable to ports within the limits of the Madras Government do not extend to the ports situate in the Bombay Presidency, where the existing practice is similar to that which it is the object of the proposed Bill to render legal. The financial effect of the measure on the local port trust funds will not be considerable. It appears therefore desirable that the law should be amended generally for all vessels calling at ports in the Madras Presidency. The present Bill has been prepared in consultation with the local authorities and Chamber of Commerce. With the object of settling the port-dues on as fair and liberal a basis as is consistent with obtaining a sufficient income, the Bill recasts Part III of the First Schedule to the Indian Ports Act on the lines indicated in the Statement of Objects and Reasons which I think it unnecessary to recapitulate here."

The Motion was put and agreed to.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. ILBERT moved that the Hon'ble Syud Ameer Hossein be added to the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward. He said that he was very glad to be in a position to reinforce the Select Committee by the appointment of a representative of the Muhammadan community.

The Motion was put and agreed to.

PUNJAB TENANCY BILL.

The Hon'ble COLONEL DAVIES moved for leave to introduce a Bill to amend the law relating to the Tenancy of Land in the Punjab. He said:—

"MY LORD,—Eighteen years having nearly elapsed since the Punjab Tenancy Act was passed, it will, I think, be convenient if, before explaining the grounds on which it is proposed to amend it, I briefly describe to Your Lordship and the Council the circumstances under which it was passed, and the general scope and character of the measure itself.

"When, after the Sikh wars of 1845-46 and 1848-49, the Punjab was annexed to the British possessions in India, one of the earliest and most important duties which fell to the revenue-authorities of the time to perform was the making of what is called a settlement of the land-revenue. This, as is well known, consists of two operations—the assessment of the revenue, and the framing of a record of the rights and interests of all who are in any way connected with the land from the produce of which the revenue is paid. The inquiries made by the officers who were charged with this duty showed that the agricultural population of the Province was chiefly made up of cultivating communities of small peasant-proprietors; but interspersed among these in varying proportions were found persons who, though they might not in the eyes of the country have a claim to proprietary right, had cultivated the lands in their occupation for long periods on almost the same footing as the recognised proprietors, and had moreover in many instances been the first to reclaim those lands from waste. The officers who made the earlier regular settlements, following in this respect the well-known twelve-year rule which had been in force in the North-Western Provinces, whose revenue-system had been authoritatively introduced into the Punjab, caused a large proportion of these non-proprietary cultivators to be shown in the settlement-records as having rights of occupancy. No opposition on the part of the proprietors themselves was made to this proceeding; on the contrary, they everywhere showed a readiness,

amounting almost to eagerness, to induce men of this class to share with them, on almost any terms, the new and then much-dreaded responsibility of our system of fixed cash-assessments ; and the terms generally recorded were that for the period of settlement these tenants should hold their lands on payment of the quotas of revenue assessed thereon, with the addition sometimes of a small proprietary fee or malikana, varying from five to ten per cent. on the revenue.

" But by the time some of these first regular settlements came to be revised, circumstances had greatly changed, and with them the attitude of the proprietors towards this class of tenants. Fifteen years of peace and settled government, combined with improvements in communications, had greatly developed trade and raised prices ; and the landlords had begun to look with a covetous eye on the large profits which these tenants were now enjoying, and in which, by the conditions of the expired settlements, they had hitherto been debarred from sharing. Their cause was vigorously taken up by the Settlement Commissioner, Mr. Prinsep, and, on the ground that great mistakes had been made during the first settlement in creating, in disregard of local customs, rights of occupancy on the basis of mere length of occupancy, a general inquiry into the status and rights of these tenants was instituted in the districts of the Lahore and Amritsar Divisions, and resulted in reducing two-thirds of these tenants to the position of either lease-holders for various terms or mere tenants-at-will.

" Two opposite views were taken of these proceedings. On the one side, it was contended that they amounted to a wholesale confiscation of rights of long standing which had been created and guaranteed by the British Government. On the other hand, it was urged that the entries relating to these rights had been made without sufficient inquiry, and without due regard to the superior rights of the landlords—rights of which the exercise might for a time have been suspended owing to the oppressive character of the Sikh revenue-system, but of which the memory was still tenaciously cherished, and which, in consequence of the moderation of our assessments, had once more become valuable.

" The Act was a compromise between these conflicting views, and was based on the results of long and careful inquiries into the relations of proprietors and tenants during Sikh times, made from the best sources of information then available.

" The immediate effect of the measure was to restore to the greater number of occupancy-tenants the status of which the proceedings of the Settlement Com-

missioner and his subordinates had deprived them. But it, at the same time, greatly improved and strengthened the position of the landlords by giving them what they really wanted—the means of obtaining a fair share of the profits of the lands cultivated by these tenants. Apart from this, the chief value of the Act was that it defined with precision the rights of occupancy-tenants, and regulated the relations of the landlords with tenants of all classes. To use the words of our present Lieutenant-Governor in a Minute on this question written in 1882, 'it is probably in its main principles the nearest approach to the old law and custom of the Province in respect of occupancy-right that could at the time have been hoped for'; and, quoting again from an opinion left on record by the late Lieutenant-Governor, 'in spite of its many imperfections, Sir Robert Egerton regards this much-controverted measure as one of the greatest boons conferred on the Punjab by the administration of Lord Lawrence; regarded by some, at the time, as a confiscation of proprietary right, it has been found defective only in the comprehensiveness of its provisions for maintaining the status of tenants, while in the greater part of the Province it is the bulwark and charter of a contended peasantry.

"In the revision of the Act now proposed it is not contemplated to depart in any important particular from the principles and policy to which it gave expression, but to confine the operation to the correction of mistakes which had crept into it owing to the haste with which, in its later stages, it was passed through the Council, and to supply defects which subsequent experience of its working has shown to exist.

"The first proposals for the amendment of the Act were made in 1876 by the Financial Commissioner, Mr. (afterwards Sir R.) Egerton, with the general concurrence of the Judges of the Chief Court. But the Lieutenant-Governor (Sir Henry Davies), thinking it inexpedient to reopen questions of principle which had been fully discussed and decided when the Act was passed, confined himself to advocating a few minor modifications in the law. The Government of India was, however, unwilling to resort to legislation until its necessity had been further demonstrated, and the matter for the time was allowed to drop.

"More recently, during the revision of the settlement of two of the districts of the Province, facts have come to light which show that certain provisions of the Act have caused, and, if allowed to stand, would be likely to cause, hardship to this class of tenants. The Famine Commissioners in their report have also made

numerous proposals with a view to improving the relations of landlords and tenants generally, many of which have been accepted and introduced into the revised Rent and Tenancy Acts of other Provinces. I propose, with the permission of Your Lordship, to say a few words on each of these subjects.

"In one of the two districts referred to—that of Sirsa—the question which arose between landlord and tenant was mainly one of title. Eighty years ago the tract of country comprised within the limits of this district was uninhabited waste. It was colonised chiefly by immigrants from the sourrounding Native States, where, while there was no limit to rent, there was no practice of ejectment. Up to the commencement of the regular settlement of 1852 there was no restriction on the power of the individual colonists to break up as much of the waste as they chose, on condition of paying the customary rent and dues on their cultivation, and in practice each cultivator held the land reclaimed by him undisturbed so long as he made these payments. At the first regular settlement, however, the proprietorship of each estate was declared to belong *exclusively* to the leaders of the body of colonists who had settled in it, or to the representatives of those persons who had first received permission from the State to found a village therein; and it was further declared that the ordinary cultivators would thenceforth have no right to break up land without the permission of those to whom proprietary rights had been granted. At the same time, however, rights of occupancy in the land then held by them were granted to the cultivators from whom proprietary rights had been withheld. The result of this settlement was that the whole area of the district—nearly two million acres—was declared to belong in proprietary right to about 5,000 persons, while the remaining 25,000 cultivators were recorded as holding under them as tenants, with rights of occupancy in about nine-tenths of the half-million acres cultivated by them.

"When this settlement came to be revised, twenty years later, it was found that considerable changes had taken place in the interval. Occupancy-rights had been lost or abandoned in about a fourth of the area in which those rights had been recorded, but, on the other hand, a large proportion of what was uncultivated waste when that record was framed had been brought under the plough, and, owing to the decision above referred to, so much of this newly reclaimed land as had been broken up by the tenants was shown in the annual papers as held without a right of occupancy. Thus at the revision of settlement it was found that of the total cultivated area of more than a million of acres, about two-fifths were held by tenants without any right of this kind. Up to 1874, when the term of the

first settlement was about to expire, the Punjab Tenancy Act had little effect on the Sirsa District. The area of unreclaimed land being still very large, it was to the interest of the proprietors to have as much of it as possible brought under the plough; and they had therefore encouraged their tenants to extend their cultivation, and ejectment proceedings were almost unknown. But the proprietors, hearing that the settlement would soon be revised, now began to fear that, unless they asserted their rights, the same procedure might be followed at the revised as had been adopted at the regular settlement, and that the tenants might be recorded as having rights of occupancy in all the land cultivated by them. They accordingly set to work to issue notices of ejectment under the Act in great numbers. This was done apparently, not so much with the object of actually ousting their tenants or of raising their rents, as of clearing their own title by establishing their right to eject the tenants from the lands which the latter had reclaimed since the first settlement. During the six years ending in October, 1880, notices of ejectment were served on the tenants of 64,500 acres, or about a sixth of the area held by tenants without rights of occupancy. On the other hand, the tenants, accustomed to be left in possession of their cultivated lands so long as they paid the rent due on them, felt that they were being hardly treated in being ejected from land which they had themselves in many instances reclaimed from waste. They naturally expected that they would be as fully protected in the occupation of these lands as they had been in the possession of those broken up by them before the first settlement; and in this belief more than half the notices of ejectment were contested by them in Court, while more than a thousand suits were brought on other grounds to establish a right of occupancy in lands held by them. The Courts, however, felt themselves bound by the decision of Government already referred to, according to which the waste land had been left at the absolute disposal of the proprietors; and the result generally was that the tenants' claims were dismissed, and the tenants were compelled either to leave their lands, or to acknowledge themselves as holding at the will of the proprietors.

"In answer to a call made by the Government of India, whose attention had been attracted to the subject by a passage in the Annual Revenue Administration Report of the Province, a special report on the working of the Tenancy Act in this district was submitted in 1881. The Financial Commissioner (Mr. Lyall), concurring with the Settlement-authorities, recommended special legislation with the object of protecting the tenants from ejectment from the lands which they had reclaimed from waste and held for long periods. The chief grounds

for this recommendation were (1) the reasonable expectations formed by the tenants that they would be maintained in the occupation of these lands; (2) the injurious effect of these wholesale ejectments on the well-being of the district; and (3) the arbitrary nature of the grant of proprietary rights in the waste at the first settlement to a few persons whose claim to those rights was not, in any marked degree, superior to that of their fellow-colonists, to whose co-operation, rather than to their own labour, the development of the district and the value of their rights were mainly due.

"In reporting these circumstances to the Government of India in October, 1882, the Lieutenant-Governor (Sir R. Egerton), though holding that a law to enable Settlement-officers at the time of settlement to fix the rents of tenants with rights of occupancy would be an undoubted advantage, did not consider that the need of special legislation for this district had been established. But the Government of India, in replying to the Punjab Government in the following May, stated that it was not disposed to accept the view that the evils brought to light did not afford a sufficient case for legislation; that, on the contrary, they seemed to demand decisive action; and that, if, under this view, the amendment of the Punjab Tenancy Act, as a whole, should seem to the Lieutenant-Governor to be required, the magnitude of the question would not deter the Government of India from entering upon it. It was added that, before forming any definite conclusions on this question, the Government wished to have the opinion of Sir Charles Aitchison, who, by this time, had succeeded to the charge of the Province.

"Before describing what followed on this communication, it will, I think, be well to complete the history of the struggle between the landlords and tenants of this district. Towards the end of 1881 the latter were informed by Sir R. Egerton's order that their relations with the former would continue to be regulated by the Tenancy Act of 1868, and, finding that the Courts held that under the provisions of that Act they were liable to be ejected from land broken up by them since the date of the first settlement, they accepted the position and acknowledged themselves to be at the mercy of the landlords as regards these lands.

"A somewhat remarkable result followed on the submission of the tenants. In many cases the landlords either sold or made a free gift of occupancy-rights in such land to their tenants, and the result was that on the completion of the settlement-record in 1882 it was found that, in place of 350,000 acres held with rights of occupancy, more than 420,000 acres were now so held. Since then the

Government has itself conferred rights of this kind in 80,000 acres on the cultivators in certain villages which were held in farm, and the total area held with rights of occupancy is now about 500,000 acres, or half the total cultivated area of this district. The rents of all tenants of this class were fixed by the Settlement-officer, but under the present law these rents are liable to enhancement every five years, and I am sorry to have to add that a number of suits for enhancements have already been instituted.

"I may now return to the main line of my narrative. The views of Sir Charles Aitchison were expressed in a Minute, which, with a Memorandum by the late Financial Commissioner (Mr. J. B. Lyall), was forwarded to the Government of India in the beginning of July, 1882. While concurring with his predecessors and the Chief Revenue authority that no radical change should be made in the principles and policy of the existing Tenancy Law, the Lieutenant-Governor was of opinion that experience had shown that a few modifications in the mode of applying those principles in practice were urgently called for. The most important of these related to the system under which enhancements of rent were made.

"As just stated, the existing law prescribes that on certain specified ground the Courts on the suit of the landlord may decree enhancement at intervals of five years.

"Statistics, the Lieutenant-Governor wrote, showed that suits of this kind were increasing; that a difference of interest was thus making its appearance between landlords and occupancy-tenants, which in time might embitter the relations between these classes; and, as the most suitable remedy for this evil, he proposed to revert to the law formerly in force in the Punjab, and empower Settlement-officers to fix the rents of occupancy-tenants paying in cash, in terms of the revenue, and for the period of settlement. I may here mention that a precisely similar recommendation, based on the same grounds, had been made by the Famine Commissioners, whose proposals on this subject had about this time been circulated for the opinions of Local Governments and Administrations. As bearing directly on the subject I am treating of, I may perhaps be allowed to quote a short passage from that portion of their report which deals with the relations of landlord and tenant in Northern India. In paragraph 26 of this section they wrote as follows:—

'The chief scope which our system affords for the exercise of the antagonistic feeling which, as stated in paragraph 19, exist between the two classes is in the Rent Courts, where the landlord can sue for enhancement of rent. These suits are extremely perplexing in their

character; they involve a great deal of minute and laborious inquiry into the soils and the current rates of rent, and the decisions of the Courts have often been conflicting; such circumstances give encouragement to litigation, and leave a feeling of bitterness behind them when the suits are decided. It is to the interests of all parties and of the State that litigation of this kind should be discouraged as far as can be fairly done with due regard to the claims of either side. Under the present law a landlord who has sued a tenant for enhancement of rent can sue him again after a period of five years in the Punjab, ten years in the North-West Provinces, one year in Bengal, and the same in the Central Provinces, in respect of a "conditional" occupant. Moreover, as the landlord can sue his tenants in detail in successive years, the sore is constantly kept open. We are of opinion that most of these evils could be avoided by reverting to the original principle, under which the rent of privileged tenants could be altered only at the same time as the revenue, and had to be fixed periodiclaly by the same officer who fixed the revenue.'

"But to return from this digression. The case of the Sirsa tenants was then discussed by the Lieutenant-Governor, and the conclusion arrived at by him was that, in the face of the clear grant of proprietary right to others, it would not be just or expedient to create by legislation occupancy-rights which might or might not have accrued if circumstances had been different. But he agreed with the Financial Commissioner in thinking that compensation for disturbance should be given to these and to all other tenants who had broken up waste-land. A few less important alterations in the law proposed by Mr. Lyall were also supported by Sir Charles Aitchison; and his proposals having met with the general approval of the Government of India, instructions were issued, towards the end of the year to the Financial Commissioner to prepare, in consultation with the Settlement Commissioner, a draft Act comprising such of the amendments proposed as Mr. Lyall was prepared to accept, and such others as he himself might wish to see adopted.

"While these matters were still under consideration, reports were received which showed that a burning question relating to enhancement of rents had arisen in the Hoshiarpur district, then under settlement. It was pointed out in these reports that this district is exceptionally situated in respect to the number of holdings of tenants of this class paying at revenue-rates with or without the addition of a cash malikana, or proprietary fee, rarely exceeding two annas in the rupee; that these tenants, more than 90,000 in number, were liable under section 11 of the Act to have their rents raised to 'the rate of rent usually paid in the neighbourhood by tenants of *the same class* for land of a similar description and with similar advantages,' less only a deduction of fifteen per cent.; and

figures were furnished showing that the cash-rents paid by tenants-at-will were seldom less, and were often more, than twice and even *three times* the revenue assessed on the land held by them; further, that though these rents were paid on only a very small portion of the whole cultivated area, the area so held was large enough to enable proprietors to base their enhancement claims on these exceptionally high rents. At the same time it was confidently expected that the occupancy-tenants would firmly resist the claims to these severe enhancements, and it was argued that they would be right in so doing, for the reason that these cash-paying tenants-at-will were not, as regards the tenancies on which these high rents were paid, *of the same class* as the occupancy-tenants; and in explanation of this it was stated that these exceptional rents were paid for land usually cultivated by the owner, but let to men who, having other land of their own, were willing to pay a high rent for one or two additional plots to be cultivated with spare stock and at spare moments. For these and other reasons it was anticipated that long and harassing litigation was impending, which, besides ruining the parties to it, would generally and permanently embitter the relations between these two important sections of the agricultural population; and on these grounds the Settlement Commissioner strongly supported by the Financial Commissioner recommended that application should be made to the legislature either to pass a short enactment temporarily introducing into this and other districts under settlement the revised provisions for enhancement contained in Chapter III of the Draft Bill, or a law giving to the Local Government power to suspend the decision of suits for enhancement of rents for a certain period. Sir Charles Aitchison was, however, unwilling to advocate special and emergent legislation of this kind, and preferred to proceed with the revision of the Tenancy Act for the Punjab generally. Up to the present time the old light rents have been in most cases maintained, because they are in accordance with entries in the old settlement-record, which under section 2 of the Act have the force of agreements; and the Chief Court has, by recent decisions, held that these agreements remain in force until the new record-of-rights is handed over to the Deputy Commissioner of the district, under a direction of the Local Government on the report of the Financial Commissioner that the operations of the settlement are completed. Under these circumstances the Government has purposely refrained from giving a direction of this kind in regard to the records of the settlement of this district. It is obvious, that, unless the law is altered, the same difficulties will arise in other districts now under settlement as those which have arisen here.

"These are, my Lord, the circumstances which have led to the proposal to revise the Tenancy Law of the Province, and, having described them, I will add

a few words regarding the form which it is proposed that legislation shall take. The Draft Bill framed by the Financial and Settlement Commissioners in April, 1883, did not altogether meet with the approval of the Lieutenant-Governor, and for reasons which were fully explained at the time (but which I need not occupy the time of the Council by repeating, as the whole of the correspondence on the subject will shortly be placed before it if this Motion is carried) he was at first inclined to limit legislation, if undertaken at all, to minor modifications involving no very important principles, and such as were required mainly for the purpose of removing ambiguities and correcting mistakes and omissions, of partially enlarging the provisions relating to the more privileged classes of tenants, and of affording a limited protection to tenants who had earned a right to special consideration by breaking up waste land.

"After some further discussion in correspondence with the Government of India, it was decided that legislation should proceed on this basis; and further that, reverting to the law and practice with respect to the fixing of the rents of occupancy-tenants which had been in force in the Punjab before the passing of the Act of 1868, these rents should be adjusted, at the time of revising the assessment, with reference to the land-revenue instead of at short intervals by comparison with the rents paid by tenants-at-will. These conclusions were communicated to me in February, 1884, some time after I had succeeded Mr. Lyall in the office of Financial Commissioner; and I was asked, after consultation with Colonel Wace and any other officers whose views I might wish to ascertain, to prepare and submit a revised Bill, together with a full exposition of my own views. I thereupon circulated for opinions both drafts—that prepared by Mr. Lyall and Colonel Wace, and the more limited draft prepared in the Punjab Secretariat—to some of the most experienced Revenue-officers of the Province. Their replies were considered by a Committee consisting of Mr. Barkley, Colonel Wace and myself; and we came to the unanimous conclusion that, as the existing Tenancy Act requires so much alteration and so many additions, it would be best to replace it by an altogether fresh enactment in which the law on this subject would be placed before the people, and those who would have to administer it, in the most complete and simple form possible. Taking, therefore, as the basis of our draft the Bill submitted to the Punjab Government in April, 1883, we revised and rearranged it, and then submitted it to our own Government. This was done in June, 1884.

"During the course of the past summer the proposals of our Committee were carefully considered by the Lieutenant-Governor, and, in personal communication

with both Financial Commissioners, the draft sent up by us was gone through section by section, and was further revised till it assumed the shape in which it was submitted to the Government of India in November last.

"With the permission of the Council I will now explain the more important changes in the existing law proposed to be made by the Bill which I am asking for leave to introduce.

"The first is the omission of section 2 of the present Act, by which a highly artificial authority was given to entries in the records-of-rights of the first regular settlements in regard to certain matters dealt with by the Punjab Tenancy Act. The section as originally framed and passed ran as follows :—

'Nothing contained in this Act shall affect the operation of any decree of Court under which a tenant holds, or of any agreement between a landlord and a tenant when such agreement is in writting or recorded by the proper officer in the record of a regular settlement sanctioned by the Local Government.

'All entries in such record . . . . in respect of matter comprised in Chapters III, IV, V and VI of this Act shall, when attested by the proper officer, be deemed to be agreements within the meaning of this section.'

"The chapters specified in this second clause refer—III to rent, IV to ejectment, V to relinquishment, leases and under-leases, alienation and succession, and VI to compensation for tenants' improvements. The effect, therefore, of this section was practically to exclude from the operation of nearly the whole of the Act all parts of the Punjab in which a regular settlement had been made and sanctioned by the Local Government. The only part of the Act to which this clause did not apply was Chapter II, which dealt with 'rights of occupancy.' The object of this clause was clearly to give a character of conclusiveness to the entries in the records of the first regular settlements in regard to the several matters treated of in the chapters specified therein. Whether it was intended to have prospective as well as retrospective effect was very fully discussed by Sir James Stephen when presenting the Report of the Select Committee on the Bill which afterwards became the Punjab Land-revenue Act of 1871 ; and the question was decided in the negative by the introduction into this clause, by section 21 of the Act, of the words which have restricted its operation to entries in the records of settlements made *previously to the passing of the same Act.* It is now proposed altogether to omit this section, on the ground that it has done its work and is no longer required. To show that this is the case as regards the second clause of the section, I would

mention that, of the regular or revised settlements sanctioned before the 18th November, 1871 (the date of the passing of the Land-revenue Act), those of only four districts still remain in force. Of these, two are already under revision, and these, with the remaining two shortly to be taken up, will be completed within the next six years. The provisions of this clause have, therefore, ceased to apply to 27 out of the 31 districts of the Province, and will cease to apply to the remainder from periods varying from two to six years. I may add that many of the entries in the old settlement-records relating to matters dealt with in Chapters III to VI of the Act do not accurately represent local customs, are often so ambiguous that the Courts on this ground have refused to enforce them, and are not unfrequently opposed to public policy. So far as the clause has had a beneficial effect in enabling local custom to override the law, provision has been made in the Bill for the maintenance of this useful object. As regards rent, the revised provisions of Chapter III will do much to give the custom hitherto prevailing the force of law; and, in respect of alienation and succession, special provision has been made in section 38 for keeping alive such customs as may be applicable to such subjects. But where custom is found to be opposed to public policy—as, for instance, where it would prevent tenants from making improvements, or deprive them of compensation for improvements on ejectment—we propose deliberately to set it aside, and section 46 of the Bill declares entries of this kind in the records *void*, as being contrary to public policy. As to the first clause of section 2 of the Act of 1868, it seems sufficient to say that decrees of Court cannot of course be affected by subsequent legislation which does not in express terms deal with their subject-matter and agreements stand on their own merits, whether they are entered in a record-of-rights or not. The fact is, the whole section was obviously enacted to set at rest the controversies of eighteen years ago already referred to; and as the record of Mr. Prinsep's revised settlements of certain districts were annulled by the Tenancy Act of 1868 in important matters relating to the status of tenants, it was thought advisable to declare in express terms to what extent they would be maintained. The revision of these records, rendered necessary by the passing of this Act, was shortly afterwards carried out, and the first part of the section has therefore long since ceased to be of any practical use.

"Next to this come the changes in certain of the clauses of section 5 relating to rights of occupancy. The object of these modifications of the law is to extend the benefits of these clauses to certain classes of tenants who appear to be equitably entitled to them, but who, according to the interpretation put upon these clauses by the Chief Court, have hitherto been excluded from their bene-

fits. The first of these changes consists in the omission of the word *'heretofore'* from clause (*1*) of this section (section 4 of the Bill), and the addition of an explanatory sub-section by which, on proof by the tenant of continuous occupation of his tenancy for thirty years and payment of nothing in the shape of rent beyond land-revenue and rates and cesses, a presumption is raised in his favour that the conditions of clause (*1*) have been fulfilled. This alteration of the law was first proposed by the late Financial Commissioner, Mr. J. B. Lyall, in a Memorandum on proposed amendments of the Act written in 1882, from which, with the permission of your Lordship, I will quote the relevant passage :—

'I would certainly,' he wrote, 'strike out the word "heretofore" in clause (I) of section 5. It may be argued that this is a deviation from the great principle expressed in the first sentence of section 9. If it is so, I would allow an exception in this case. By a recent decision of the Chief Court, which is no doubt legally correct, no tenant can establish a right under clause (1) of section 5 unless the land had been held free of rent and service for three generations in 1868. Before that decision was published, many Courts had been decreeing in favour of tenants now holding in the third generation, though they did not so hold in 1868. Most Settlements-officers, I think, interpreted the law in that way. I do not think the law amended as I propose would give a tenant a right greater than he may be held to be equitably entitled to. On the other hand, very few tenants can possibly establish a right under the clause as interpreted by the Chief Court. Except in the districts of the old Delhi territory, it is almost certain that the grandfather of the tenant of 1868 must have died before annexation, perhaps long before. Few men now survive who can give evidence as to those times, and there are no records to refer to.'

"In forwarding on to the Government of India a copy of this Memorandum with a Minute by the Lieutenant-Governor the proposed change was supported by the Punjab Government in the following words :—

'Mr. Lyall suggests that this amendment may involve a deviation from the principle that no occupancy-right shall be acquired by mere lapse of time. It does not, however, appear that this is so ; for the reasons for acknowledging the right depend not upon any particular duration of tenure (for obviously the time during which the land may pass through the hands of grandfather, father and son may vary enormously in different cases), but rather upon the custom of the country, and perhaps also on the circumstance that the proprietor stands by and sees two successions take place without intereference.'

"The amendment, together with others proposed at the same time, was accepted by the Government of India, and when the Bill to give effect to them was drafted the explanatory sub-section already referred to was added. The object of this addition is to place a reasonable limit on the evidence to be required of a tenant claiming under this clause. It is contended that, if a tenant can show that he succeeded his father or uncle, and that he and his father and uncle together

have held on these favourable terms for thirty years, it is only reasonable to throw on the landowner the burden of proving that the grandfather's or grand-uncle's tenancy was of a different nature. It is not often that older evidence would be forthcoming, and, if it is obtainable, it should be for the owner to produce it.

"In a recent criticism it has been objected that these changes in the law will have the effect of converting into occupancy-tenants of the most privileged class many thousands of tenants in the districts of the old Delhi territory who are now recorded as tenants-at-will only, and are paying at the same rates as the proprietors, as it will probably, in many cases, be impossible for the landlords to rebut the presumption given by the 'explanation' referred to. This may be, and probably is, quite true; but, if so, the reply to the objection is that, although recorded as tenants-at-will, these tenants are, by the ancient custom of the country, entitled to hold the lands occupied by them undisturbed, so long as they pay the quotas of revenue assessed thereon. If proof of this be wanted, it will be found in abundance in the Settlement Reports of that part of the Punjab, and in particular in the admirable Report on the Settlement of part of the Karnal District by Mr. Ibbetson, who in paragraphs 257 to 259 has given a full and interesting history of the origin and growth of tenant-right in those parts. In the latter paragraph he writes :—

'In short, as already pointed out in paragraph 241, the conclusion is irresistible that, in old items, any body who broke up new land, or even who was given old land to cultivate, except as an obviously temporary measure, acquired a right to hold the land so long as he paid the revenue on it.'

"These tenants, I would explain, belong largely to the same classes as the landowners, and the fact that no rent, properly so-called, has been hitherto demanded from them is partly due to this cause, but more still to the excessive pressure of the old assessments, in consequence of which, to quote again from Mr. Ibbetson,—

'the village was only too glad to get cultivators to accept land on these terms; and the explanation of the fact that the people even now fail to distinguish between occupancy-tenants and tenants-at-will of any standing is, not that old custom failed to raise the ancient tenants approximately to a level with owners, but that it treated both owners and tenants of all kinds alike so far as the right of cultivating possession was concerned.'

"Much more might be quoted in support of this view, but I think I have said enough to show that where the position of the so-called tenants-at-will is so strong as it is in this part of the Punjab, and where they can show an unbroken

occupation of three generations, or of thirty years, and the payment of no rent beyond revenue and cesses throughout this period, it is only equitable to give them the same status, and the same protection from ejectment and undue enhancement of rent as that which was given by the first clause of section 5 of the Act to the almost precisely similarly circumstanced tenants of 1868. Nor will the proprietary bodies have any fair cause to complain of this change, for whereas they have up to this time been receiving nothing from these tenants but revenue, and rates, and cesses, they will, under section 15 of the Bill, be enabled to obtain from them in addition a proprietary fee of two annas in the rupee.

"The next alteration in this section which seems to call for notice is that made in its third clause. The clause has been so worded now as to admit to its benefits not only those who were at the date of the passing of the Act of 1868 the *representatives* of persons who settled as cultivators in a village along with the founders, but also the settlers themselves. There can, I think, be no doubt that the exclusion of the latter by the framers of the existing Act was intentional, but there is at the same time good reason for believing that the exclusion was contrary to the custom of the country, and, as remarked by the Lieutenant-Governor in the Minute already referred to, it involved a somewhat grotesque anomaly, namely, that a man should not be possessed of what his heir can inherit from him, and that his heir should take from him rights larger than those which he himself enjoyed. Instances have come to light in which cultivators who had held from the founding of a village up to 1868 were denied rights of occupancy merely because they had survived the date of the passing of the Act, whereas if they had died before that date the right would have accrued to their heirs. The removal of so anomalous and unjust a restriction seems to require but little justification. An explanatory sub-section with respect to this clause has been added at the end of the section, the object of which is the same as that of the sub-section relating to clause (1). The opportunity of the revision of this clause has been taken to require evidence of *continuous* occupancy, which the Chief Court has held is not necessary under the clause as it at present stands, but which was certainly its intention.

"The last change I have to explain in this section is in clause (4), and this has been rendered necessary by a decision of the Chief Court, who have held that a right of occupancy can only be acquired by the jagirdar or ex-jagirdar himself, and not by his representative. The right in such cases has its origin in the position of authority held by the jagirdar under Sikh rule, which gave security to his tenure; and provided the land was originally occupied by the jagirdar during

the continuance of the Jagir, and has since been uninterruptedly occupied by him and his representative for the term of twenty years, as originally fixed in this clause of the Act, there seems no good reason for excluding the latter from the right given by this clause. On the contrary, the fact of his having succeeded in maintaining his cultivating possession of the land after the death of the jagirdar strengthens his claim to recognition of this right.

"The two last alterations have been effected by so defining the word 'tenant' as to include the *predecessors* and *representatives* in interest of a tenant.

"The only other amendments in this chapter are those in section 6 (section 5 of the Bill) and section 9. The alterations in the former are purely verbal and make no substantial change in the law. They will be found fully explained in the Statement of Objects and Reasons. The change in the latter section consists of the correction of the generally recognised mistake in its second clause, which, in place of providing that joint owners of the common lands of a village shall not acquire occupancy-rights in those lands, enacted that no right of occupancy shall be acquired in the common lands of a village held on a pattidari tenure. The clause, as it stands, has been a great stumbling-block to the Courts generally, and conflicting decisions have been pronounced under it by the superior Courts. In 1871 the Financial Commissioner (Mr. Egerton) held that the bar to the acquisition of rights of occupancy laid down by it related only to the claims of proprietor cultivating land of which they were joint-owners, and did not exclude claims by others who were not members of the proprietary body. In the following year the Chief Court took the opposite view. The interpretation put upon the clause, as it stands, by the latter Court is undoubtedly the more correct one, but a study of the blue-book containing the discussions which took place prior to the passing of the Act leaves no doubt that the decision of the former Court, gives more accurate expression to the custom of the Province, and to what was probably the intention of the legislature, in regard to this particular provision of the law.

"I pass on to Chapter III, which deals with the important subject of rent. By the changes made in this chapter power has been restored to officers engaged in making and revising assessments of the land-revenue to fix at the same time the rents of occupancy-tenants, and the present scale for the enhancement and reduction of the rents of these tenants has been readjusted so as to bear a fixed relation to the land-revenue demand. The grounds on which these alterations

have been made have already been sufficiently explained, and I will only touch briefly on the detailed provisions for giving effect to the change of policy in this respect, which, as before remarked, is based on the recommendations of the Famine Commissioners, and has received the approval of the Government of India.

"Ordinarily the cash-rents of occupancy-tenants will be revised only when the assessment of the land-revenue undergoes revision, and the officer who determines the sums payable by the landowners as land-revenue will, at the same time fix, with reference to these sums, the rents to be paid by their occupancy-tenant according to the scale laid down in section 15 of the Bill. But circumstances may occur which may render it only equitable to grant, *at other times*, to the landlord or tenant, as the case may be, enhancement or reduction of the rent originally fixed. For instance, it may, on the one hand, be found that when the Bill becomes law the revenue in some districts has been raised, but the rents of this class of tenants have not been adjusted to the enhanced assessments according to the new scale, or, as any other time, that the area of land held by the tenant is greater than that for which he has hitherto been paying rent; or, on the other hand, that the area of the tenancy has been reduced by diluvion, or its productive powers have been decreased by any cause beyond his control. In all such cases it is only right and fair that the Revenue-officers should have power to revise the rents of these tenants *at any time*, on the application of the landlord or tenant; and accordingly this power has been given to them by section 10. The rents of grain-paying tenants cannot of course be subject to the ordinary law of enhancement and reduction and will therefore only be capable of revision under the circumstances described in sections 14 and 16.

"As to the scale for enhancement and reduction of rents laid down in section 15, it is based on the assumption that the land-revenue is half of what is on an average paid by tenants-at-will, or the full rental of the estate; and an attempt has been made so to graduate the maximum rents for the several classes of tenants described in sections 4 and 5 of the Bill as to correspond approximately with the existing scale in the third ground of section 11 of the Act. It is not pretended that the correspondence is exact; indeed, it may be safely asserted that any nearer approach to an exact arithmetical correspondence therewith would be unfair to the landlords, who, owing to the fact that the grain and cash-rents paid by tenants-at-will have almost everywhere very largely exceeded twice the land-revenue, have under the present law been able to obtain unduly severe enhancements, but who, on the assumption on which the scale in section 15 of the Bill has been calculated,

would obtain nothing but *bare revenue* from the most privileged class of occupancy-tenants, and would themselves be liable to pay the rates and cesses! Such an anomaly as this was of course never contemplated, and could not be allowed to exist in any scheme of future legislation. The legislature in framing the Act of 1868 evidently intended that even the highest class of occupancy-tenants should be liable to some slight enhancement, or, in other words, that the landlord should have the right to demand from them something more, though perhaps not much more, than revenue and rates and cesses; and this the proposed legislation, while improving the position of occupancy-tenants as a whole, will secure to them.

"The only other point which I think I need notice in this chapter is the addition of a section (19) which empowers Revenue-officers, when allowing a suspension or remission of the land-revenue, to direct a proportionate suspension or remission of rent. This has been inserted with reference to principles laid down by the Government of India in a circular issued in 1882, and approved by the Secretary of State.

"Chapter IV of the Act, which treats of 'relinquishment and ejectment,' has been redrawn with a view of clearly distinguishing the procedure to be adopted in ejecting a tenant with a right of occupancy from that to be observed in evicting a tenant-at-will. The procedure in both cases has been made as simple and complete as possible. The only other notable change in this chapter is the omission of clause (2) of section 19 of the Act, which enables a landlord to buy out the lowest class of occupancy-tenants. This clause, I must explain, was introduced into this section at the strongly expressed desire of the then Lieutenant-Governor Sir D. MacLeod, who attached great importance to it and believed that the powers given by it to landlords would be extensively made use of; but, as a matter of fact, it has been almost, if not quite, a dead letter. The retention of this novel provision was, I may add, strongly opposed at the time by certain members of the Council, on the ground that it was wrong in principle and opposed to the custom of the country; and, during the final debate on the Bill, words were added, on the motion of Sir R. Temple, which limited its operation to the lowest class of occupancy-tenants, and to those of this class who had been less than thirty years in occupation of their tenancies. As, owing to the lapse of time, the clause must have become wholly inoperative, it has been determined to omit it from the Bill.

"In Chapter V, on 'Alienation of, and Succession to, Right of Occupancy,' the following are the more important amendments. A new section (36) has

been introduced with a view to the protection of the interests of a tenant having a right of occupancy who makes an invalid alienation of his right; and in section 37 of the Bill it is proposed to substitute the ordinary law of succession for the somewhat artificial rule for the devolution of the right of occupancy prescribed in section 36 of the Act. The former change has been rendered necessary by a series of decisions of the Chief Court, which have laid down that the previous offer of the tenancy to the landlord is a condition precedent to the valid exercise of the power of alienation vested in the tenant by section 34 of the Act, and that, if without making such offer the tenant transfers his land to any other person, the landlord, can sue for, and obtain possession from, the transferee. But whether the tenant has forfeited his right by making the invalid transfer is a point which has been left in doubt by these rulings, and it is proposed to set this doubt at rest in favour of the tenant. Inasmuch, however, as the landlord is put to trouble and expense in proving the alienation to be invalid, it is considered equitable that he should be allowed to purchase, should he wish to do so, the right which was improperly alienated. The latter change is one which has been introduced tentatively. It is believed that it will be found to be in accord with the general views of both landlords and tenants, and the decisions of the superior Courts show that it is certainly supported by custom, so far as the grant to the widow of a life-interest in her deceased husband's right of occupancy is concerned. Whether the alteration is right in other respects is a point to which special attention will be called with a view to local inquiry and report. It will be seen that by section 38 of the Bill the provisions of sections 5 and 7 the Punjab Laws Act are duly saved in regard to this matter, and the effect therefore of section 37 is to introduce the ordinary law of succession where no special custom affecting these tenures can be proved.

"The subject of compensation to tenants on ejectment (*a*) for improvements made by them, and (*b*) for disturbance in the case of certain tenants, is dealt with in Chapter VI of the Bill. The changes and additions which have been made in this chapter under the first heading are, for the most part, the result of rulings of the superior Courts of law under sections 25 and 37 of the Act; and it will, I think, be sufficient if I draw attention to the more important omissions and defects which have in consequence been supplied and remedied, without referring particularly to the decisions on which they are based. These latter have been collected together and reprinted in a convenient form, arranged according to the different sections of the Act to which they have severally relate, and are available for reference when required by the Council.

"The present Act is altogether silent as to who may and who may not make improvements, and the conditions on which they may be made. These matters are provided for in sections 39 and 40 of the Bill. By the former an absolute right of making improvements is given to an occupancy-tenant, while the latter lays down that a tenant-at-will may only make improvements with the assent of his landlord. The most important provision on the subject of compensation for improvements is that contained in section 41 of the Bill, which provides that in all cases in which compensation is found to be due to a tenant on ejectment it shall be paid to the officer ordering the ejectment before the tenant is evicted. The object of the section is to remove all technical restrictions on the complete adjudication of every claim for compensation which a tenant may have when proceedings are taken for his ejectment. These provisions are called for in common fairness to tenants, and have been rendered necessary by some of the decisions referred to.

"The only other important amendment in this Chapter, namely, the introduction of the new section relating to compensation for disturbance, is the result of a proposal originally made by Mr. J. B. Lyall, supported by the Lieutenant-Governor, and accepted by the Government of India. Its object is to afford a limited protection to tenants who have brought waste land under cultivation. Its justification can, perhaps, be best given by a quotation from the paper in which the proposal was first made. In paragraph 4 of his Memorandum of 18th June, 1882, Mr. Lyall wrote as follows regarding it :—

'When the Tenancy Act was under discussion, many officers were of opinion that it would be in accordance with the custom of the country to give a right of occupancy to all tenants holding land which they had broken up from waste. This proposal was nearly carried. I myself thought at the time, and still think, that the general custom of the country would have justified the insertion of such a provision in the Act of 1868. At the present day there are a few tracts in the Punjab in which such a custom still exists, and is admitted by the proprietors. In other tracts it did exist formerly, but the more or less died out. In most districts, and specially in tracts where breaking up the waste is difficult, there is still a strong feeling among the tenants that a tenant who has cleared the waste ought not to be evicted; and the proprietors themselves generally admit in practice a claim, though they would object strongly to the creation of a positive tenant-right. I do not recommend the addition to section 5 of a clause giving occupancy-right to all tenants who have broken up waste land; but I am strongly in favour of inserting a provision in the Act giving them compensation for disturbance.'

"In supporting this proposal the Punjab Government added that the Financial Commissioner's suggestion amounted 'to a just and practicable com-

promise between the incidents of a beneficial custom, still strong in places, but often moribund or insusceptible of judicial proof, and the express language of existing legislation.' As to the justice and good policy of a provision of this kind there will probably be no dispute, though some difference of opinion may arise as to the amount which should be given as compensation for disturbance.

"This, my Lord, is all I have to say in support of the motion for leave to introduce this Bill, and in explanation of the changes which it makes in the existing law. I have, I fear, trespassed too long on the time and exhausted the patience of the Council. If so, my excuse, for the length to which my address has run, must be the magnitude of the subject with which I have had to deal, the many difficult issues involved in it, and the necessity for justifying every material change in a law of this kind, on the proper framing of which the prosperity, peace and contentment of the whole agricultural population of this important Province will largely depend."

The Motion was put and agreed to.

The Hon'ble COLONEL DAVIES also introduced the Bill.

The Hon'ble COLONEL DAVIES also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English, and in the *Punjab 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 7th July, 1886.

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

SIMLA;
The 25th June 1886.

S. G. P. I.—No. 453 L. D.—25-6-12—50—A. F. A.