Thursday,
22nd September, 1887

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVI

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

VOLUME XXVI

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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 Thursday, the 22nd September, 1887.

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.
His Excellency the Commander-in-Chief, Bart., R.A., V.C., G.C.B., G.C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble J. B. Peile, M.A., C.S.I.
The Hon'ble J. Westland.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble Colonel E. G. Wace.
The Hon'ble Nawáb Nawázish Ali Khán, C.I.E.

KING OF OUDH'S ESTATE BILL.

The Hon'ble MR. SCOBLE applied to His Excellency the President to suspend the Rules for the Conduct of Business in order to enable him to introduce a Bill to provide for the Administration of the Estate of the late King of Oudh. He said:—

"His Majesty died yesterday, and, in view of the peculiar circumstances which marked his legal position and the state of his family, it is desirable that steps should at once be taken to secure his property and to provide for its distribution without exposing it to the risk of robbery or the delays and costs of litigation.

"As the Council is aware, His late Majesty was, during his lifetime, exempt from the jurisdiction of the Civil Courts. Three Acts of this Council have been passed securing to him special immunities and privileges. By the first, Act XIV of 1860, provision was made for the execution of process within the precincts of the residence occupied by the King at Garden Reach. By the second, Act VIII of 1862, with a view to protect his personal dignity, His Majesty was partially exempted from the jurisdiction of the Civil and Revenue Courts, and

from that of the Criminal Courts except in regard to offences punishable with death under the Indian Penal Code. By the third, Act XIII of 1868, it was provided that no suit or process should be allowed against the King's person or property unless with the previous consent of the Governor General in Council; and His Majesty was further declared incapable of entering into any contract which might give rise to any pecuniary obligation on his part.

"The King having been thus *solutus lege* in his lifetime by reason of the consideration shown him by Government, I venture to think that exceptional legislation is justified for the administration of his estate after his death. But there are other considerations which point to the same conclusion. I understand that there are between three and four thousand persons at Garden Reach who are dependent on the King, and whose occupation will be lost by his death. The situation is still further complicated by the fact that some weeks ago the King's seals were stolen from his palace, and have not improbably been used to give apparent authenticity to a variety of false documents. To provide for the claims of his enormous household and to put a check on the presentation of fraudulent demands it is proposed that the Governor General in Council shall have exclusive authority to act in the administration of the property of whatever nature left by His late Majesty the King of Oudh in regard to the settlement and satisfaction of claims against the estate of His late Majesty, and may make distribution of the remaining property or the proceeds thereof in such manner as he deems fit among the family and dependents of His late Majesty; and that no act of the Governor General in Council in connection with the administration to or distribution of the property left by His late Majesty shall be liable to be questioned in any Court.

"As the Agent to the Governor General with His late Majesty, immediately upon the King's death, took possession, under instructions from the Government of India, of all the property in the palace, it is proposed to indemnify him and all persons acting under his orders from all liability in respect of the measures taken by them for the preservation of that property. And, as a final precaution, it is proposed to enact that no testamentary or other disposition made by His late Majesty, and no proceedings that have been, or may be, instituted in any Civil Court, shall interfere with, or defeat, the exclusive authority of the Government to act in the administration of the estate.

"I may mention that similar measures were taken in the case of the Nawáb of Surat, and that the legislation now proposed finds a precedent in Act XVIII of 1848."

1887.] [*The President; Mr. Scoble; Colonel Wace.*]

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. SCOBLE introduced the Bill, explaining that he proposed, after the other business of the Council was disposed of, to move that the Bill be taken into consideration.

PUNJAB TENANCY BILL.

The Hon'ble COLONEL WACE moved that the Reports of the Select Committee on the Bill to amend the Law relating to the Tenancy of Land in the Punjab be taken into consideration. He said:—

"When my predecessor introduced this Bill into the Council fifteen months ago, he gave a very full explanation of the circumstances with reference to which it had been framed, and of the results which it was intended to secure. In particular he explained that it was the desire of Government to depart as little as possible from the principles and policy expressed in the Punjab Tenancy Act enacted in 1868, to supply some admitted oversights and defects, and to adopt some of the suggestions made by the Famine Commission with a view to improving the relations of landlords and tenants generally.

"It is by these aims that the Select Committee have been guided in their labours. When, on the 27th of July last, I presented the first Report of the Committee, I entered into a detailed explanation of the alterations made in the Bill subsequently to its introduction; and to recapitulate on this occasion what I then said would be a superfluous task. Of the alterations proposed in the Committee's second Report there are only two which call for special explanation. The first is the alteration of clause (*c*) of sub-section (*i*) of section 5 of the Bill. Under the corresponding clause of the Act of 1868, if a tenant holding in the year 1868 was the representative of a cultivator who settled in the village when it was founded, that tenant was entitled to a right of occupancy. My predecessor, when introducing the Bill, explained the necessity that was felt for granting this privileged status not only to the representatives of cultivators who settled at the village founding, but also to such cultivators themselves in the instances in which they had survived up to the year 1868. But when the Hon'ble Nawáb Nawázish Ali Khan joined the Council, about the time that the Select Committee presented their first Report, he proposed that the clause as thus altered should be qualified with reference to the circumstances under which the tenant was settled. My hon'ble friend, in

a memorandum which he submitted to the Select Committee on the subject, explained that—

'those persons who settle in a village with its founders can be divided into two classes, namely, (*1*) those who have rendered assistance to the landlord in the foundation of the village by clearing and reclaiming lands and cutting trees and making houses and wells at their own expense, and (*2*) those who have rendered no such assistance and have simply occupied the land, which was in every way prepared for cultivation by the landlord himself or at his expense.'

"And he urged that the latter of these two classes were not entitled to rights of occupancy.

"In our Report we have so far adopted the view thus urged as to recommend the addition to section 5 of words enabling a landlord to rebut in this particular class of cases the tenant's claim to occupancy-right by showing that the tenant was settled on land previously cleared and brought under cultivation by or at the expense of the landlord. This alteration will not invalidate any right of occupancy that has already accrued under the Act of 1868; against any such invalidation section 11 of the Bill provides a sufficient safeguard. The words added merely enable a landlord to show that a tenant of this class not already privileged under the Act of 1868 entered at the village founding under circumstances which give him no claim to special protection. I believe that the appropriateness of this addition will be readily admitted.

"I pass on to the second point, namely, the alterations which we have introduced into section 84 relating to the exercise of the power of revision. These are in accord with the views on the subject expressed by the Hon'ble Mr. Ilbert when the Punjab Courts Act of 1884 was passed into law. His remarks on that occasion pointed to the difficulty of foreseeing how a revisional authority, expressed of necessity in wide and general terms, would in practice be interpreted; but he urged, quoting the words of Mr. Justice West, that in India, as in England, the exercise of this extraordinary jurisdiction should be discretional, and that it should be used only to sustain the regular course of judicial administration, and not to promote uncertainty and restlessness by an over-nice scrutiny of proceedings which should aim at promptness rather than at refinement.

"To this end we have made it plain that the putting in motion of this exceptional jurisdiction is a matter for the discretion of the revenue-authorities, and that this discretion should be exercised strictly with reference to their own

judgment of its expediency, and not on the motion of parties seeking by this means to obtain an appeal from which the law has debarred them.

"Passing on to more general considerations,—it would be sanguine to expect that a measure of this importance could be introduced into and carried through this Council without encountering unfavourable criticism. It has been said of this Bill that it aimed at an unnecessary extension of the conditions under which tenants are entitled to rights of occupancy, that it provided a scale of rent unduly favourable to those tenants, that it contemplated the enlargement of their powers of alienation without showing any due cause for this innovation, that its provisions relating to compensation on ejectment were calculated to place material obstacles in the way of successfully executing decrees for ejectment, and finally that the Bill has been unduly elaborated. I propose to respond briefly to each of these criticisms.

"As regards the admission of new claims to rights of occupancy, the power of a tenant with a right of occupancy to alienate his land, and the treatment of claims to compensation on ejectment, it will I believe be admitted that the changes made in the Bill since its introduction have to a large extent met the apprehensions at first expressed.

"As regards the scale of rent to which tenants with rights of occupancy will in future be liable, the provisions of the Bill are undoubtedly open to this criticism that we have preferred that method of adjusting these rents which was successfully followed in the first years of our administration of the Punjab to the newer method introduced for the first time in 1868, which subsequent experience has shown to be of difficult application and to involve protracted and uncertain litigation. Under the existing law it has been difficult for a landlord to obtain an enhancement of rent, and even in the cases in which he succeeded the litigation by which it was obtained was likely to cost him more than the enhancement was worth. Under the provisions of this Bill the landlord will perhaps obtain a smaller enhancement, but he will obtain it more easily. Moreover, I am myself convinced that this enhancement, though smaller than was theoretically possible under the existing Act, is as large as can justly be allowed; and I believe this opinion is shared by the majority of those Revenue-officers who have enjoyed special opportunities of observing the condition of our agricultural classes.

"That the Bill has been unnecessarily elaborated is a criticism the merits of which will not be duly appreciated unless it is weighed in connection with the existing condition of the rest of the Punjab Code. For instance,

the Punjab Laws Act of 1872 disposes of a long list of important subjects in 52 sections. Some of the principal subjects comprised in this list are succession, marriage, minority, family relationship, pre-emption, insolvency, Courts of Wards, village-police and the track law. On the assumption that so brief an enactment deals adequately with these important subjects, it is no doubt difficult to justify the fuller treatment of only one branch of the law in so lengthy an enactment as that now before this Council.

"But the time is past when large branches of the law can be dealt with in the comparatively brief style of the local laws enacted twenty years ago. Whether it is convenient to propose new legislation on any subject, as, for instance, we are beginning to feel may be necessary if we are to deal adequately with the extremely important problems involved in the successful administration of the canals and forests of the Punjab, or with those left open to every uncertainty of litigation by the existing Punjab Laws Act, is a question that cannot be decided at any time without weighing other considerations than those immediately connected with the imperfections and shortcomings of existing enactments. But when the decision has once been taken to revise any of the older laws, then to shrink from the task of adjusting that law to the larger wants of the present time, to neglect the opportunity of incorporating rules of which the utility has been established in adjacent provinces, and to refrain from re-drafting obscure provisions in terms suited for the guidance of that great majority of our Courts, officers and legal practitioners who have scant leisure or opportunity to study books of reference and little legal training to supply the place of such aids—this would be a course that would give juster cause for dissatisfaction than is likely to be found in the increased fullness and precision of the new enactments.

"To other and wider criticisms, such as those which attack on independent grounds the merits of those rights of occupancy the protection of which is one of the chief objects of this Bill, which dispute the consistency of declaring such rights and at the same time enforcing restrictions on their devolution and succession, and which challenge the wisdom of invalidating any agreements whatever into which landlords and tenants may enter with each other; it will suffice to reply that equally we ourselves and our predecessors in 1868 have, not perhaps with entire freedom from error and misconception, endeavoured to limit our action to the support of rights as ascertained by competent enquiry, and to bear in mind that, where persons stand to each other in the relation of landlord and tenant, we cannot give to one of these two classes without by so much taking from the other; and, if in respect of a limited class of matters, such as the encouragement of improvements,

the protection of statutory rights of occupancy and the claims of a tenant to fair treatment under unforeseen calamity or on ejectment, we have provided that the law shall prevail over previous usage and future agreements, we have done this in deference to conclusions based on wide experience and enquiry in all the provinces of Northern India."

The Hon'ble NAWÁB NAWÁZISH ALI KHÁN addressed the Council in a Vernacular speech, a translation of which was read by Mr. Harvey James, the Secretary, as follows :—

"The provisions of the Act of 1868, with respect to the enhancement of rent and the acquisition of the right of occupancy, were found so defective as to have given rise in some districts to a ruinous litigation, and a change in them was rendered indispensably necessary. Therefore, after some correspondence between the Local and the Supreme Governments, the preparation of this Bill was undertaken. On the announcement of this decision great anxiety was naturally felt by the people, and some of their fears were no doubt confirmed by the Bill which was introduced. But afterwards the Bill, together with the opinions of the officers and of the inhabitants of this Province, was carefully considered by the Select Committee, which, having paid due regard to those opinions and keeping the advantage of both the *landlords* and the *tenants* in view, made many alterations and additions in the Bill, so that it assumed its present form, and this form in my opinion is a most satisfactory one. I have carefully examined the Bill and I approve highly its provisions, with the exception of section 22, in which the proposed rate of rent is so low that the section is likely to prove injurious to the landlords. With this exception I firmly believe that the revised Bill is most suited to give complete satisfaction to both the landlords and the tenants, and to extirpate the dubious litigation which formerly attended many suits, and, providing clearly for every thing, it will likewise save the Courts a great deal of trouble. In conclusion, I wish to thank His Excellency the Governor General and my hon'ble colleagues for their undertaking a task of so great a magnitude and performing it with such a degree of success. I have also thoroughly gone through the Land-revenue Bill and fully approve of all the sections contained therein."

His Honour THE LIEUTENANT-GOVERNOR said :—

"I do not think it necessary to occupy the time of the Council by making any remarks on the details of the Bill. Since it was first introduced it has been repeatedly considered in Committee, and has been subjected to most exhaustive criticism by the Judges of the Chief Court, the Lahore Committee and a num-

ber of other gentlemen of experience, Native and European. All these criticisms have been carefully considered, and the amendments which the Bill has undergone are detailed and explained in the Select Committee's Reports dated 27th July and 7th September, and in the speeches in this Council of my friend Colonel Wace, the member in charge of the Bill. My predecessor in office, Sir C. U. Aitchison, in his speech in this Council in July, 1886, on the Motion to refer to a Select Committee the Bill as originally introduced, remarked that it was an amending Bill and of a very limited scope; he added that the only important changes which it introduced were not changes of principle but alterations or additions necessitated by practical experience of difficulties in the working or in the interpreting of the existing law. This is even still more true of the Bill as now finally revised by the Select Committee, for in matters affecting the rights of landlords and tenants as distinct from matters of jurisdiction and procedure the amendments which the Committee have made are entirely in the direction of closer adherence to the Act of 1868. I am convinced that the Committee has been wisely guided in making these amendments, and I look upon the transfer to this Bill of the rules of jurisdiction and procedure now contained in Chapter VII as a very convenient addition, which will be of much use in guiding Revenue-officers and Courts in the right administration of the law. As Financial Commissioner of the Punjab I was one of the officers who had a part in 1881 and 1882 in pressing for an amendment of the Act of 1868: that Act had had the effect of settling the controversies raised by Mr. Prinsep's settlement-proceedings, and had tended generally to maintain the old order of things undisturbed; but for 10 or 15 years after it passed the instances in which either proprietor or tenant took action upon its provisions were for various causes extremely rare. But latterly it became evident to lookers-on that some of these deterring causes would soon disappear and that there was every probability that in a short time the provisions of the Act would be extensively brought into play and severely tested. I think I may confidently say that all the most experienced officers of the Punjab Commission regarded the prospect with gave apprehension, not in the tenant's interest only but also in that of the proprietors. Such litigation as had occurred was sufficient to show that the law would in some important respects be most capricious in action and that in other directions it was likely to result in an unusual number of hard cases. Speaking for the Local Government I can now say that I have no such apprehensions in respect to the effect of the Bill now before the Council and that I shall not be afraid to see its provisions extensively applied. I believe the Revenue-officers and the Courts will find the law which it contains a good basis for equitable orders and

decisions and generally a clear and safe guide, though no doubt a few flaws will be in time detected. I can say in words which Sir Charles Aitchison used, in the speech which I have already quoted, that I sincerely believe that the Bill when it becomes law will tend to foster and preserve the friendly relations which happily have hitherto existed in this province between landlords and their tenants."

The Hon'ble MR. PEILE said:—

"After the statement which we have just heard from His Honour the Lieutenant-Governor, whose knowledge of the Punjab and its tenures is, we know, profound, some of the remarks which I proposed to make on the Bill may perhaps be deemed superfluous. But I differ from His Honour in this respect that I approach the subject as an observer from without, and also as the member of Your Lordship's Government who is primarily responsible for the administration of the land-revenue. While therefore I am deeply sensible of the disadvantage at which such a duty is undertaken by one who has had no personal experience of the rights and customs connected with property in the land of the province with which he is dealing, I ask leave to state to the Council how the principal points of the Bill present themselves to me. After a careful study of much that has been written on the subject, I am impressed with the feeling that, if legislation which touches on the disposition of interests in land in any part of India is a matter of anxious thought and care to Your Lordship's Government, it is especially so in the Punjab, where in amending the Tenancy Act of 1868 the legislature treads on the embers of a glowing controversy which no one desires to revive. We propose today to repeal the first Land Act of the British Government for the Punjab—an Act which, after much warm debate and a great conflict of opinions, was accepted as a compromise designed to lay to rest the contention between the advocates of the right of the landlord and the advocates of the right of the privileged tenant. The Act answered its purpose, and the balance of the compromise which it effected should not be lightly disturbed. If it cannot be said that the Bill before the Council does not affect it at all, I think it will be apparent that we have not without good reason agreed to transfer any weight from the one scale to the other. In the division of the interests in land in the Punjab there is much which is at first sight perplexing. But I think we may safely say that the usage and sentiment which were the unwritten law in these matters before the days of Legislative Councils, are much akin to the principle which is recognized as the fundamental principle of tenant-right elsewhere in India. The main principle is that the occupant of the soil is entitled to remain on his holding, as long as he pays to the Government or a landlord the share of

the produce fixed by custom or the decree of the ruling power, and that the capricious expulsion of an old tenant is condemned by public opinion as unjust. To this may be added in the Punjab that the tenant who has redeemed his holding from waste has the strongest claim to fixity of tenure, while on the other hand the landlord has asserted a right to evict when he wants the tenant's land for his own cultivation. I must confess that in a country of peasant-proprietors like the Punjab this last rider to the principle appears to be clothed with a fair show of reason. But it was not established that there was any practice of eviction, nor where the rent is a share of the produce fixed by custom is there any room for eviction with a view to enhance rent. Consequently Sir Henry Maine in the debate on the Tenancy Act described the asserted custom of eviction as 'a customary mode of doing that which never was done.' Nevertheless the then Lieutenant-Governor, Sir Donald Macleod, among others, did so far see reason in the contention that the landlord should be entitled to resume his tenant's land if he needed more land to cultivate himself, that he was in favour of allowing the landlord to buy out long resident tenants by paying such compensation as would enable the tenant to establish himself elsewhere. This opinion found a limited expression in section 19 of the Act of 1868, a half-hearted enactment which has become practically obsolete by virtue of the conditions attached to it on the motion of Sir Richard Temple, and it has not been reproduced in this Bill. In the end it was agreed that the Act should secure fixity of tenure to certain special classes, such as ex-proprietory tenants and old hereditary tenants who had never paid rent,—a variety of tenure which probably transcends any experiences of Her Majesty's Law Courts in Ireland,—but they were in fact tenants whom the village managing body associated with them in bearing the burthen of the crushing assessment of the Sikh Government, and who paid the quota of the Government demand assessed upon their holdings, but nothing more. It was agreed also to protect the tenants who by the decision of the Settlement-officers had been recorded before 1868 as possessing occupancy-right in virtue of long undisturbed occupation, with the proviso that on specified grounds the landlord might attack this presumption of right in a suit. But the Act contains no provision for the further accrual of occupancy-rights.

"It may perhaps be argued that in the omission of all such provision the Government did not maintain its usual policy declared in the Regulation of 1793 and expressed in more than one provincial land law, and that the omission should now be corrected by some large extension of tenant-right. But in a province where 60 per cent. of the area under the plough is tilled by small landholders in properties averaging about 25 acres, the development of tenant-right is

not a question of the same dimensions as in a province of great zamindárs, and the needs of an increasing landowner population may justly be considered. The Act of 1868 therefore contained no enactment for the accrual of right to fixity of tenure by mere efflux of time, or otherwise than by proof of custom or agreement, and in this respect the Bill does not alter it. It does in some matters afford protection to the tenant-at-will, and defines more clearly for his benefit the relations between him and his landlord, but it does not provide that, as in Bengal and the North-Western Provinces, a tenant who has occupied or cultivated land continuously for twelve years shall be a settled raiyat with a right of occupancy in that land. It does not, as in the Central Provinces, empower the ordinary tenant to acquire occupancy-rights by purchase. Undoubtedly, where there is no provision for recruiting occupancy-tenants by fresh accrual, the area of occupancy-tenancies will tend to diminish. We see such a decrease of old tenancies in the North-Western Provinces, where however it is more than recouped by fresh accretions under the twelve years section of the Rent Act. But in the Punjab, as I have said, 60 per cent. of the cultivated land is in the hands of the proprietors, whereas in the North-Western Provinces the proprietors cultivate only 26 per cent.; and this fact goes far to justify us in adhering to the policy adopted by our predecessors in this Council in 1868.

"The Bill does however in certain respects alter the old law as to privileged tenants. It is claimed for these alterations that they are of the nature of developments of the purpose of the old Act rather than invasions of its principle. They will, we are assured, change little in the Punjab itself, and affect chiefly the tract known as the old Delhi territory, which extends southwards from the Sutlej between Rajputana and the Jumna, and which, becoming a British possession far earlier than the Sikh Kingdom, has a curious administrative history of its own as a frontier province. In parts of this territory, as in Sirsa and Hissar, villages were founded on waste-land in the generation before 1868. Many cultivators who were settled in such villages with or by the founders, had the special claim to fixity of tenure which attaches to the man who reclaims land from the waste, but were excluded by the wording of the section of the Act of 1868, which, while recognizing the claim, threw the origin of the right back to a remoter time. The Hon'ble Colonel Wace has explained the condition on which occupancy-rights are extended to these tenants by this Bill.

"Again, while there was a class of villagers of higher status in whom the village-management was vested, in regard to the privileges attaching to cultivating possession there was little or no distinction between this class and the body of

regular cultivators. These latter paid generally only their share of the Government revenue and village-expenses, and, if any recognition of superior right at all, a few handfuls of grain. Now, though these men were recorded by the early Settlement-officers as tenants without occupancy-rights, their rent was fixed at revenue-rates and they were otherwise protected. But here again the words of the Act of 1868, as interpreted—and no doubt rightly interpreted—by the Chief Court, were somewhat too narrow to meet the full equities of the case. Numbers of these tenants who were recorded at the regular settlements of 1852 to 1864 as tenants-at-will, held and have held from that day to this the strong position above described, and their privileges may fairly be regarded as having matured into rights of fixed tenure. We therefore propose to put ourselves as regards them in the position of the legislators of 1868, and once more make the date of the passing of the Bill before us an epoch at which the occupation of land for more than two generations or for thirty years on payment of revenue-rates shall be deemed to establish occupancy-rights. We do not, as first proposed, allow this form of title to accrue hereafter, nor do we entirely exempt those who may claim occupancy-rights under the amended clause from paying rent, but we maintain them in what is in substance their actual position. What we propose is to confirm an existing status rather than to create a new one. The first clause of section 5 gives the right of fixed tenure only to tenants who during an occupancy of twenty or thirty years before 1887 have never paid any rent or rendered any service. They have in fact cultivated side by side with the men recorded as proprietors with practically identical privileges under the ægis of custom, though not, since 1868, under the ægis of the law.

"That is the extent to which we have thought it expedient to go in the enlargement of occupancy-tenancies by this Bill.

"To tenants-at-will who clear and bring waste-land under cultivation we have not given occupancy-rights on that ground, but the claim to security of tenure which has always been admitted in the case of clearing tenants has been recognized by entitling them to compensation for disturbance as well as compensation for improvements.

"Then I pass to the second chief point of difference between the old Act and this Bill.

"The Bill proposes to fix the rents of privileged tenants at a percentage on the land-revenue, and not, as in the Act, at something below the rent paid by tenants-at-will. This will be a method peculiar to the Punjab Tenancy Act.

It finds place in the land law of no other Indian province. But it is not a new method in the Punjab. The Government which preceded ours was accustomed to take to itself the entire net rent of the land, leaving no margin for the owner. The tenant, paying a customary grain-rent, was presumably protected in the enjoyment of his share of the crop. But the other proprietary interest got no consideration whatever. The Government official went to whoever was the man in possession—whether village-manager or old tenant or new tenant—and swept off direct from him the whole net rent. If the man of superior status got anything, it was only a few seers of grain. Then, when our Government came in and we began to make settlements, the Settlement-officers fixed the revenue in cash instead of grain, and the landlord's rent-charge, if any was recognized, at so many annas on the rupee of land-revenue. Rules were issued which restricted the zamindárs' rent to fixed percentages on the land-revenue, and these rules were validated by the Councils Act of 1861. Now, one thing which the Act of 1868 did by its second section was to give what Sir Fitzjames Stephen called a sacred character to certain entries in the records of a regular settlement, which was extended by the Land-revenue Act of 1871 to the record of regular settlements made before the 18th of November in that year. Entries in such records, when attested by the proper officer, and relating, among other things, to rent and its enhancement, were to be deemed agreements and not to be affected by the Act. Now, the hon'ble member who introduced the Bill said that by the force of that section the old light rents had been for the most part maintained up to the present time, and what he meant was that in the early settlements the rents of privileged tenants, consisting, as I have explained, of the land-revenue and cesses plus a malikana of so many annas in the rupee of revenue, were fixed unalterably for the term of settlements which have recently expired or are expiring. So that the effect of this section has been to maintain the form of rent introduced authoritatively by the first Settlement-officers almost down to the present time, and it is only after a revised settlement that these rents can be altered. By far the greater number of privileged tenants who pay in cash—some 280,000 out of 390,000—still pay either the revenue only or the revenue plus malikana. This explains how the method of the Bill is really not a novelty, and is designed to anticipate an evil which is likely to spring up rather than to remedy one which already exists.

"Now, it certainly was the intention of the legislature in 1868 to enable the landlord to obtain from the privileged tenant a reasonable rent, reduced, according to the grade of privilege, more or less below the rent of the unprotected raiyat, and this Bill could not be justified if it failed to fulfil that intention. But it is also

clear from the debate in this Council on the Act of 1868 that section 11 was framed on the understanding that the Government revenue was half the net rent, as it still in theory purports to be. On that assumption the most privileged tenant, whose rent was limited to 50 per cent. of an ordinary rent, would pay simply the Government revenue and nothing to his landlord. The less privileged tenants would pay as rent two-fifths or seven-tenths of the revenue according to class. But in the first place it has proved to be a difficult matter to discover what is the usual rent of the tenant-at-will by which the rent of the privileged tenant was to be gauged, and secondly the rent of the tenant-at-will is not definite and stable enough for a basis, because it depends on the discretion of the landlord and not on any statutory limit. The privilege of paying 15 per cent less than a competition-rent is not a very tangible privilege. A right to have any substantial value must be expressed in definite terms, and the terms of section 11 are not as definite as they were meant to be. That is the explanation of the peculiar provisions which have been substituted for section 11 in this Bill. My hon'ble friend the Nawáb Nawázish Ali Khán would have liked the maximum rent-rates therein fixed for privileged tenants to be somewhat higher. Now, this is a matter of the kind on which a Select Committee goes for guidance to local experience, and the local experience by which we were guided in this case was that of the eminent body of Punjab Revenue-officers and Native gentlemen which is known in the literature of this Bill as the Lahore Committee. That Committee advised an increase of the rent-rates proposed in the first draft of the Bill for all but the most privileged class of tenants. Their views were approved by Sir Charles Aitchison, and the Select Committee adopted their rates without modification and as they stand now in the Bill. In my opinion, if the rates are carefully examined, they will not be found to be more favourable to the various grades of privileged tenants than was section 11 interpreted on the assumption that the Government revenue absorbs half the net rent. Perhaps they are even less favourable. But I agree with the hon'ble member in charge of the Bill that they are not unfair to either party. When the increasing moderation of the Government assessment allowed a margin of profit once more to emerge between the customary share of the cultivator and the share of the State, it is clear that the landlord had the first claim to that margin. It has been said that, as the Government by reducing its demand from the whole net produce to a part of it revived or created rent, it was entitled to dispose of its own creation as it thought fit. But it was obviously the landlord and not the tenant who lost his property when the former Government appropriated the whole rent, and the Secretary of State very justly declined in 1869 to assert a power of free dealing with rights which had recovered their value under a good system of government.

"On the other hand it is right that the occupancy-tenant should have appointed for his rent-rate a definite maximum easily ascertainable by the Rent Court, and I see no objection to defining his rent on this exact basis, though no doubt it establishes a broad line of distinction between the rent of the privileged tenant and the rent of the tenant-at-will, which we have not felt equally justified in safeguarding from the ordinary action of free contract and competition.

"These are the reasons in favour of this form of enactment which were accepted by Your Lordship's Government and the Secretary of State.

"The maximum rent-rates in section 22 are not immutable, but will vary with the land-revenue, which again varies with the profits of agriculture. Rents already above the maxima, of which there are said to be few, are not reducible by the Bill. Rents now below the maxima, which are believed to form the great majority, can be enhanced to the maxima only by such steps as the Rent Court deems fair and reasonable.

"It is not necessary that I should pursue the examination of the policy of the Bill, further than the hon'ble member in charge has pursued it, into the incidents of rent, such as adjustment or remission, or into the incidents of tenure, such as relinquishment and ejectment or alienation and succession. The hon'ble member has explained that, while the law in these matters has been made clearer, there is hardly any substantive change. In connection with these and other interests of the tenants, I may call attention to the important sections, now in Chapter VIII at the end of the Bill, prescribing the extent to which the law, on grounds of public policy, will prevail over certain entries in records-of-rights, and over agreements made between landlords and tenants after the passing of the Act, and conversely defining the particulars in which we have deemed it just that the saving force of section 2 of the Act of 1868 should be preserved. On the other hand, sections have been introduced which give to the landlord the right of making improvements on privileged tenancies with due provision for the protection of the tenant, and of obtaining an increase of rent on their account.

"The seventh chapter of the Bill deals with jurisdiction and procedure. In distributing between this Bill and the Land-revenue Bill the portions of the subject-matter which come within the province of each, it seemed expedient to transfer to the one or the other certain chapters of the Punjab Courts Act of 1884. It was therefore proposed to make this Bill complete by embodying in it Chapter V of the Courts Act, which treats of Revenue Courts; and in doing so we have been careful to alter as little as possible the settlement of the powers and duties of Revenue Courts arrived at, not without controversy, only three years ago. The Act of 1884 was an important step in the separa-

tion of executive and judicial functions which formed a necessary part of the re-organization of civil administration in the Punjab in that year. It was then decided that, while the Commissioners were relieved of the bulk of their judicial duties, the cognizance of certain suits relating to land should remain with the Revenue-officers as Revenue Courts, with appeal to the Commissioner and Financial Commissioner instead of the Chief Court. The assignment of appellate jurisdiction to the superior Revenue-authorities, and not as in the North-Western Provinces to the Civil Courts of appeal, was adopted as suitable to the Punjab and as affording relief to the Civil Courts. The law for the jurisdiction and procedure of Revenue Courts, enacted as part of the Courts Act, finds a more appropriate place in the land law, and has therefore been transferred without important change from the Courts Act to this Bill.

"My Lord, I have briefly touched on the salient points of the Bill. The hon'ble member in charge has reminded us that the Bill has been called, in its earlier stages at least, a tenants' Bill. I do not think that as it now stands, and in comparison with the land laws of other Indian provinces, that criticism is just. I should rather call it a landlords' Bill. But Your Lordship's Government would not advise this Council to adopt it if it were either the one or the other in the sense of holding the scales inequitably between the two co-existing interests. I believe that in the special circumstances of the Punjab peasant-proprietors it is not open to any such criticism, and that it is a fair measure. It has been revised and again revised, and in its final form has been generally accepted. I am therefore in favour of passing it into law, and I trust that it will give such finality as a legislature can hope to secure to the settlement of the important questions with which it deals."

The Hon'ble COLONEL WACE said:—"I ask the permission of the Council to make a few remarks suggested by one observation that fell from my hon'ble friend Mr. Peile. He expresses an apprehension that in course of time the area held by occupancy-tenants in the Punjab would under the provisions of this Bill tend to diminish. In saying a few words on this point I wish to be understood as speaking rather from the existing tenures and existing customs of the Punjab than as attempting to give any forecast of what may happen during the ensuing 30 or 40 years. No doubt, in cases in which we find a small body of occupancy-tenants holding land under a stronger body of landowners who are themselves cultivators, the tendency is for these occupancy-tenants to die out, and for the landowners, who are often in needy circumstances, to watch carefully against the accrual of any new rights of this nature. But there are large portions of the Punjab, especially in the south-west-

ern districts, where there is nothing more remarkable than the liberality of the usages and agreements by which the landowners allow tenants to acquire rights of occupancy, and in these districts the difficulties of husbandry and the uncertainties of the harvests are so great that I think we may hope that these occupancy-rights will not diminish but will be continued with the same liberality as has existed in the past. I may mention that in the Sirsa settlement, a few years ago, we were surprised by the liberality with which, in spite of somewhat strained relations between landowners and tenants, the landowners at the last stage of the proceedings admitted of their own agreement tenant-rights in more numerous instances and over larger areas than were covered by the previously existing record. It is also just that I should acknowledge that in my dealings with the larger landowners of the Punjab I have in many cases found them willing to give to their tenants a larger measure of occupancy-right than might have been obtained by those tenants under the strict provisions of the law, and I am confident that the feelings by which these grants have been actuated will continue to exist."

The Motion was put and agreed to.

The Hon'ble COLONEL WACE also moved that the following be substituted for section 11 of the Bill, namely :—

"11. Notwithstanding anything in the foregoing sections of this Chapter, a tenant who immediately before the commencement of this Act has a right of occupancy in any land under an enactment specified in any line of the first column of the following table shall, when this Act comes into force, be held to have, for all the purposes of this Act, a right of occupancy in that land under the enactment specified in the same line of the second column of the table :—

Continuance of existing occupancy-rights.

PUNJAB TENANCY ACT, 1868.		THIS ACT.		
First Column.		Second Column.		
Section.	Clause.	Section.	Sub-section.	Clause.
5	(1)	5	(1)	(a)
5	(2)	5	(1)	(b)
5	(3)	5	(1)	(c)
5	(4)	5	(1)	(d)
6	...	6	...	...
8	...	8	...	...

He said:—"The amendment is a verbal one. Section 11 of the Bill as it at present stands is intended to secure to tenants who have been awarded rights under the Act of 1868 the privilege secured to similar tenants by the Bill under consideration. But the language used for the purpose is wanting in preciseness, and the proposed amendment is intended to remove this difficulty."

The Motion was put and agreed to.

The Hon'ble COLONEL WACE also moved that the Bill, as amended, be passed.

His Excellency THE PRESIDENT said:—

"Before putting this Motion to the Council I desire to congratulate my colleagues in the Government, as well as the members of the Legislative Council, upon the successful termination which has been reached in this important matter. Undoubtedly we are under the very greatest obligation to those members of the Committee who have undertaken the responsible and laborious task of shaping this Bill in so careful and conscientious a manner. Although it is perfectly true that the proposed Act may, in some sort, be called an amending Act, there can be no doubt that any piece of legislation which touches such important and extensive interests, unless very carefully drawn, is liable to inflict both injury and injustice. I am quite convinced that, thanks to the ability and care with which the clauses of the Bill have been drawn, this danger has been reduced to a minimum. I think we are also very much indebted to the Government of the Punjab for the manner in which they have given their attention to the subject. I also wish to express on behalf of all my colleagues our thanks to Mr. Peile for the interesting and clear manner in which he—and no man is in a better position than himself to undertake such a task—has described the general scope and objects of the measure.

"With these few observations I now beg to put the Motion made by Colonel Wace that this Bill, as amended, be passed."

The Motion was put and agreed to.

PUNJAB LAND-REVENUE BILL.

The Hon'ble COLONEL WACE also moved that the Reports of the Select Committee on the Bill to amend and declare the Land-revenue Law of the Punjab be taken into consideration. He said:—

"When the Bill was introduced into this Council and referred to the Select Committee nearly fifteen months ago my predecessor explained that its main

object was to bring the existing law into better agreement with the changes of practice which have been established both in the preparation of records of rights and in the administration of the land-revenue since the enactment in 1871 of the existing Land-revenue Act.

"The Bill has been subjected in Select Committee to the same careful examination as the Tenancy Bill, and the changes consequently made in it were explained in the Select Committee's first Report and in the remarks which I made in this Council when I presented that Report.

"I do not desire to add on the present occasion more than a few brief remarks on the principal matters dealt with by the Bill.

"As first introduced it was not confined to the subject stated in its title, but dealt also with the jurisdiction and procedure of Revenue Courts, and with applications to Revenue-officers arising out of the Tenancy Act. From the Bill as now reported for our final consideration all these additional subjects have been excluded. It is now strictly what its title purports, namely, a Bill intended to regulate the administration of the land-revenue, and to secure the preparation and due maintenance of those records which are essential to this end.

"Speaking first on the subject of records, I need not explain in this Council the importance which from a very early period in the present century has been attached by the Government to the preparation and maintenance of accurate records of the agricultural tenures of the country. Thirty-eight years ago, when the Punjab was annexed to the empire, no documents which in any way served this purpose existed in any part of the province. By the year 1860 a sufficient record had been provided in almost all districts except those situate on the frontier, and by 1875 the record of the remaining districts was practically complete. But, so early as 1863, the Government, acting under the advice of its principal Revenue-officers, undertook in some of the most important districts of the Punjab a revision of the record-of-rights first prepared. I believe I am not wrong in saying that even at that early date there were officers among us who deprecated this revision, and would have preferred to have seen our efforts spent rather on the improvement of the annual papers than on the preparation of entirely new records. There were no doubt reasons of some weight for revising at least once the records-of-rights prepared immediately after annexation. But the course thus adopted certainly led up to results unfavourable to the general efficiency of our revenue-administration. It came to be tacitly assumed that we could not look for more than a very moderate standard of efficiency in the

patwári agency or of correctness in their annual papers; and year by year, as exact legal procedure and organised administration added fresh demands on the attention of our officers, it was natural that they should feel less and less inclined to give much attention to records for the periodical revision of which the Government was willing to provide separate trained establishments.

"This Bill expresses the definite decision of Government against such periodical revision by a separate agency. And, while I do not desire to under-rate the additional responsibility thus thrown on Revenue-officers engaged in current administration, I believe that the patwári establishment—an establishment maintained by a not inconsiderable tax on the profits of the landowners—has attained to a standard of efficiency sufficient to warrant the adoption of the course on which we have now resolved; and that, if our Revenue-officers at the appropriate agricultural seasons give a fair share of their time to the direction and supervision of that agency, the annual records prepared by the patwáris will be as accurate and complete as for practical purposes need be desired. We shall no doubt often need to be content with records less elaborate and pretentious than would be prepared by a more highly trained special agency; but I do not think that this is a result that we need regret; for the task of keeping any records correct to date is so onerous that elaborations rarely lead to greater accuracy, while the attempt to attain them is usually burdensome equally to the agriculturist and to the administration.

"In the Chapters on the assessment and collection of the land-revenue we have refrained from introducing any changes in the existing practice. There is probably no province in India which presents a greater variety of agricultural conditions than the Punjab—conditions varying from the rich husbandry of the sub-Himalayan districts secured by a certain and abundant rainfall, to that of almost rainless tracts dependent entirely on irrigation from canals and on the autumn floods of the great Punjab rivers, or where there is neither irrigation nor river floods, and such indifferent crops of pulse and millet as can be raised are dependent on an uncertain rainfall of only a few inches. Indeed, I could name one Settlement-officer's charge which contains within its own limits most of these variations.

"In a province that contains tracts so variously circumstanced no prudent administrator can advocate any one form of assessment as exclusively applicable—neither the fixed assessment system which our officers introduced at annexation from the North-Western Provinces, nor the system of assessment by rates on the results of each harvest which we have borrowed from the

Irrigation Department. We can only seek, as the Government demand in each tract comes under revision, to make an assessment on broad and simple grounds, deduced from the results of previous experience; as, for instance, to give contract assessments for fairly long terms where the profits of agriculture are secure and the tenures prosperous, or where the results of agriculture vary with causes beyond the control of the landowners to limit our demand to rates assessed on the results of each season; but under all circumstances basing our success as revenue-administrators rather on a careful adaptation of existing systems to the varying requirements of each tract, than on any set system framed in the ambitious hope of anticipating by official rules results that can be reached only by the safe teachings of a wider experience than we at present possess. Whether when the agriculture of the province has been secured against the fluctuations and uncertainties which at present surround it, and the average standard of agricultural skill and resources is higher than that now prevailing, it will be practicable to attain to a more uniform system is a question beyond the limits of our present task and duties.

"The chapter on surveys and boundaries is in very much the same condition as that in which it stood in the Bill when introduced.

"That on the partition of land has been added by the Select Committee. In the original Bill this important subject was disposed of in three sections. In the Bill as revised the established practice of the province previously expressed in the rules under the existing Land-revenue Act have been incorporated together with some additions from the law of the North-Western Provinces. And the chapter thus framed will, I believe, bring about a much-needed improvement in the manner in which this important class of business has hitherto been treated.

"The chapter on arbitration also is added from existing rules. There are some provisions in this chapter, especially that which enables a Revenue-officer to set aside the award of an arbitrator, which have provoked adverse comment. But I am convinced that these provisions cannot be altered without largely discouraging the employment of an agency from which our Revenue-officers have hitherto derived much assistance. The original civil procedure rules of the province contained similar provisions in respect of arbitrators; but with the introduction of the Civil Procedure Code of 1859 the award of arbitrators was made final, and can now only be set aside on very special and limited grounds. The result of this change has been to almost entirely put an end to the employment of arbitrators in civil causes, litigants with some reason declining to trust their interests to agents against whose decision, however faulty, there was practically

no remedy. I doubt whether, even as regards civil causes, this result is not to be regretted. But, as regards the class of cases dealt with by the Land-revenue Act, it would be matter for regret if by a change of law for which no necessity has been felt, and which would be supported rather by an analogy drawn from the civil law than by the merits of the case, we were to make it difficult for our Revenue-officers to avail themselves of the assistance of the principal men among the agricultural classes.

"Of the remaining provisions of this Bill I do not think it is necessary for me to speak particularly."

His Honour THE LIEUTENANT-GOVERNOR said:—

"I observe that this Bill seems to have attracted a comparatively small share of public interest, judging from newspaper comments and the opinions received since its introduction and publication. But as it now stands, after the exclusion of the chapter intended to apply to village waste-lands and other minor modifications made by the Committee, I do not think this small extent of public interest and criticism remarkable, for the Bill confers on the Executive no new powers encroaching on private rights.

"The Bill in fact will effect no important change in the substantive law, though it will greatly improve its expression; in some directions it will make the law more flexible, and so get rid of technical difficulties and useless restraints which the wording of the old Act has been found to impose: in other directions it will make the law more precise and definite, and so greatly reduce the number of subjects left open to be dealt with by rules.

"I concur in the remarks made by the hon'ble member in charge of the Bill on the chapters which deal with the subjects of records and assessments. I will only add that the old system of elaborate survey and compilation of records, carried out by large special establishments as an accompaniment to the periodical re-assessments of the revenue, was necessary in the past, but that it is in every way an advantage to be able to give the system up, as it was a great tax on the people, and often stirred up unnecessary litigation. The annual papers which will be prepared hereafter are no more elaborate than those which have always been demanded from the patwáris, but it is to be hoped and expected that in future they will be presumably true, not only in law but also in fact: formerly no presumption of the kind could be attached to them, as the system was quite inefficient. The practice of accepting annually from the patwáris a mass of returns known to be generally fudged and

unreliable was demoralizing to our officials and worse than useless. In respect to assessments, there were some sections in the old Act which, strictly interpreted, prescribed a procedure almost impossible to follow, and different from the practice which has always prevailed in this and other provinces: the Bill makes the law accord with the practice, and also puts on a clear legal basis the system of fluctuating assessments which it has been found necessary to adopt for the benefit of landholders in certain parts of the Punjab.

"In the chapter relating to collection of the land-revenue the assertion of the rule that the land-revenue is a first charge on the land is an old principle, the omission of which from the Act of 1871 is difficult to explain. The rule is required not only to protect the public revenue, but also to protect indebted landholders from Civil Court proceedings which might result in forcing the Revenue-officers to confiscate the landholders' title to the land.

"No new powers to enforce collections have been taken in this chapter, and some of the old powers have been modified by softening provisos.

"The sections in the chapters on partition and arbitration merely supersede with some important additions the rules on the subjects passed under the old Act and are better expressed. I agree with the hon'ble member in charge of the Bill in anticipating that the chapter on partition will much improve the procedure in these cases to the great benefit of the interests of the people concerned. The provision in section 117 which gives the Revenue-officer conducting a partition power to himself determine questions of title which arise, instead of referring objectors to a Civil Court, will, in my opinion, result in the quicker and better decision of those cases.

"I believe that the power to prevent illegal encroachments by co-sharers on common lands, contained in section 62, will prove a most useful provision. Cases of the kind are very common in the Punjab and create much litigation. On behalf of the Local Government I accept the Bill as a very useful amendment of the existing law, and believe that it may be safely passed by the Council."

The Hon'ble MR. PEILE said:—

"I have less to say on this Bill, which deals chiefly with procedure, than on the more important Tenancy Bill, which deals with substantive rights. In one respect the Bills are alike, namely, that as the Tenancy Bill will take the place of the first directly enacted land law for the Punjab, so this Bill is to be substituted for the more elementary Act, which was rough hewn by Sir Fitzjames Stephen

in 1871 out of the mass of Regulations and circulars which were appointed as a guide for the earlier revenue-administration. In fact, that first directly enacted revenue law for the Punjab was the first of its class in Northern India; and it was important as, among other things, assigning a definite legal effect to records-of-rights. As this Bill has been drafted and edited with great care and has met with general acceptance, it is needless for me to examine its provisions in detail, but I may advert to one chapter of it on which His Honour the Lieutenant-Governor and the hon'ble member in charge have both dwelt at some length, and which may perhaps claim to give effect to a part of the administrative policy of the Government of India more exactly than the other provincial Land-revenue Acts which have been enacted between 1871 and this date.

"I am speaking of Chapter IV, which directs how the record-of-rights in land shall be maintained. This chapter is distinct from those which treat of the assessment of land-revenue and of surveys, but that is not what makes it remarkable, for even Regulation IX of 1833 enacted that the preparation of the record-of-rights need not be conducted simultaneously with the ascertainment and determination of the amount of the Government demand; and in the Act of 1871 which we propose to repeal a re-settlement may be either for the re-assessment of revenue or for the revision of the record-of-rights. But the Act of 1871 further enacts that a record-of-rights once sanctioned shall not be revised until a district or area is again put under settlement. Now, the effect of that is that the record-of-rights prepared at the settlement becomes year by year more incorrect as the term of settlement runs on, and the village-registers, which note the matters wherein it requires correction, are mere memoranda kept with a view to the next periodic revision, and not in themselves vested with any legal validity. But, under Chapter IV of this Bill, the Revenue-officer will prepare an annual edition of the record-of-rights corrected up to date, entries in which will be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor; and in this way not only will there be at all times a correct record available as evidence in suits, but when the time for revising the assessment comes, the officer who performs that duty will find ready to his hand a great part of the data which are now specially worked up after long intervals, at no small cost, and with no little trouble to the agricultural people.

"It is hoped that by these means the revision of assessments may always take place at once as soon as the term of settlement expires. A large saving and an important gain to the public revenue has been secured in this way in other provinces. The reform is part of a larger administrative improvement which

is designed to increase our knowledge of the conditions of agriculture by the observation and collation of facts, with a view to assure ourselves of the equable and discriminating assessment of the land-revenue. The claim of the State to a share of the produce of land in India is not unpopular because it is sanctioned by immemorial custom, and it would be a most indefensible breach of public duty to be careless in the stewardship of this great branch of the public income, which Sir Fitzjames Stephen, in the debate on the Act which we are repealing today, justly called the mainstay of Indian finance. But, if the demand of the State on the profits of agriculture must be firmly kept up to its legitimate proportions in justice to the financial interests of the Empire, the Government is all the more bound to assure itself by every means of investigation open to it that the incidence of its assessments is equably and uniformly adjusted to the value of the land."

The Motion was put and agreed to.

The Hon'ble COLONEL WACE also moved that for section 73, sub-section (*4*), of the Bill, the following be substituted, namely :—

"(*4*) At some time before the expiration of that term the Collector shall determine the assessment to be paid in respect of the estate or holding for the remainder of the term of the current assessment of the district or tahsil, and, when that assessment has been sanctioned by the Financial Commissioner, shall announce it to the landowner."

He said :—"This is a verbal amendment, and its object is to bring the language used in this section relating to a particular and occasional assessment into better agreement with that used in respect of assessments generally in the chapter of the Act which deals with this subject."

The Motion was put and agreed to.

The Hon'ble COLONEL WACE also moved that the Bill, as amended, be passed.

His Excellency THE PRESIDENT said :—

"In putting this Motion, now that Colonel Wace has crowned his work by the successful passing of these two important Bills, I desire, on the part of the Government of India, to offer to him our very best thanks. There is no doubt he has displayed a great amount of industry and ability in discharging the important task which has fallen to his lot, and personally I am most obliged to him.

"I also desire to express to our hon'ble colleague Nawáb Nawázish Ali Khán our very best thanks for his valuable assistance, and for having thus enabled his colleagues and the Government of India to profit by his great local knowledge and his advice. I am sure it has been a satisfaction to all of us to know that in a matter in which our hon'ble colleague is so deeply interested both these Bills should have received his warm and hearty support."

The Motion was put and agreed to.

ALLAHABAD UNIVERSITY BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to establish a University at Allahabad be taken into consideration. He said:—

"We have received numerous criticisms on the Bill from the Government of the North-Western Provinces and Oudh, from gentlemen interested in the subject residing in those provinces, and from some members of the Senate of the Punjab University. We have also been favoured with a written opinion from our hon'ble colleague Rana Sir Shankar Baksh Singh, who was prevented attending this session of Council, in which he expresses approval of the measure. These opinions and criticisms we have carefully considered, and in accordance with many of them we have cleared up what appeared to be ambiguities in the wording of the Bill as introduced, and have endeavoured to remedy defects which experience has brought to light in the working of the Punjab and other University Acts.

"I need not detain the Council by dwelling on these changes, the more important of which are set forth in our Report. I proceed at once to make some observations on the constitution of the University, the point in the Bill which has been mainly selected for adverse comment. We have made no change in the constitution and functions of the University, which will be, as originally proposed, an examining body with power in process of evolution to develop into a teaching body. It will consist of a Chancellor, Vice-Chancellor and Fellows, with whom when assembled as a Senate will rest the entire management of, and superintendence over, its affairs, concerns and property. Before the University can come into existence its component parts must be created, and therefore the Bill of necessity nominates the persons who are to be the first Chancellor, Vice-Chancellor and Fellows. This necessity appears to have been overlooked by a few of the critics of the measure. The first Chancellor will be the present Lieutenant-Governor of

the North-Western Provinces and Chief Commissioner of Oudh, as I stated at an earlier stage of the Bill. The first Vice-Chancellor will be the Hon'ble Sir John Edge, Chief Justice of the High Court of the North-Western Provinces. This nomination will, I have no doubt, commend itself to the Council not only on account of the personal merits of the nominee but also because from the fact of his holding a high office at Allahabad the Vice-Chancellor will be able to preside over all, or at least all the more important, meetings of the Senate and Syndicate and to guide their proceedings with weight and effect.

"The first Fellows will be found in Parts I and II of the schedule to the Bill. Part I contains a list of officers in the service of Government. On a former occasion I explained the reasons for which it was deemed advisable that the incumbents for the time being of such offices should be Fellows of the University. We have added to the list entered in the Bill as introduced the Chief Commissioner of the Central Provinces and the Agent to the Governor General in Rajputana, as we hope that both the Central Provinces and Rajputana, where there are at present colleges imparting high education, will soon send students to our University. The Government of the North-Western Provinces and Oudh accepted a proposal to limit the number of *ex officio* Fellows and suggested a maximum of twelve, but on consideration the Select Committee came to the conclusion that such a limitation might prove inconvenient in practice and decided to make no change on this point in the Bill as introduced.

"We were unable to attach much weight to a general objection to the institution of *ex officio* Fellowships as giving Government excessive influence in the management of the University. There is nothing in the circumstances of the infant Allahabad University which will enable her for a long time to dispense with the official support and guidance which have been found necessary in the case of her elder sisters at Calcutta, Madras, Bombay and Lahore. The educated classes within the sphere of her operations are not yet so numerous as to afford a sufficiently wide field for the selection of persons who could safely be entrusted with the control of higher education in an area of such vast extent, and are not so influential with the general public as to draw them on to a practical appreciation of that education, when unaided by the prestige and authority of the Executive Government. By the measure before us Government is committing large though indirect powers of control over the education of the people to the institution established by the Bill, and it is

our duty to make such provisions in regard to its constitution as will ensure that those powers will be properly and efficiently exercised and that they will not be abused.

"On this point and also on some proposed additions to the *ex officio* list Sir A. C. Lyall writes as follows :—

'The institution of *ex officio* Fellows, and the power conferred by the Bill on the Local Government to specify the offices to which Fellowships should be attached, have met with some adverse criticism. The Hon'ble Mr. Justice Mahmud, who combines with the education of an English University an intimate knowledge of the people of these Provinces and whose opinion is therefore of special value, while he admits that there are good reasons why the Bishop of Calcutta, the Chief Justice of the North-Western Provinces and the Director of Public Instruction should be *ex officio* members of the Senate and Fellows of the University, would either restrict the distinction to those appointments or, if it were thought necessary to attach it to others, would greatly add to the number specified in the first schedule of the Bill. As a member of the governing body of the Muhammadan College at Aligarh, he objects to the distinction which seems to be drawn between the Principals of Government colleges and the Principals of colleges which have been founded or are supported by the people, and suggests that either the former be struck out of the schedule or the names of the latter added to it. After full consideration, the Lieutenant-Governor is unable to recommend any alteration of the Bill in this respect. The reasons for the present rule are found in the wording of section 5 (*a*), which limits the nomination of *ex officio* Fellows to persons who hold offices under Government, and who would not, therefore, be at liberty either to decline the appointment or to abstain from taking such a part in the business of the University as Government might allot to them. But gentlemen who are at the head of the independent colleges are in a different position; and to enter them in the Act as Fellows *ex officio* might expose the Government to the risk of anomalies and embarrassment. All the present heads of independent colleges have been nominated by Sir Alfred Lyall as Fellows in Part II of the schedule, and there is no reason to suppose that the claims of their successors will be overlooked. When the principle on which the distinction is made is understood, it is not likely to be regarded as in any way invidious, nor indeed does the Hon'ble Saiyad Ahmad Khán Bahádur, C.S.I., the founder and Principal of the Aligarh College, take any objection to it in the opinion with which he has favoured this Government. That there should be a small number of *ex officio* Fellows to form a permanent nucleus to the Senate seems hardly open to dispute and is not gainsaid by Mr. Justice Mahmud. His suggestion, that a general power be given to the Local Government to specify such independent or aided colleges as are affiliated to the University and possess a sufficiently high status to entitle their Principals to *ex officio* Fellowships, has also been attentively considered. But here again the objection already explained stands in the way, while it has also to be remembered that a college thus specified might not maintain the standard of teaching in regard for which the Fellowship should have been made *ex officio*.'

"Part II contains the list of first Fellows other than those appointed *ex officio*—32 in number—and has been drawn up so as to include qualified representatives of all classes likely to be interested in the success of the University.

"In the printed papers on the Bill will be found letters from gentlemen connected with the Educational Department in the North-Western Provinces which express regrets and apprehensions that sufficient influence has not been given to Principals and Professors of colleges in the constitution of the University. When those letters were written the list contained in Part II of the schedule had not been published. An analysis of that list shows that of the 32 Fellows named in it 16 are or have been directly concerned with education in the united provinces.

"The services in the cause of education of my hon'ble friend Saiyad Ahmad Khán Bahádur are well known to the members of this Council. He is the founder and practically still the manager of the Anglo-Muhammadan College at Aligarh, a flourishing institution which numbers its students by hundreds and is rapidly diffusing among our Muhámmadan fellow-subjects a widespread desire for that higher English education from which they have hitherto in a great measure kept aloof.

"Rájá Siva Prasad, of Benares, was for many years employed in the Educational Department of the North-Western Provinces, where his intelligent labours earned for him special reward and distinctions.

"Besides these two gentlemen the list includes the Principals of five aided colleges, seven Professors or ex-Professors of Colleges and two Inspectors of Schools, and Part I enrols among the *ex officio* Fellows the Director of Public Instruction and the Principals of the Government Colleges at Allahabad and Benares. Unless it be determined to make over the entire management of the University to what is after all a small body of professional teachers in the united provinces, I think their representation in the governing body of the University cannot be considered inadequate. Great as are the professional abilities, zeal and attainments of those gentlemen, we are not prepared to recommend that the just influence they may hope to maintain in the direction of the studies prescribed by the University should be untempered by the wider experience of the educational needs of the inhabitants of the united provinces which we may hope to gain from the representation in the Senate of the views of classes other than professional educationists. The identity of the teaching and examining staff is also as far as possible to be avoided in a University which, like this,

aims at ultimately combining teaching with examination. In the debate on the Punjab University Bill in 1882, the late Law Member, whose opinion on the subject is entitled to especial weight, stated that from his English experience he knew the risk to be real and substantial if this principle were disregarded.

"In addition to the gentlemen directly connected with education in the North-Western Provinces, the list of first Fellows contains the names of several others who from their academic experience, professional avocations or interest evinced in the cause of education are likely to contribute to the successful management of the University.

"We have by an alteration in the Bill as introduced, in partial accordance with a recommendation of the Lieutenant-Governor, empowered the University to confer degrees of Bachelor and Doctor of Laws without reference to the Government of India. The local High Court is therefore largely represented in the Senate by the Vice-Chancellor, by two others of its learned Judges, by one of its Advocates and one of its Pleaders. Three Fellows are taken from the Covenanted, one from the Uncovenanted, Civil Service; three from the Medical, and one from the Engineering, professions. The Taluqdárs of Oudh furnish one Fellow whose literary abilities and liberal encouragement of education on his estates would under any circumstances entitle him to a place in the list, in which also fitly appear the names of two gentlemen from the same province, one of whom is an enterprising publisher of Vernacular works which he disseminates through India, Persia and Central Asia, and the other is a Master of Arts of the Calcutta University to whom we are indebted for several useful criticisms on the Bill."

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.

KING OF OUDH'S ESTATE BILL.

The Hon'ble MR. SCOBLE moved that the Bill be taken into consideration. He said:—"This Bill, copies of which have been laid on the table since the sitting of the Council began, consists of three sections the effect of which I will briefly state. The first section gives the Governor General in Council exclusive authority to act in the administration of the property of whatever nature left by His late Majesty the King of Oudh in regard to the settlement

and satisfaction of claims against the estate of His late Majesty and to make distribution of the remaining property or the proceeds thereof in such manner as he deems fit among the family and dependents of His late Majesty; and it also provides that no act done by the Governor General in Council in connection with the administration of the property shall be liable to be questioned in any Court.

"The second section indemnifies the Agent to the Governor General (who, as I have already stated, is in possession of the property of His late Majesty in his house at Garden Reach at Calcutta) and all persons acting under his orders from liability in respect of all acts done by him or them since the 20th of September, the date of His Majesty's death, in connection with the preservation and administration of the estate of His late Majesty; and provides that no suit or other proceeding shall be instituted in any Court against him or them or against the Secretary of State for India in Council in respect of those acts or any of them.

"The third section is designed to prevent the possibility of any testamentary or other disposition of the estate made by His late Majesty from taking effect adversely to the administration of the estate by the Government, and to nullify any proceedings which may have been or may be instituted before any Civil Court for administering the estate, and it also provides that any person who under any probate, letters of administration or certificate or otherwise has received any portion of the estate of the King shall be bound to account for such property to the Government of India or to such officer as may be appointed in this behalf."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 6th October, 1887.

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

SIMLA;
The 29th September, 1887.

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