

[Mr. Das ; Maharajadhiraja Bahadur of Burdwan.]

proprietor, not a tenant. The Hon'ble Mr. Maddox in his letter No. A., dated the 6th April, 1909, in paper No. 2 regulating to this Bill says :—

'The *bajiaftidars* complain that they are by origin proprietors and not tenants. Historically this is true... The *bajiaftidars* are not therefore by origin at any rate tenants within the meaning of section 3 (3) of the Bengal Tenancy Act, because the person under whom they now hold does not own the *bajiafti* land.'

"But what status was given to this class in the settlement of 1899-1900 ?

Let me refer again to the Hon'ble Mr. Maddox. He says:

'In the settlement of 1899-1900 some of them have been recorded as tenure-holders and some as raiyats in accordance with the provisions of the Bengal Tenancy Act.\* The effect of this has been to reduce them to the position of tenure-holders and raiyats pure and simple, more especially as their assets have been distributed exactly in the same way as those of other tenants. They have thus suffered material injury in the following ways:—

'Zamindars are now treating them as ordinary tenants, forbidding their transfers or only permitting their transfers on receipt of *salami*, where they are classed as tenure-holders, their raiyats can apply for commutation of produce rents, though they themselves depend on produce for their living or for their worship or for their charities; where they are classed as raiyats, they are tied down by the provisions of section 48 and cannot get more than 25 per cent. from their under-raiyats, in excess of the low rents which they themselves pay, except by registered agreement, and then only 50 per cent. in excess; and where their lands are acquired by Government, zamindars are resisting their claims to a substantial share of the award.'

"These *bajiaftidars* are not by any means an insignificant class. They possess 21 per cent. of the total number of holdings, 17 per cent., that is  $\frac{1}{3}$  of the cultivated area, and pay  $9\frac{1}{2}$  per cent. of the assets. This is an instance of erroneous classification.

"I shall next refer to *nij-jote* or proprietor's private lands. The Hon'ble Mr. McPherson in his speech when referring the Bill to a Select Committee very lucidly explained that it was the object of the Bill to ear-mark proprietor's private lands and leave the remaining cultivated area as raiyati stock. In the former the raiyat cannot acquire right of occupancy, so long as they were let under a lease or year by year. In the latter the raiyat can always acquire a right of occupancy.

"It is admitted that during the Revenue Settlement under the Bengal Tenancy Act two words were used in recording the lands in actual possession of proprietors. These words were *nij-jote* and *nij-chas*. All lands in possession of tenure-holders were recorded as *nij-chas*. This was done because section 116 of the Bengal Tenancy Act speaks of only proprietor's private land, and not tenure-holder. The most curious thing in this connection is that section 116 of the Bengal Tenancy Act was not extended to Orissa till 1906, i.e., six years after the completion of the settlement. The law in force in Orissa was section 6 of Act X of 1859. That section protects the *nij-jote* lands of tenure-holders. That section says 'but this rule does not apply to *khamar*, *nij-jote* or *seer* belonging to the proprietor of the estate or tenure.'

"This distinction of *nij-jote* and *nij-chas* is arbitrary. The word *nij-chas* means lands cultivated by self, meaning the zamindar or tenure-holder himself.

"What they did in the Revenue Settlement of 1891-1900 was to record as *nij-jote* those lands which were recorded as such in the Revenue Settlement of 1838, and as *nij-chas* the remaining lands under the proprietor's actual cultivation.

"The total area recorded as *nij-jote* of proprietor's tenure-holders in 1838 was 88,700 acres."

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN, said :—

"May I rise to a point of order, Sir. The provisions of the Bill, I understand, are to be discussed later on, but Mr. Das is discussing them now."

\* The italics are the Hon'ble Mr. Das'.

[Mr. Das: the President.]

The Hon'ble Mr. Das said:—

"My object, Your Honour, is just to show that the Bill as it stands raises questions which defeat the very object which the Hon'ble Member says the Bill has to secure. If Your Honour will allow me a little more time, I will show that there is not time at the command of this Council to discuss this technical point of law which has been raised, and I shall show conclusively that if the Government wishes to make any concessions by passing the Bill as it stands, they will just do the reverse of what they intend to do, therefore my contention is that this Bill—there being no time at the command of this Council—should not be further considered in this Council."

The PRESIDENT said:—

"I have been waiting to try to grasp the relevance of the point which the Hon'ble Member has been discussing, and I have not so far been able to do so. On his explanation I am willing to allow him to proceed, but I must remind him that his line of argument is apparently based on the fact that this Council will not be able to discuss the Bill, as there is so much to be discussed, and the line of now examining in detail everything that has to be discussed in this Council will take up its time rather unnecessarily. I think it would be more to the point if the Hon'ble Member confines himself to showing why the Council will not be able to discuss the Bill without going into the merits of the clauses."

The Hon'ble Mr. Das said:—

"It will thus be seen that the proprietor and tenure-holder were unlawfully deprived of their *nij-jote* lands. The Hon'ble Mr. McPherson calls this a generous concession to the land-owners of Orissa. All that is proposed to be done is to change the word *nij-chas* to *nij-jote*.

"I have given two instances, and with Your Honour's permission I would like to show how large classes of people have been divested of their lawful rights by the erroneous procedure of the Settlement Departments, how what was meant to be record-of-rights has become in many cases record-of-wrongs.

"I appreciate the generous desire to arrive at *status quo ante*. This naturally leads to the question, does the Bill provide the proper remedy?

"Those responsible for the drafting of this Bill had most difficult work before them. My criticism of their work is not without an appreciation of their difficulties.

"I do not think in the whole history of this Council there has been a Bill so complicated in nature. The Bill tries to rectify mistakes done under a wrong Act. Where the original Act did not apply, it was an illegality; where it was applied by mistake, it was an irregularity. In some cases the errors arose from other causes. Sweeping denunciation of the whole work is not derirable or practicable. The work before us is to preserve the general result of the settlement, to make amends where injustice has been done, and to frame a self-contained Code for future guidance with the aid of experience in the past.

"Clause 163A of the Bill as altered by the Select Committee runs thus:—

'163A. (1) In temporarily-settled estates for which a record-of-rights has been prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, between the years 1891 and 1900 inclusive, and again between the years 1906 and 1912 inclusive, a proprietor's private land shall include—

- (a) land which has been recorded as *nij-jote* in the record-of-rights prepared between the years 1906 and 1912, and
- (b) land recorded as the *nij-chas* of a proprietor or sub-proprietor [other than a sub-proprietor referred to in sub-clause (i) of clause (22) of section 3] in the record-of-rights prepared between the years 1891 and 1900, which has again been recorded as his *nij-chas* in the record-of-rights prepared between the years 1906 and 1912.

[The President; Mr. Oldham; Mr. Das.]

(2) No land in a temporarily-settled estates which is not covered by sub-section (1) shall be held to be a proprietor's private land.

"With regard to these *nij-chas* lands the Hon'ble Mr. McPherson in his speech said, the chief value of the change in fact will be that it will remove a fertile cause of dispute and strife about the lands. So there is dispute which means that right of occupancy is claimed in these lands.

"Suppose this Act were passed to-day, it cannot retrospectively affect the right of occupancy acquired during the period of 21 years—the interval between 1891 and 1912. The revenue settlement show the lands as other than proprietor's private land. They are cultivated through raiyats. How can clause 163A extinguish the occupancy right acquired before the date when this Bill is passed into law?

'Every statute, it had been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed, must be presumed, out of respect to the Legislature to be intended not to have a retrospective operation'—*vide Maxwell on the Interpretation of Statutes, 4th edition, page 323.*

'No rule of construction is more firmly established than this—that a retrospective operations is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure'—*vide Hardcastle on Statutory Law, 3rd edition, page 353; see also Full Bench Decision, Jogadanund Singh versus Amrita Lal Sircar, dated 1895, and Reid versus Reid, Volume VI, Ruling Cases.*

The PRESIDENT said:—

"The Hon'ble Member is still discussing the provisions of the Bill. We are not here to discuss them now. I am still waiting for his argument as to why the Council should not proceed with the business. It is not quite proper to enter into a discussion of the merits of the Bill which is not now before it."

The Hon'ble MR. OLDHAM said:—

"I do not wish in any way to interrupt the Hon'ble Member. But I think, Sir, he raises a point of principle which at this stage is not permissible, and therefore he is out of order."

The PRESIDENT said:—

"I think the ruling which I have given will suffice. He is out of order in discussing the details of the Bill."

The Hon'ble MR. DAS said:—

"One of the principal objects of this Bill is to restore to certain people whose interests have been affected by the Settlement Department.

"If Your Honour wishes the people to understand that Government has most honorably come forward to restore to them what they had lost by the mistake of their officers, let us not proceed any further with this Bill. The people of Orissa will ever remain grateful to Your Honour for the intention which has now been put on record. How to give effect to that intention requires further deliberation, and a little more help of that contemptible class called lawyers than the Bill seems to have received. There is no time for that in this Council. Orissa will be more thankful to your Government for the intention than for the Bill enacted into law. The Government of the new Province will exactly understand the situation, and having more time at its command will give effect to the intention. If, on the other hand, it is the latent wish of Government to deprive permanently these men of their rights and give legislative sanction to what was done through ignorance and mistake, pass the Bill as it stands. I cannot believe that it is the intention of Government to give the zamindars and *baijafidars* some concession which the law"

[Mr. Oldham; the President; Mr. Das; Maharajadhiraja Bahadur of Burdwan.]

courts will subsequently pronounce as delusive. It is admitted that the interests of these classes have suffered. It is proposed to compensate them for the injury they have suffered. Let not the compensation be dubious in the least. Let it not be given in a form which will drive these men to litigation. Let it not be given in a form which will leave the ultimate decision to law courts. If the decision of courts be adverse, Orissa will lose all faith in the British Government, and Your Honour's name will be associated with the breach of faith by the British Government with a people whose ancestors invited the British to occupy the Province."

The Hon'ble Mr. OLDHAM said:—

"I rise to a point of order, Sir. I submit that the Hon'ble Member is still discussing a question of principle, which is not in order at this stage.

The PRESIDENT said:—

"I think the Hon'ble Member is now in order in arguing why the Bill should not be proceeded with."

The Hon'ble Mr. DAS said:—

"The other matter to which I beg to refer is that there is in the Bill a most contentious matter, that is the maintenance of land records, and that is a thing which is opposed by everybody. In fact the District Judge opposes it. We wanted to have before the Select Committee a letter which had been written by the Divisional Commissioners on the subject, but we had not the advantage of seeing that letter. This work has been carried on for some time in Orissa. I do not understand why Orissa should have been selected as the field of experiment.

✓ "The Hon'ble Mr. McPherson hopes that this Bill should form the parting gift from Bengal. Bengal cannot give what she has not; there are many provisions in the Bill which Bengal has not been burdened with. The provision about communal land, the transfer of right of occupancy, the provisions about reclaimed waste land and the maintenance of land records, these the most contentious portions of the Bill do not exist in Bengal. It is not correct to say that it would be a parting gift from Bengal. Bengal cannot give what it has not. It might be a parting gift from the old Bengal Government.

"The people have always enjoyed the reputation of being peaceful and peace-loving. Orissa is called the holy land of India. Though situated within a few hours journey from Bengal, there was no sedition in Orissa. There never has been any agrarian disturbance like those in other parts of the country under this Government. No commission was ever appointed to inquire into the strained relation between zemindars and raiyats. There is one Sessions and District Judge in the whole Province, and only one Sub-Judge. What have we done that before handing us over to the new Government it is the intention of this Government to give us the worst character. In the *Mahabharat* there is a transfiguration of Krishna. He appeared once transfigured. It was a monstrous figure, standing on three legs and holding the Sudarsan Chakra, the emblem of Almighty destructive power in the right hand. Of the three legs, one was of a tiger, the second of a horse and the third of an elephant. The tail was the expanded hood of a cobra. A lion's body and peacocks neck completed the figure.

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN said:—

"May I say that Hon'ble Mr. Das should not discuss religious matters here."



[*The President; Mr. Das; Raja Rajendra Narayan Bhanja Deo.*]

The **PRESIDENT** said:—

“He is only citing this by way of illustration.”

The Hon'ble **MR. DAS** said:—

“It was the combination of all destructive powers available in creation with an attractive front as the peacock's neck has. That is the character of this Bill. Of the destructive power of the Bengal Government, Orissa need not be reminded. The famine of 1866 and the floods which followed it carrying away more than a million people need not be supplemented by additional proofs of the power of Government. Why then this combination of all that is oppressive in Bombay, Madras, Chota Nagpur, Bengal and East Bengal. The Bill combines all these. Is Orissa a land where the worst characters of all parts of India find refuge.

“If this Bill is passed Your Honour will hand us over to the new Government as the worst portion of the people under Your Honour's Government. I believe this Government has done enough injustice to Orissa. How we shall fare under the new Government is yet unknown, but we believe that His Majesty's wishes and object in placing us under the new Government is to secure to Orissa a greater share of Government attention. But when making over Orissa, Your Honour makes over also an Act more stringent in its provision than are to be found in any other part of the country under your Government; the natural inference of the new Government will be that Orissa contained most turbulent people in the new Province.

“I beg to draw the attention of the Hon'ble Member in charge of the Bill and Your Honour to the principle which was enunciated by the Hon'ble Mr. Greer at the last meeting of this Council, that it would not be proper for this Council to discuss the Budget because there are members here who will shortly have nothing to do with Bihar and Orissa, and they have no right to discuss the income and expenditure, of these places. On the contrary if Bengal has no right to discuss their income and expenditure, so also they have no right to legislate about the destinies of millions of people just before handing them over to the new Province. With these remarks, Sir, I beg to move that the further consideration of the Bill be postponed.”

The Hon'ble **RAJA RAJENDRA NARAYAN BHANJA DEO** said:—

“With your permission, Sir, I beg to support the motion proposed by the Hon'ble Mr. Das. In doing so I have no intention of going into the details of the Bill. I support the motion on general grounds.

“On the 9th January I moved the motion that stood in the name of the Hon'ble Mr. Das to stay all further proceedings in connection with this Bill. Your Honour was pleased to say that it would be open to me to get the Bill postponed or take any other steps after the Select Committee submitted their report, and accordingly I withdrew the motion.

“The present Bill is practically a reproduction of the Bengal Tenancy Act of 1885. A few sections have been altered to suit the conditions of Orissa. It retains most of the sections of the Bengal Tenancy Act; many of these were unsuitable, and therefore were not extended to Orissa. The Bill adopts some provisions from the Chota Nagpur and the East Bengal Tenancy Acts.

“In some matters in regard to which no legislation has yet been thought necessary in Bengal, East Bengal or Chota Nagpur, it is proposed to legislate for Orissa on principles adopted in the Bombay and the Madras Presidencies. In regard to other matters in the Bill, the principles followed could not be found anywhere in India.

“The result is that the Bill retains most of the sections of the Bengal Tenancy Act which are disadvantageous to the landlords, and provides a few more which are intended to curtail their existing rights.

[*Raja Rajendra Narayan Bhanja Deo.*]

"The Hon'ble Member in charge of the Bill justly observed the other day that 'although power was reserved in the Bengal Tenancy Act to extend its provisions to Orissa, the needs of Bihar and Lower Bengal were alone considered in framing that Act. The peculiar condition of Orissa was not taken into consideration.' In spite of this remark most of the sections which are unsuited to Orissa are embodied in the Bill. The Hon'ble Member in charge gives the following reason :—

'I take it for granted that I am generally precluded from discussing the sections of the Bengal Tenancy Act which have been embodied unaltered in the present Bill, though in my opinion they may be open to objection and call for amendments on general grounds. It would arouse opposition and delay passing of the measure if they are brought to the front at present. The preferable course is to let these common sections pass unchallenged, and to consider later whether the amendment of the Bengal Tenancy Act, the Chota Nagpur Tenancy Act and the Orissa Tenancy Act (when passed), in any particulars that are common to them, is desirable.'

"I do not see the force of this argument, when after experiences of more than a century the present Government have found that special legislation is required for Orissa, why such special legislation should not be made, and why the objectionable sections of the Bengal Tenancy Act preserved? In the words of the Hon'ble Member this is done only to prevent delay. Yet, when introducing the Bill, the Hon'ble Member in charge said, that 'in deciding to take up the Bill in the present Session, Government has no desire to rush the Council.' Here we have a Bill. It is admitted it contains portions of the Bengal Tenancy Act which demand alteration; but they have been adopted in their present state and why? Because there is not enough time to discuss how far and why they should be altered. This alone is a sufficient reason why this Council should not proceed any further with this Bill. Orissa can very reasonably and pertinently demand an agrarian Code to suit her peculiar conditions, and not a Code made up of provisions borrowed from different parts of India. But the Bill is of the latter description.

"Legislation should be made to suit the conditions of the locality and to preserve all rights and interests of the people, and not that the conditions of such locality be disturbed and made to adapt themselves to a piece of legislation foreign to the locality. The duty of a Legislature should be to make laws for men as they are, and not to make men for laws as they exist in other parts. To be short, laws should be made for men, and not men for laws.

"From the above facts and many others we fear that it is the intention of the Government to rush the Bill through before Orissa is placed under the new Government. I do not consider it is doing justice to Orissa for the present Government to hurry through this piece of legislation of such vital importance against the wishes of the people and their representatives who voice them here. The people of Orissa will feel it more keenly as, after the announcement of His Imperial Majesty at Delhi, separating them from Bengal, they naturally expect that their interests will be more carefully considered under the new Government.

"The newly nominated member from Orissa in this Council questioned the correctness of my information that the people of Orissa were opposed to have this Bill dealt with by the present Council. I anticipated such remark from the Hon'ble Member. Since then I have reasons to believe the wish of the people on this matter has been communicated to Government by Associations. The two Hon'ble Members who represent the Muhammadan community of Orissa will, I hope, agree with me that the Bill should be postponed.

"It has been said that there are in this Council zamindars who have interests in Orissa, and this is shown as a reason that the Bill ought to be passed in this Council. To this all I can say is that legislation should be on territorial and not on personal grounds. In the present case the claim on personal ground has received due attention in the constitution of the Select Committee, and the work of the Select Committee will receive its due weight when the question is

[Maharajadhiraja Bahadur of Burdwan.]

taken up by the new Government. No doubt their interests in Orissa will be safeguarded by their representatives in the other Council, and it will be open to the other Government to take in any gentleman whose advice they will consider helpful to the passing of this Act.

"There may be a few, non official members who will still advocate passing the Bill in this Council, and the non-official opinion may not be unanimous. But we are on the eve of an administrative dissolution. Unanimity in this Council has lost its weight. The principle which ought to guide Your Honour's Government at this critical time was enunciated the other day in the Hon'ble Mr. Greer's announcements about the budget estimate for 1912-13. The principle applies with greater force in the matter of this Bill. The budget estimate covers the income and expenditure of one year, the Bill before this Council involves the destiny of millions of people extending over at least many years. The budget estimate controls the power of Government over funds at the disposal of Government; the Bill deals with rights belonging to the people.

"Apart from all other considerations, the legal difficulties raised by the Hon'ble Mr. Das are sufficient grounds to postpone this Bill, so that these difficulties will receive proper attention in future. With these remarks I beg to support the motion put by the Hon'ble Mr. Das.

The Hon'ble **SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN** said:—

"I am sorry to have to oppose this motion, and I shall state my reasons very clearly in doing so. In the first place however I must say that I am more disappointed with the Hon'ble Mr. Das's speech than I thought I would be before he spoke. The Hon'ble Mr. Das has brought in *Belati panis* and all sorts of other things. I do not think my Bihar friends would object to *Belati pani* as much as they would terms like *channamaas*, *bajiafidars*, *sarbushkars*, *shikmi kharidadar*, *kharida jamabandidar*, etc. Probably this would be more *Belati pani* to them than the *Belati pani* the Hon'ble Mr. Das spoke of. What I wish to point out in this connection is that one of the arguments the Hon'ble Mr. Das advanced was that Orissa being temporarily settled, this Bill should not be taken up in this Council. Now if I had known that Bihar was also temporarily-settled, I could have followed his line of argument; but like Bengal, Bihar is also permanently-settled, therefore that ground falls through. Then again he has said that because the budget cannot be discussed for reasons very clearly stated by the Hon'ble Mr. Greer, we should not pass this Bill. But, I think, Sir, that this argument is very irrelevant like most of the things the Hon'ble Mr. Das has said to-day. The Hon'ble the Raja of Kanika has remarked, and I am surprised at his remark, that personal rather than territorial interests were represented on the Select Committee, and argued that the Hon'ble Maharaj Kumar Hrishikesh Laha and myself were put in there only to safeguard personal interests, but we being territorial magnates as well, it cannot be said that territorial interests were not represented, and therefore I do not see how the question of territorial and personal interests comes in.

"I should like to mention one other point. If I knew that the vested interests of Bihar were in any way going to suffer by this Bill being passed now, I for one should certainly have moved that this Bill should be postponed till the new Council of Bihar came in. We find that no vested interests of Bihar will suffer. On the other hand, this agrarian Code belongs to a part of the new Province which will be self-contained. The Uriyas certainly may get one or more representatives upon the new Council, but I do not think that this is a sufficient ground for delaying the passing of this Bill now. Moreover, if the Maharaj Kumar Hrishikesh Laha and myself were put in to protect personal interests, there were on the Select Committee the Raja of Kanika, the Hon'ble Mr. Das, and the Hon'ble Babu Janaki Nath Bose, and Government officials who have had personal experience of the working of the agrarian

[*Mr. Maddox; Maharaj-Kumar Gopal Saran Narayan Singh; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

Code in Orissa, and in my opinion are most fitted to be on the Select Committee, and that in itself is another ground on which we should take advantage of their experience in Orissa in passing this Bill here.

"Of course, Sir, we have heard the song of the dying swan about Orissa being maltreated by Government and the request that we should not put an extra burden on it just when it was going to be put under a new régime.

"While I certainly wish my Oriya friends success in the new Province, I do not think that it is fair either to the Government or the people in this Province, who have been excellent friends in the past, to make such an assertion. I am sorry that the Hon'ble Mr. Das's motion, and particularly his arguments, are so frivolous and I think that if the Council be seriously minded, it should throw it out at once."

The Hon'ble MR. MADDON said:—

"Sir, I wish to oppose the motion. The attack, if I may call it, of the hon'ble Mr. Das affects me in three ways, as Settlement Officer and as the drafter of the original Bill which was considered and so much improved by the Select Committee; and also as a Member of the Select Committee. I would ask the Council, if they would take it from the Hon'ble Mr. Das that injustice had been done at the time of settlement, considering that all the Hon'ble Mr. Das' evidence had been taken from my reports, to accept my opinion that the Bill, as at present framed, remedies these defects and sets right these injustices.

"There is only one other point which I should like to mention. There is no rushing through of this measure. Since November 1908, all these matters have been carefully considered by the people of Orissa and by officers who have discussed these matters with them in Orissa, and this is nearly a period of 3½ years."

The Hon'ble MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH said:—

"Your Honour, I desire to support my hon'ble friend Mr. Das's proposition that the Report of the Select Committee be not considered by this Council. We are on the eve of the dissolution of this Council. His Imperial Majesty has accorded to Bihar and Orissa a separate Government. In the new Government the claims both of Bihar and Orissa will have a larger chance and a greater scope than, while we continue to be tied up to, our powerful neighbours of Bengal. In all human probability our countrymen of Orissa will be better represented in the Council of the new province than they are here. Why, then, not let the new Council take up this question? It has been pointed out on the Government side that official experience of Orissa happens to be very well represented in this Council. Be it so. But legislation of this order cannot be safely undertaken without a strong tinge of the non-official element also. And the non-official element cannot be said to be well represented either in this Council or in the Select Committee, as is pointed out by the Hon'ble Mr. Das in his Note of Dissent, of which he has supplied us with a private copy.

"Lastly, it has not been made out that there is any great urgency in this measure. Nothing very reprehensible could happen if this measure is not passed this time but is taken up, say, a year from now. For these reasons I beg to support the motion of my hon'ble friend that the Report of the Select Committee be not considered by the Council."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Your Honour, on the 9th January last, when the constitution of the Select Committee was taken up by Your Honour for consideration, the Hon'ble Raja Rajendra Narain Bhanj Deo moved the motion which originally stood in the name of the Hon'ble Mr. M. S. Das, and I had the good luck of supporting that motion. My chief reason for supporting that motion was that, after the announcement made by His Imperial Majesty the King-Emperor at Delhi that Orissa will form part of the new Province of Bihar and Chota Nagpur and that the new Province will be created very shortly, if the consideration of the Bill



[*Khan Bahadur Maulvi Sarfaraz Hussain Khan; Babu Janaki Nath Bose.*]

be postponed till after the creation of the new Province to be considered by the new Legislative Council of Bihar, it would be very satisfactory. Your Honour suggested a very good and conciliatory scheme to let the Report of the Select Committee come forward before this Council, and if, at that time, any members should think that it is not satisfactory the members of the Council will then be at liberty to move for the postponement of the consideration of this Bill by this Council. Of course, I have not had the opportunity of examining what changes have been made by the Select Committee; nor am I personally aware what discussions took place in the Select Committee, and how far the changes made by the Select Committee are satisfactory, but what I have heard to-day from the Hon'ble Mr. Das shows that the people of Orissa are not satisfied with the Report of the Select Committee, and therefore they want further time to consider the provisions of the Bill in the new Council. Whatever defects may be in the existing law by which Orissa is at present administered so far as the landlords and tenants are concerned, if the same defective law be made applicable to it for a few months more, there would not be much harm done, and there is no reason why this Bill should be taken up in a hurry, and should be passed into law. With these few words, I beg to support the motion of the hon'ble Mr. Das."

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN said:—

"Your Honour, before coming to the Council and after reading the Hon'ble Mr. Das's Note of Dissent, I thought I would support his motion. But after having heard his arguments as well as the arguments advanced by other Hon'ble Members, I do not at all feel convinced that this Council is not competent to pass this Bill. I do not also think that Orissa will fair better than it is now, if the Bill is taken up for consideration in the new Council. I do not quite follow the reasons advanced in favour of postponing the passing of this measure. I am sorry therefore that I cannot support the Hon'ble Mr. Das's motion. If I support it at all, it would be upon grounds of sentiment as a Bihari which I do not wish to do. For these reasons, Your Honour, I oppose this motion."

The Hon'ble BABU JANAKI NATH BOSE said:—

"Mr. President—I very much regret that I cannot support the motion of my hon'ble friend Mr. Das. I have listened to his speech very attentively, and to the speeches that were delivered in support of his motion, but I cannot find any reason whatsoever as to why this Council is not in a position to deal with this measure effectively. It will not serve any useful purpose now for me to answer the questions of law raised by my friend, but it will suffice for me to say that this motion of the hon'ble Mr. Das does not seem to be in consonance with the feelings or convictions of the people of Orissa. Up to this moment, I have only heard that a telegram has been received from the Orissa Landholders' Association asking this Council not to proceed further with this Bill, but there are other Associations in the Province and we do not find any representation to that effect from any of them, and there are people in Orissa who can hold public meetings and mass meetings if necessity arises, but no such meeting has been held up to this moment to give expression to their feelings, that this Council will be unable to do justice to this measure."

"Assuming for the sake of argument that my friend's contention is right, that the settlement records prepared in 1898 and 1899 were not quite accurate and that some of the entries might have interfered with the vested rights of landlords and tenants, we ought to see whether this Council can do anything to right the wrongs, if I may say so, or put the law on a sound basis. To my mind it has always seemed that the gentlemen who were connected with the settlement of Orissa and who had to work up the agrarian law in that Province, are the best fitted to right the wrongs and to place the statutory law on a safe and sound basis. Your Honour knows very well Act X of 1859 was the law of Orissa from the year 1859. For over 50 years it has been the rent law of Orissa. The subsequent introductions of the Bengal Tenancy Act made the rent law of Orissa somewhat

[Babu Mahendra Nath Ray.]

anomalous and uncertain. This working of two statutes side by side might have given rise to anomalies and some cause of complaint, and the responsible officers of the Government of Bengal also thought it best to remove these anomalies and uncertainties; and after years of deliberation in which the public was taken into confidence, we have got a decent piece of legislation with which I think this Council will deal, not hurriedly but will take time and properly discuss the questions that will be raised by my hon'ble friend. I do not see the slightest advantage in this Bill going before the Council of Bihar, because Your Honour knows that this Bill will then be before legislators who will be for some time to come quite unacquainted with the land-tenures of that province, and the special interests of the people of Orissa. My friend's contention is that the people who are best fitted to deal with this measure should be deprived of the power of doing that, but that the Bill should have a chance of going before people who perhaps are not acquainted or will not be soon acquainted with the essential features of land tenures, and who will not feel so much sympathy with the people of this province as this Council would naturally feel.

"I am really sorry, Sir, that a remark which was unfortunately made by the Raja of Kanika at the meeting of the 9th January has been repeated. He said that the Government of Bengal was guilty of injustice to the people of Orissa. Of course, my friend the Raja of Kanika is a young man, and I did not think it worth my while to answer his accusation; but I do not think that I shall allow this opportunity to pass without entering my solemn protest against an accusation like this.

"On the other hand, I have been in the province for about a quarter of a century, and I have seen that Orissa has all along been treated like a pet child. The return that child now gives is to accuse this Government of gross injustice. Your Honour, I think that the people of Orissa do not want that this Bill should be dealt with by another Council. I do not see any advantage in postponing the discussion of this Bill by this Council, and I do not think that this Council will rush this Bill through without proper deliberation. From the experience I have had of the Select Committee, I am convinced that matters brought before the Committee were properly discussed, and representations made by the members of the Committee were given proper attention to. Therefore I am very sorry to oppose this motion of the Hon'ble Mr. Das."

The Hon'ble BABU MAHENDRA NATH RAY said :—

"Sir, I am sorry I cannot support the motion of the Hon'ble Mr. Das to the effect that this Council should not take up the consideration of this Bill. I speak from my experience as one who has to deal with rent law cases of Orissa that the present condition of the rent law in that part of the country is extremely unsatisfactory. I agree with the last speaker (the Hon'ble Babu Janaki Nath Bose) that the working side by side of the old rent law (Act X of 1859) with portions of the Bengal Tenancy Act extended to that Division from time to time—not to the whole Division but to some of the districts—has left the law relating to landlords and tenants in such a unsatisfactory state, that sooner the uncertainties are removed, the better. I believe the Hon'ble Mr. Das cannot gainsay the position that it is necessary that the agrarian law should be put upon a better footing; and the question is whether that is to be done by the present Council or by the new Council of Bihar and Orissa. I do not see, Sir, why the accumulated experience and the wisdom of a number of members of this Council beginning from you, Sir, should be lost in the matter of the revision of the Rent Law applicable to Orissa; nor do I see why the large mass of materials which has now been collected and which is available for the purpose of giving a good Rent Law to Orissa should be altogether lost. There is no doubt that the adequate consideration of the measure will require time, and I do not know how long we are destined to exist here or when we should be extinguished, but that is a matter which, I suppose, is not known to many of us here. Assuming that we have still a month's time to live—a month's time I should consider would be sufficient to enable us to see whether the recommendations made by the Select Committee should be allowed to stand as

[Mr. H. McPherson.]

they are or adopted with proper modifications. It will then be time for the Hon'ble Mr. Das to bring in his objections about *nij-jote* and *nij-chas*—a very delicate distinction which I was trying to follow with all the power that I could command. It would then be for the Hon'ble Mr. Das to see whether the position of the *bajastidars* may be improved or not. But all this is no reason why so much experience and so much material should be thrown away in order that the Council of the new Province may begin with the solution of very difficult questions—a solution which is urgent in view of the very unsatisfactory condition of the rent law that prevails in Orissa. With these few words, I beg to oppose the motion of the Hon'ble Mr. Das.

The Hon'BLE MR. MCPHERSON said :—

“Sir, I oppose the motion which has been proposed by the Hon'ble Mr. Das. I should like to explain briefly the point of view of Government with regard to it. In my speech of 9th January I explained to the Council why it had been decided then to proceed with the Orissa Tenancy Bill in the present session. I pointed out that the Bill was the fruit of many long years of consideration and that the present Council has exceptional advantages in dealing with it, because it includes in its midst an extraordinarily large number of members—official and non-official—who are intimately acquainted with Orissa or have special interests in Orissa. If the Bill be passed in the present session, it will have the benefit of their assistance and advice. If it be postponed, it will, to a very great extent, be robbed of this advantage. I also pointed out that the tenancy law of Orissa has been before the public of Orissa for the last six years—ever since, in fact, the Revision Settlement was started—that an influential local committee was consulted in 1909 by the Hon'ble Mr. Maddox before the Bill was drafted, and that since its publication, in July of last year, it has been circulated for opinion to local officers and local bodies. The Bill was thoroughly considered by them and has, indeed, been the chief subject of conversation in Orissa since its publication. We have had valuable opinions and suggestions from all these local officers and local bodies, and we have given them most patient consideration in Select Committee for the last six weeks. The Bill is now ripe for consideration in Council, and it seems to me to be pure procrastination to suggest that the proceedings shall be stopped at the present stage and the Bill be handed over for disposal to the Legislature of the new province.

“There can be no reasonable doubt that, had there been no administrative changes announced in December last, the Bill would have been taken up in the ordinary course of business during the present session, would have been passed by the present Council, and would have been welcomed by all classes of the Uriya community. What magic is there in the Delhi announcements that appeals to the supporters of this motion? If the Bill be postponed on their account, we stand to gain nothing and to lose much. We lose the advice and assistance of many who know Orissa well, and the result is the postponement for one or two years of a much-needed legislative measure which is on the very threshold of completion. The administrators of the new province have before them the stupendous task of organizing the new administration. We shall cast an intolerable burden on them if we leave this legislation to them. It is no question of a few months more or even of a year more. There will be inevitable delays on account of references to the superior powers, re-introduction of the Bill, republication for public criticism, fresh consideration in Select Committee, and it is safe to prophesy that at least two more years will pass before Orissa gets the Tenancy Code of which it stands so much in need. Meanwhile the present settlement staff, whose services are required to give effect to certain provisions of the Bill, will be disbanded. It will be necessary in particular to reconsider the privileged land provisions of the Bill, because we shall be unable to act without inquiry on a record that is two to five years old. The detailed inquiries into the facts of possession which I deprecated in my speech of 9th January will be unavoidable, will necessitate the employment of a special staff, and will stir up a lot of strife and dispute which it was the object of clause 163, as amended, to avoid.

[Mr. Das.]

"It may be admitted that if the Bill is left over for the new Council, the new Council will have more time for its consideration. It may take five years or even ten years over it. But what I ask is, can the people of Orissa afford to wait longer for this legislation. They are crying out for the adjustment of their tenancy laws, and it will be a real misfortune to them if they are kept waiting longer.

"I must confess that I am puzzled to understand the attitude of mind of the Hon'ble Member who has proposed this motion. We have been told by him, in season and out of season, that Orissa is a distressed and afflicted country, which has never been treated fairly by British administrators. One of its chief troubles, we are told, is that in tenancy matters it has been coupled up with Bengal to its grievous disadvantage. Although we may not subscribe to the dark and gloomy pictures that have been drawn of Orissa's past history by the Hon'ble Member, and although we claim some credit to British administration for its splendid achievements in Orissa, for the peace and order which were evolved after the dark days of Mahratta misrule, for the careful administration of its revenue and civil law by a succession of distinguished Collectors and Judges, for the care and industry with which its land records have been prepared, for its canals and its embankments, its roads and its railways, and the general diffusion of prosperity that has followed in the wake of these great public works, we do admit that some confusion has resulted in the tenancy law of Orissa from the joint application to it of Act X of 1859 and portions of the Bengal Tenancy Act. We have made an honest attempt to remove this confusion and to clear up various points of difficulty and dispute that have arisen between landlord and tenant. We believe that we have the sympathy of the great mass of the population—landlords and tenants alike—in carrying through this proposed legislation, and we fail to understand why this beneficent work should be stigmatized by the Hon'ble Member as an additional grievance. In whose interest, I would ask him, is this delay proposed? If he professes to speak for the landlords of Orissa, I can only say that I have come in contact with many of them, and that all have assured me of their desire to see a self-contained Tenancy Code provided for Orissa with the least possible delay. There may be a section of the landlords who have been made acquainted with the proceedings of the Select Committee and fancy that they may fare better if the Bill be reconsidered in the new Legislature. They remind me of litigants who apply to the High Court for transfer of their cases, when the evidence has been recorded, the arguments of counsel have been heard, and fear is entertained that judgment will be unfavourable.

"If it is on behalf of the raiyats that the Hon'ble Mover professes to speak, I claim to know at least as much as he does regarding the wants and requirements of the Orissa raiyats. The revision operations of the last six years have brought its officers into close contact with all the agricultural classes, and the Council may rest assured that the interests of the cultivators of the soil have not been overlooked.

"For these reasons and for those that have been advanced by my hon'ble colleagues on the Council, I oppose the motion for postponement and strongly recommend that the Council take the Report of the Select Committee and the Bill as amended into consideration at the next meeting of the Council."

The HON'BLE MR. DAS said:—

"Your Honour, the speeches that have been made by those gentlemen who have opposed my motion, had been apparently made on a supposition that I was opposed to have an agrarian Code, a self-contained law, containing all that is necessary to govern the relations between the different classes having interest in land. I am not at all opposed to it. All that I say is that the interests are of such a nature, and owing to there being these anomalies as regards the application of the different Acts in the province, there have been so many difficult questions to be solved, that it is not possible for this Council, unless this Council's lease of life has been extended by anything which is not known to the public, to do justice to this question. The



[Mr. Das]

Hon'ble Mr. Maddox has said that he has brought to the notice of the public certain irregularities which were made. No doubt he has done that. I certainly admire the Hon'ble Member's straightforwardness in doing that, and not only that but also his solicitude that some compensation should be made to those whose interests have been affected by the mistakes of the Settlement Department is worthy of anybody's admiration; but then, Sir, the man who makes a mistake is no doubt the person who can tell us as to where the mistake has been made, and no doubt his suggestions as regards how the mistake can be remedied are valuable, but the question, when he becomes the sole arbiter of the situation assumes a dubious form. I really admire the Hon'ble Mr. Maddox coming forward boldly and saying that these people should be compensated, just as I would admire the courage of a doctor, who had been operating by mistake in such a way as to injure a vital part, to say that he had made a mistake, but while certainly I would follow his advice: I would say, 'I will not allow you to be the arbiter of the situation; it is much better that your work should be judged by others.' A good deal has been said that the volume of work, which has been gained by the application and labour of men who have known Orissa so well, should not be thrown away. I am sure none of it will be thrown away. They have all been put on record, and consequently they will pass on to the next Government. That is altogether an erroneous argument.

"Another objection is that this Council has Hon'ble Members who are so well acquainted with Orissa, and the next Council might not have men who are likely to possess the same knowledge about the affairs of Orissa. That may be so, but the administration of Orissa is about to be made over to a new Government. It is not known what policy that Government would adopt with regard to the administration of Orissa. Are we not sitting here actually to decide what policy that Government should adopt when we undertake to legislate a measure which affects the interests of millions of people—a most important measure regarding an agrarian population of millions. How should we know that that Government would actually like the idea of importing legislative enactments which are not to be found anywhere in the neighbourhood, but are to be found in Madras, Bombay and in the theories of those gentlemen who have been drafting this Bill."

"Then the Hon'ble Member in charge of the Bill has spoken for the raiyats. I can very well understand that. When a raiyat has been making his *salam* to a Settlement Officer in the mufassal, and when the raiyat found that the Settlement Officer deprived another of his rights, and made it over to him, he would naturally show confidence in the Settlement Officer. Of course, if the Settlement Officers admit that they have done irregularities, it is no wonder that they would please some people. The Hon'ble Member in charge has claimed to be the raiyat's friend. This claim is put forward by an official. But I suppose the poor raiyat knows the real sympathy of the official when he remembers the official treatment he gets in times of famine and floods.

"Then, Sir, it has been said that the Government of Bengal has treated Orissa like a pet child, and therefore we expect the best things from this Government. I do not know whether this is the theory which the Government of Bengal entertains. That theory has not been entertained by His Gracious Majesty. If His Gracious Majesty thought that the Bengal Government had treated Orissa as a pet child, certainly this administrative change would not have been brought about. Let me state to Your Honour that when the Bengal Tenancy Act was passed, though it was contemplated that this would be introduced into Orissa at some future date, no man from Orissa was allowed a seat in this Council.

"I may also remind the Council that all Acts that have been passed in this Council with regard to Orissa have been passed without anybody representing Orissa on this Council.

"The Bengal Tenancy Act was amended on two or three occasions for the purpose of carrying out the revenue settlement in Orissa; there was no seat

[*Mr. Das.*]

allowed to a member from Orissa. I know for certain that even on that occasion nobody was appointed to this Council by nomination. The only instance when there has been a nomination to this Council is the present one, when Government thought it fit to bring in by nomination the public prosecutor of the land, to prosecute a people give them a bad name and a bad law, just before handing them over to the new Government with a bad character.

"I do not know exactly what time this Council has at its command for passing this Bill. Certainly, I should have been the last person to object to this Bill being considered in this Council, if I knew that the time at its command was sufficient for the purpose. Of course, Your Honour knows best. If I were allowed to discuss the principles of this Bill, I could point out to Your Honour that there were mistakes even in the definition. If all that is to be gone through, either the Council must be rushed or attention cannot be paid to what are called 'legal objections' raised by the contemptible class called lawyers. If we do not pay attention to the suggestions of that contemptible class, the result will be whatever may be the intentions of Government, the law courts will not look to the intention of the Government, and the Government might find that after all its intentions have not been given effect to, —then there will be necessity of legislating again; and that is the danger ahead of us. I do not think that I should take up Your Honour's time any more, but I submit respectfully that if the people of Orissa understood what is good for them, if the people knew what their rights were, then certainly these mistakes which were done by the Settlement Department—unsettlements made by settlement—should not have been allowed. The question is, do the intelligent people,—do the people who understand the provisions of the enactments, do the people who appreciate the Hon'ble Mr. McPherson's generous concessions,—do these people bearing in mind the concessions which Government intends to make,—do these people think, after they have read the Bill and the form in which it is proposed to be passed, that this law should be the best suited for their purposes. I should like to know what lawyers have been consulted on this point. Certainly in a legislation of this kind lawyers must have a voice. I was going to discuss certain things and to point out that these provisions will never do, but of course Your Honour ruled that I was going beside the point. It was not therefore possible for me to show how the irregularities and the mistakes which are to be found in the Bill have been remedied."

"The Hon'ble Babu Mahendra Nath Ray said that he found that there were anomalies, and he said that he had special acquaintance with the Tenancy Act. Of course I do not know the nature and the extent of his experience, but I found that he was arguing certain points which were perhaps new to him, as the Hon'ble Maharajahdiraja Bahadur of Burdwan said certain words in the Bill would be strange to the Bihar gentlemen in the new Council. They may be so. The whole administration of Orissa will be strange to the new Council. But this is not for us to decide. I believe that at least we will have this advantage, that the new Government will look at it from an outsider's point of view and judge the work of the Settlement Officer as an outsider would do, and not be influenced by such opinions as have been put forward by people who are responsible no doubt for the mischief done, and who now say that the mischief is to be corrected in this way.

"With these few remarks, Sir, I beg to put the motion to the vote."

A division was then taken, with the following result:—

<i>Ayes—9.</i>	<i>Noes—31.</i>
The Hon'ble Maharaj-Kumar Gopal Saran Nrarayan Singh.	The Hon'ble Raja Kisori Lal Goswami.
" Raja Rajendra Natayan Bhanja Deo.	" M. R. T. Greer.
" Mr. Golam Hossein Cassim Ariff	" Mr. D. J. Macpherson.
" Dr. Abdullah-al Mamun Subrwardy	" Mr. C. J. Stevenson-Moore.
" Mr Saiyid Wasi Ahmad.	" Mr. E. P. Chapman
	" Mr. R. K. Finnimore.
	" Mr. C. A. White.

*The President.]*

The Hon'ble Maulvi Saiyid Muhammad Fakhrud-din.	The Hon'ble Mr. J. H. Kerr.
„ Mr. K. B. Dutt.	„ Mr H. L. Stephenson
„ Rai Sheo Shankar Sahay Bahadur	„ Mr S L. Maddox
„ Mr. M. S. Das.	„ Mr B C. Mitra.
	„ Mr. S. W. Kuchler
	„ Mr L. F. Morehead.
	„ Sir Frederick Loch Halliday.
	„ Mr. J. G. Cumming.
	„ Mr. C. E. A. W. Oldham
	„ Mr. H. McPherson.
	„ Maharaja Bahadur Sir Prodyot Kumar Tagore.
	„ Sir Frederick George Dumayne.
	„ Babu Bhupendra Nath Basu.
	„ Babu Janaki Nath Basu.
	„ Sir Bijay Chand Mahtab Maharajadhiraja Bahadur of Burdwan.
	„ Maharaja Manindra Chandra Nandi
	„ Mr. J. G. Apear.
	„ Mr Norman McLeod.
	„ Mr. F. H. Stewart.
	„ Mr. W. J. Bradshaw.
	„ Babu Hrisni Kesh Laha
	„ Maulvi Saiyid Zahir-ud-din.
	„ Babu Mahendra Nath Ray.
	„ Khan Bahadur Maulvi Sarfaraz Hossain Khan.

The following members were absent:—

The Hon'ble Mr. F. A. Slacke.

- „ E. W. Collin
- „ Mr. J. H. E. Garrett
- „ Kumar Sheo Nandan Prosad Singh
- „ Rai Sitanath Ray Bahadur
- „ Lieut.-Col. G. Grant Gordon
- „ Babu Kirtanand Sinha
- „ Babu Deba Prasad Sarbadhikari.
- „ Mr. D. J. Reid.
- „ Rai Baikuntha Nath Sen Bahadur
- „ Babu Braja Kishor Prasad.
- „ Mr Dip Narayan Singh.
- „ Babu Bal Krishna Sahay.

The result of the division was, ayes 9, noes 31, and the motion was therefore lost.

The PRESIDENT said:—

“Under rule 22 (1) of the rules for the conduct of legislative business the period of notice for amendments in the case of the Orissa Tenancy Bill which will be taken up at the next meeting of Council will be seven days. Amendments on this Bill should, therefore, reach the Secretary to the Council not later than 11 A.M. on the 13th March.”

[*Mr. Cumming.*]

**THE BENGAL MINING SETTLEMENTS BILL, 1911.**

The Hon'ble Mr. Cumming presented the Report of the Select Committee on the Bill to provide for the sanitation of Mining Settlements in Bengal.

He said :—

"SIR, I beg leave to present the report of the Select Committee on the Bengal Mining Settlements Bill. In doing so, I should like to recall to Hon'ble Members the peculiar circumstances which gave rise to the legislation. The Bill is primarily in the interests of the labouring classes at work in the coal mines, and secondarily in the interests of the mining industry. It was only after every possible measure under other Acts had been tried and had failed that recourse was had to special legislation. The Indian Mining Association had complained, and with justice, that whatever sanitary precautions might be taken by any coal mine owner, these might all be nullified by the inaction of a neighbour, who might be free from any control under the Mines Act; and so the Bill was designed to create in selected areas a local sanitary authority, on which both mine-owners and royalty receivers should be represented, with power to deal with such and similar cases and to exercise general sanitary control

"The opinions which have been received since the Bill was introduced showed that it was defective in several respects; and in Select Committee considerable alterations have been made, the more important of which are mentioned in the report which is in the hands of Hon'ble Members. The principle kept in view is that the Bill should be as elastic and flexible as possible, in view of the diverse nature of the tracts in which the law may hereafter be put in force. To one objection which has been made that the Bill is not suitable for dealing with a large water-supply scheme, such as is contemplated in the Jharia coalfield, the answer is that the Bill was not designed to cover such a scheme

"The crux of the whole Bill is the financing of the Mines Board of Health which may be created in selected areas to be termed Mining Settlements. It is not unfair that the expenses should be borne by those connected with the mining industry; but the difficulty was to find a common denominator between the charges on the coal mine-owners and the charges on the royalty receivers. It was at first proposed in consultation with the Indian Mining Association that the charges should be levied from both classes in proportion to the road-cess paid; this seemed a simple and intelligible method of calculation. But the mine-owners pay road-cess on profits, while the royalty receivers pay on output. It follows that, if in a particular mine there was no profit on the working, the mine-owner would pay no road-cess; and hence would not contribute at all to the sanitary charges. So the Committee of the Indian Mining Association suggested that the output of mines should also form a basis for calculation. The Select Committee after obtaining statistics thought that the fair apportionment between the two classes as a whole would be nine-tenths to mine-owners and one-tenth to royalty receivers; and further that amongst mine-owners themselves the assessment should be according to output and amongst royalty receivers according to road-cess. But, while trusting that in the beginning the above proportion between the two classes may be maintained, the Select Committee have considered that the proportion between these two classes should be fixed from time to time by Government.

"I should like to take this further opportunity of expressing the thanks of Government to the Indian Mining Association for the part which they have taken throughout in advancing this legislation."

The Council was then adjourned to Wednesday, the 20th March, 1912, at 11 A.M.

A. W. WATSON,

*Offg. Secy. to the Bengal Legislative Council.*

CALCUTTA;

*The 12th March, 1912.*



*Proceedings of the Council of the Lieutenant-Governor of Bengal assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1902 (24 & 25 Vict., c. 67, 55 & 55, Vict., c. 14, and Edw. VII., c. 4).*

THE Council met in the Durbar Hall at Belvedere on Wednesday, the 20th March, 1912, at 11 A.M.

P r e s e n t :

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., J.S.I., Lieutenant-Governor of Bengal, *sub. pro tem, presiding.*

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President.*

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KÜCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, Kt., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, Kt.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, Kt.

The Hon'ble KUMAR SHEO NANDAN PRASAD SINGH.

The Hon'ble BABU BHUPENDRA NATH BASU.

## Questions and Answers.

[Mr. Bompas ; Maulvi Saiyid Muhammad Fakhr-ud-din.]

The Hon'ble RAI SITA NATH RAY BAHADUR.

The Hon'ble LT.-COL. G. GRANT-GORDON, C.I.E.

The Hon'ble SIR BIJAY CHAND MAHAB, K.C.S.I., K.C.I.F., I.O.M., MAHARAJA-DHIRAJA BAHADUR OF BURDWAN.

The Hon'ble MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble Mr. J. G. APCAR.

The Hon'ble Mr. NORMAN MCLEOD

The Hon'ble Mr. F. H. STEWART, C.I.E.

The Hon'ble Mr. GOLAM HOSSLIN CASSIM ARIFF.

The Hon'ble Mr. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU KRISHIKESH LAHA.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble Mr. D. J. REID.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble Mr. MADHU SUDAN DAS, C.I.E.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

## OATH OR AFFIRMATION OF ALLEGIANCE.

The Hon'ble Mr. Bompas made the prescribed oath of his allegiance to the Crown.

## QUESTIONS AND ANSWERS.

## NEW BUILDING FOR THE PATNA COLLEGIATE SCHOOL

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked :—

I. (a) Is the Government aware that the term of the lease of the house which is rented for the accommodation of the Patna Collegiate School at Bankipore expires within a few months ?

(b) Is the Government aware that the owner of the house has declined to renew the lease ?

[*Mr. Kerr ; Maulvi Saiyid Muhammad Fakhr-ud-din ; Mr. Stevenson-Moore.*]

(c) Will the Government be pleased to state whether it has made any arrangement for the location of the Patna Collegiate School elsewhere after the expiry of the term of the present lease ?

(d) If so, will the Government be pleased to state what arrangement has been thought of ?

(e) Will the Government be pleased to state whether it has already made any provision in the Budget for the construction of a building for the Patna Collegiate School ?

(f) If not, will the Government be pleased to state whether this matter has been kept in view in preparing the Educational Budget for the new Province of Bihar ?

The Hon'ble MR. KERR replied :—

(a) & (b) " Government is aware that the term of the lease of the house, which is rented for the accommodation of the Patna Collegiate School at Bankipore, expires on the 31st July, and that the owner has declined to renew the lease:

(c, & (d) No arrangement has yet been made for the location of the school after the 31st July, but the Inspector of Schools is endeavouring to secure a suitable house for the temporary use of the school.

(e) & (f) No provision has been made in the budget for 1912-13 for the construction of a building for the Patna Collegiate School. The selection of a suitable site has been under consideration, but must be left over for the decision of the Government of the new province of Bihar and Orissa."

PRESIDENT OF THE BENCH OF HONORARY MAGISTRATES AT BARH.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked :—

II. (a) Will the Government be pleased to state whether a Junior Honorary Magistrate has been appointed President of the Bench in the Barh sub-division of the Patna district, in preference to a Senior Honorary Magistrate with second class powers ? If so, will the Government be pleased to state the reason for such appointment ?

(b) Will the Government be pleased to state whether any, and, if so, what special qualification is necessary for such an appointment ?

The Hon'ble MR. STEVENSON-MOORE replied :—

(a) " The present President of the Bench of Honorary Magistrates at Barh was appointed in 1903 and has ever since performed the duties satisfactorily. He was vested with second class powers and the power to sit singly in 1909. It is true that there is another Honorary Magistrate who has exercised similar powers since 1901, but in 1903 it was decided that he was less well qualified for the post of President than the Honorary Magistrate who was then appointed to it and has now held it for more than eight years.

(b) The rule under which Presidents are appointed is as follows :—

" The Chairman of the Bench for the time being shall be the Magistrate of highest powers present at a sitting. Where two or more are of equal powers the Bench may elect its own Chairman, provided always that it shall be in the discretion of the Magistrate of the district to appoint the Chairman for each time of sitting, or generally."

DECLARATIONS UNDER SECTION 61 OF THE CODE OF CIVIL PROCEDURE (ACT V OF 1908).

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked :—

III. (a) Has the attention of the Government been drawn to section 61 of the Code of Civil Procedure (Act V of 1908) ?

[*Mr. Kerr ; Maulvi Saiyid Muhammad Fakhr-ud-din ; Mr. Stevenson-Moore.*]

(b) Will the Government be pleased to state whether it has made any declaration, as permitted under the above section, either by general or by special order?

(c) If not, does the Local Government propose to take early steps in that behalf?

The Hon'ble MR. KERR replied:—

(a) "Government is aware of the provisions of section 61 of the Code of Civil Procedure. Its attention has not been specially drawn to them by any one except the Hon'ble Member.

(b) No declaration has been made by Government under the section.

(c) The subject will be noted for the consideration of the new Government, but this Government is unable to commit it to any kind of action."

APPLICATIONS UNDER SECTION 158A OF THE BENGAL TENANCY ACT, 1885  
(VIII OF 1885).

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

IV. (a) Will the Government be pleased to state whether any application under section 158A of the Bengal Tenancy Act (VIII of 1885) has been presented by any landlord in this Province?

(b) If so, how many such applications have been filed, in what areas, and with what result?

The Hon'ble MR. KERR replied:—

(a) & (b) "Since section 158A of the Bengal Tenancy Act\* was passed in 1907, eight applications have been received by Government for the extension of the section to different estates. Of these estates, one was in Champaran, one in Monghyr, one in Gaya, one in Shahabad, one in Jessore, one in Patna and two in Muzaffarpur. All the applications were refused by Government, because the necessary conditions were not fulfilled."

APPOINTMENT OF BIHARIS IN THE SECRETARIAT OF THE NEW PROVINCE.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

V. (a) Will the Government be pleased to state whether applications have been invited from Biharis for appointment in the Secretariat of the new Province?

(b) If so, will the Government be pleased to state whether the Divisional Commissioners of Bihar, Chota Nagpur and Orissa have been authorised to invite such applications and to enrol the names of suitable candidates?

The Hon'ble MR. STEVENSON-MOORE replied:—

"The attention of the Hon'ble Member is invited to the reply given to Questions VII (b) to (e), on the same subject which were put by the Hon'ble Babu Braj Kishor Prasad at the Council meeting of the 26th February last."

APPOINTMENTS IN THE SUBORDINATE JUDICIAL AND EXECUTIVE SERVICES  
IN BIHAR, CHOTA NAGPUR AND ORISSA.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

VI. (a) Will the Government be pleased to state the number of appointments which will be available for Munsifs, Subordinate Judges, Deputy Magistrates and Sub-Deputy Magistrates in Bihar, Chota Nagpur and Orissa separately?

\* i.e., Act VIII of 1885.



[*Mr. Stevenson-Moore ; Mr. Golam Hossain Cassim Ariff ; Mr. Saiyid Wasi Ahmad.*]

(b) Will the Government be pleased to state how many Biharis and Uriyas are serving in Bihar, Chota Nagpur and Orissa, and how many in other parts of Bengal?

The Hon'ble Mr. STEVENSON-MOORE replied:—

(a) & (b) "The Hon'ble Member is referred to the reply to be given to Question No. VIII (a) to (g) to be asked by the Hon'ble Mr. Saiyid Wasi Ahmad."

#### FORMATION OF NEW CADRES FOR THE NEW PRESIDENCY OF BENGAL.

The Hon'ble Mr. GOLAM HOSSAIN CASSIM ARIFF, on behalf of the Hon'ble DR. ABDULLAH-AL-MAMUN SUHRAWARDY asked:—

VII. (a) Will the Government be pleased to state what principles are being followed in determining the position of individual officers of—

- i, the Indian Civil Service,
- (ii) the Provincial Executive Service, and
- (iii) the Subordinate Civil Service, respectively, in the *cadres* which are to be formed for the Presidency of Bengal?

(b) Has the attention of the Government been drawn to the fact that in recent years promotion has been more rapid in Eastern Bengal and Assam than in this Province, with the result that a large number of officers serving in Eastern Bengal have attained to higher grades than their seniors in service in this Province?

(c) Is the Government aware that if, in the new Presidency *cadre*, the officers in Eastern Bengal referred to in question (b) are allowed to retain their present grade, it will greatly retard the promotion of many officers in this Province who are senior to them in service, and who, in some cases, will have little chance of promotion in future?

The Hon'ble Mr. STEVENSON-MOORE replied:—

"The difficulties to which the Hon'ble Member has drawn attention have been experienced in arranging the division of the *cadres*. Officers of the Indian Civil Service will be placed according to their relative seniority before the 1905 partition or, if appointed subsequently, according to the India Office list. With regard to the Provincial Civil Service and the Subordinate Executive Service, no officer will lose grade promotion already given, but within their own grades officers appointed prior to the 1905 partition will be placed in the same relative seniority as before. This principle will, however, admit of exceptions due to success or failure at the departmental examinations, to special promotion, etc. The position to be taken on promotion by officers thus placed in grades lower than their juniors will be a matter for decision as each individual case arises."

#### APPOINTMENT OF BIHARIS IN THE VARIOUS SERVICES IN THE NEW PROVINCE.

The Hon'ble Mr. SAIYID WASI AHMAD asked:—

VIII. (a) Has the attention of the Government been drawn to the following passage in the despatch of the Government of India, dated the 25th August, 1911, and published in the Gazette of India Extraordinary, dated the 13th December, 1911?—

"The cry of Bihar for the Biharis has frequently been raised in connection with the confirm of appointments, an excessive number of offices in Bihar having been held by the Bengarlis."

(b) If so, will the Government be pleased to state whether it intends to allot to Biharis as many posts as are practicable in the various services in the new Province?

[Mr. Stevenson-Moore.

(c) Will the Government be pleased to state the number of gazetted appointments held by Bihari and Uriya officers in the various services under the present Government of Bengal?

(d) What will be the total number of such appointments in the various grades required for the new Province of Bihar, Chota Nagpur and Orissa?

(e) Will the Government be pleased to state how many of the appointments, ordinarily reserved for members of the Civil Service and open to members of the Provincial Service, will be allotted to Bihar?

(f) It appears from the Civil List that 217 Deputy Collectors are serving in the five Divisions which will form the new Province of Bihar. In other words about two-thirds of the total number of Deputy Collectors, serving at present in the Province of Bengal, are employed in Bihar. Will the Government be pleased to state whether it intends to observe at least the same proportion in allotting posts of different grades to Bihar?

(g) Will the Government be pleased to state whether it intends to move the High Court to observe the same principle with regard to the Judicial Service?

The Hon'ble Mr. STEVENSON-MOORE replied :—

(a) " The answer is in the affirmative.

(b) Practically all the Biharis and Uriyas already in service have been allotted to the new province. The selection of any additional officers who may be required to fill vacancies is not within the competence of this Government.

(c) A statement which gives the information required for the Executive and Judicial branches of the Provincial Civil Service is laid upon the table. If the Hon'ble Member so desires, a supplementary statement for the Gazetted officers of other Departments will be furnished.

(d) The total number of officers in the various grades of the Executive Branch of the Provincial Service in Bihar and Orissa will be approximately as follows:—

First grade	...	...	...	4
Second "	...	...	...	5
Third "	...	...	...	12
Fourth "	...	...	...	36
Fifth "	...	...	...	53
Sixth "	...	...	...	54
Seventh "	...	...	...	59

Similar information for the Judicial Branch is not yet available.

(e) No final decision has yet been arrived at with regard to the allotment of appointments reserved for members of the Civil Service but open to members of the Provincial Service.

(f) & (g) Government follows the principle of making the allotment of Provincial Service officers to the two new provinces with due regard to the number of posts actually to be filled in each."

STATEMENT REFERRED TO BY THE HON'BLE MR. STEVENSON-MOORE IN HIS ANSWER TO QUESTION NO. VIII (c), ASKED BY THE HON'BLE MR. SAIYID WASI AHMAD AT THE COUNCIL MEETING OF THE 20TH MARCH, 1912.

*Number of Bihari and Uriya Deputy Magistrates and Deputy Collectors, Subordinate Judges and Munsiffs.*

Deputy Collectors	...	{	Biharis	...	...	72
			Uriyas	...	...	21
Subordinate Judges	...	{	Biharis	...	...	1
			Uriya	...	...	Nil.
Munsiffs	...	{	Biharis	...	...	45
			Uriyas	...	...	2

*Rai Baikuntha Nath Sen Bahadur ; Mr. Stephenson ; Mr. Kerr ; Babu Bhupendra Nath Basu ; Mr. Chapman.]*

STEERING OF JUTE IN THE RIVERS SITUATED WITHIN THE LIMITS OF THANA JHIKARGACHA, IN THE DISTRICT OF JESSORE.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR asked :—

IX. Will the Government be pleased to state what action has been taken on the representation submitted on the 23rd September, 1911, by Babu Jogendra Nath Ghose of Ballah, in which that gentleman protested against the steeping of jute in the rivers situated within the limits of thana Jhikargacha in the district of Jessore?

The Hon'ble MR. STEPHENSON replied :—

"The petition was sent to the Commissioner of the Presidency Division, as the matter is primarily one for the consideration of the local officers, and they should be applied to before such a matter is referred to Government."

APPOINTMENT OF A JUNIOR OFFICER AS ADDITIONAL INSPECTOR OF SCHOOLS IN THE PRESIDENCY DIVISION.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR asked :—

X. (a) Is the Government aware of the circumstances which have led to the temporary appointment of a comparatively junior officer to the post of Additional Inspector of Schools in the Presidency Division?

(b) If not will the Government be pleased to inquire into the matter and consider the claims of the officers superseded?

The Hon'ble MR. KERR replied :—

(a) "It is presumed that the Hon'ble Member is referring to the case of Babu Sripati Mukherji, who has recently been appointed officiating Additional Inspector of Schools in the Presidency Division. Government is aware of the circumstances which led to that appointment.

(b) Three officers were superseded in the appointment, of whom two had already been passed over for ordinary grade promotion on account of unsatisfactory work, while the third was on his third extension of service and was not considered suitable for the post. Government does not propose to take any further action in the matter."

ANTICIPATED DIVISION OF THE CADRE OF THE PROVINCIAL JUDICIAL SERVICE.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

XI. (a) Has the attention of the Government been drawn to the article which appeared in the editorial columns of the *Bengalee* of the 5th March, 1912, regarding the anticipated division of the cadre of the Provincial Judicial Service?

(b) Is the Government aware that, if that division follows the lines of the existing cadre, the proportion of Subordinate Judges to Munsiffs in the new Province of Bihar will apparently be 1: 3·4, while in Bengal it will be 1: 5·8?

(c) Will the Government be pleased to state what steps are being taken to equalise the prospects of Munsiffs in Bengal with those in Bihar in the matter of their eventual appointment to the post of Subordinate Judge?

The Hon'ble MR. CHAPMAN replied :—

(a). "The answer is in the affirmative.

(b) & (c) The Government is in correspondence with the High Court regarding the formation of separate cadres for Bengal and Bihar. The points referred to by the Hon'ble Member have received and will continue to receive careful consideration."

[Mr. H. McPherson.]

## THE ORISSA TENANCY BILL, 1912.

3. The Hon'ble Mr. H. McPherson\* moved that the Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore in the Orissa Division be taken into consideration.

He said :—

"I do not propose to weary the Council or to waste its time by going over the Bill once more, or by explaining the amendments that have been made in the original Bill by the Select Committee. Those have been set forth clearly in the Report and will come under discussion when the amendments in Annexure A are taken up. In view of the proceedings at our last meeting, when a motion to the effect that "the Bill and the Report of the Select Committee thereon be not considered in this Council" was lost by an overwhelming majority, I take it that the present motion is purely formal and will be passed as a matter of course."

The motion was put and agreed to.

4. The Hon'ble Mr. H. McPherson also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. ✓

He said :—

"This also is a formal motion which has been accepted in anticipation by the Hon'ble Members who have moved amendments to the various clauses of the Bill. I will not detain the Council, except to make a few general remarks regarding the amendments that have been filed. They are 268 in all. Hon'ble Members will not, I hope, be appalled by their number. Many of them are duplications, many are formal and consequential, and many, I hope, will be withdrawn,† when it is explained that they are based on misapprehensions. Nearly one hundred have been put in by Hon'ble Members from Bihar and it is difficult to understand what is the cause of the lively interest that has been taken in the Bill by them. All the debatable ground of the Bill has been covered by the amendments filed by the Orissa members, and, if I may be allowed to use a homely phrase, the Orissa members are old enough to take care of themselves and do not appear to require the helping hand of their Bihar brethren. Where the Bihar amendments do not cover the same ground as the Orissa amendments, they betray an imperfect acquaintance with the local conditions of Orissa, which must be almost embarrassing to those whom they are professedly designed to help. If the Bihar amendments be deducted, and also those amendments which are either identical or consequential, the number which calls for serious consideration will be found to narrow down to about 100 and to centre round the five or six points which I mentioned at our last meeting as the principal subjects of the notes of dissent filed by members of the Select Committee. These are—(1) the registration of transfers of tenures and occupancy-holdings, (2) the provisions regarding proprietors' private lands, (3) the treatment of produce-rents, (4) the assessment of reclaimed lands, (5) the protection of communal lands, and (6) the maintenance or periodical revision of records. The first of these alone has more than 60 amendments attached to it, and, I am glad to say that, with regard to it, we have found a solution‡ which is considered satisfactory by the members chiefly concerned, and which, if accepted by the Council, will obviate a lot of tedious discussion.

"With this preliminary explanation, which I hope will be received with relief by Hon'ble Members, I will ask the Council to accept the present motion and pass on to a consideration of the amendments in detail."

The motion was put and agreed to.

\* The Hon'ble Mr. McPherson was the member in charge of the Bill, but was assisted in his duties at various stages by the Hon'ble Mr. Kerr, the Hon'ble Mr. Cumming, and the Hon'ble Mr. Chapman.

† Only 80 amendments were actually debated.

‡ See the Hon'ble Member's speech on pages 87 and 88.

[Mr. M. S. Das.]

## Clause 3.

Amendment  
No. 1.\* The Hon'ble Mr. M. S. Das moved that the following be substituted for clause 3 (2), namely—

“*Bajiafti* lands mean lands, the title to hold which on special terms of revenue assessment having been declared invalid by the Cuttack Land Regulation of 1805, the Bengal Land-revenue Assessment (Resumed land) Regulation, 1819, or the Bengal Revenue Free Lands Regulation, 1825; the said lands were assessed in the course of a settlement of land-revenue at a *jama* fixed for the term of that settlement.

“*Bajiaftidar* means a holder of *bajiafti* land, who was recorded in the record-of-rights published under Chapter X of Act VIII of 1885† between the years 1891 and 1900, or between the year 1906 and the commencement of this Act, as a *bajiafti* tenure-holder or *bajiafti* raiyat according as he cultivated the lands through tenants or cultivated them himself.”

He said :—

“Sir, before I proceed to refer to the amendment, I shall, with Your Honour's permission, just speak two or three sentences with regard to the remarks which fell from the Hon'ble Member in charge of the Bill. He complains that the Bihar members are taking a lively interest in the provisions of the Bill; for the duty of fighting or being slain by the Hon'ble Member in charge of the Bill should devolve on two members 'who can take care of themselves.' I cannot say that both of them are old enough to take care of themselves. With regard to my present amendment, Sir, we are not fighting for anything which Government does not like to give or the people like to have. We are agreed as to what should be given. The only point of difference between us is how it should be given, and the form in which it should be given. I contend that the form in which the remedy to *bajiaftidars* is proposed to be given in the Bill will not pass the right actually. It will remain a dubious point to be decided afterwards by the Courts, and Courts, Sir, are after all Courts of Law, and nobody can possibly predict what the decision of a Court will be on a particular point of law. Therefore my contention in this Council is that the form in which it is proposed to relieve these men should be such as would remove all doubt. Now, it is admitted that the *bajiaftidars* were people who held land revenue free; they claimed to hold it revenue free at the first settlement of Orissa, when their title to hold revenue free was questioned and adjudged, and afterwards it was found that they were not entitled to hold it revenue free or on a particular percentage of revenue, and then they were assessed. Now, this should be borne in mind, Sir, that what was assessed on them was the revenue, i.e., there was a contract between the Government and these people, and they had a proprietary right in the land. I should not have fought for these people if they numbered only a few hundreds. These people hold lands which is equal to one-sixth of the total cultivated area and they pay 7 or 8 lakhs of revenue. They form an important class. Well, what was done during the last revenue settlement was that their status was altered under the Bengal Tenancy Act.† The Bengal Tenancy Act,† Sir, has always been responsible for the Bengal tendency of all your more recent agrarian legislation in Orissa. The result is that that these *bajiaftidars* have been made to fit in with the definitions in the Bengal Tenancy Act.† It is something like putting a round man into a square hole. I do not know whether anybody has actually tried the experiment.

\* This and the following numbers refer to the serial number of the amendments set out in Annexure A to the List of Business laid upon the table.

† i.e., Act VIII of 1885.



[Mr. M. S. Das.]

Now, the course which was adopted made the consequences disastrous to these people. Their rights suffered and Government saw it, and this is very graphically described in Mr. Maddox's letter; and I reiterate the sentiment to which I gave expression the other day that I do admire and appreciate, not for myself but on behalf of these thousands of people, Mr. Maddox's statement that some mistakes have been made in dealing with agrarian matters in Orissa in the past, that some rights may have been prejudiced, and that he is anxious to do justice to the people of Orissa. There is no difference between us there. I say I admire this spirit in Mr. Maddox, and I hope that he may live long to associate this consciousness of human infirmity with a keen sense of justice in still higher offices than the one that he now fills. But then the question is, what is being done now? The *bajiaftidar* is made in some cases a raiyat and in some cases a 'tenant' and this fact is recorded under the Bengal Tenancy Act.\* Mr. Maddox, in his letter dated the 6th April, 1909, says:—

'The *bajiaftidars* complain that they are by origin proprietors and not tenants. Historically this is true. In the settlement of 1837, and again in the settlement of 1890 and 1900, although Government fixed their rents for the terms of each settlement they were ordered to pay for their lands (where the area was less than 75 acres), through the proprietor or proprietary or sub-proprietary tenure-holder, to Government, and these payments have been so made without objection for the last 70 years. It must, however, be remembered that, originally, under clause 22, Regulation XII† of 1875, the revenue, not the rent assessable on these tenures, was declared to belong to Government. The *bajiaftidars* are not, therefore, by origin at any rate, tenants within the meaning of section 3 (§) of the Bengal Tenancy Act,\* because the person (proprietor or proprietary or sub-proprietary tenure-holder) under whom they now hold does not 'own' the *bajiafti* lands. This is also very clearly shown by the fact that where the resumed grant exceeded 75 acres, a separate estate was created in 1857 and the holders paid revenue direct to Government. Moreover, in the 1837 settlement, the zamindar retained only collection expenses and handed on the whole balance (without deduction for *malikhana* or proprietary allowance) to Government, and although in the settlement of 1890-1900 the zamindar was allowed to retain the same percentage of the *bajiafti* assets as he retained of the raiyats' assets, he was permitted to do so only because the *bajiaftidars* had in the past paid pepper-corn rents, and because it was thought that, without such a concession, the rents enhanced at that settlement could not possibly be collected. On the other hand, they (except the holders of 75 acres and more) have, as already stated, made payments for their lands to zamindars for 70 years, and their lands have been included within the areas of the estates of zamindars for the whole of that period. Possibly, therefore, by the custom of dealing therewith, their interests have now become tenancies. Never theless, it seems to me that something should be done in order to preserve to them their rights in their property . . . . .

'Then, further on, Mr. Maddox says that under the settlement of 1890 to 1900, some of them have been recorded as tenure-holders in accordance with the provisions of the Bengal Tenancy Act.\* The effect of this has been to reduce them from the position of tenure-holders to raiyats pure and simple, more especially as their holdings have been distributed exactly as have those of other tenants. They have thus suffered material injury in the following way: Zamindars are now treating them as ordinary tenants, not permitting their transfer of right on payment of *salami*, and so on. I admit, Sir, that there is anxiety on the part of Government to compensate and to restore them to their former position, but the attempt here made is doomed to failure. For the Bill puts the matter in this form:—

"*Bajiaftidar*" means a person holding lands the title to hold which upon special terms was declared invalid by the Outrack Land-revenue Regulation, 1805, the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819, or the Bengal Revenue-free Lands Regulation, 1826, and which has been assessed, in the course of a settlement of land-revenue, at a rent fixed for the term of that settlement; and includes also the successors in interest of such a person.

"Now it will be seen that the word 'rent' is used. That means that the '*bajiaftidar*' holds the position of a tenant, and consequently it is ignored that he formerly stood immediately under Government and that revenue was

\* i.e., Act VIII of 1885.

† i.e., the Outrack Land-revenue Regulation, 1805.

[Mr. M. S. Das.]

assessed on him. Mr. Maddox's letter says 'loss of property.' What right can a tenant have? Tenants have no other right in land except the right of occupancy. Then again, we find that there has been an anomaly in that the same class of people in some instances have been called tenure-holders and in other cases raiyats. But an attempt is made to reconcile this in clause 6, which runs thus—

"(i) every *bajiaftidar* who is recorded, in any record-of-rights finally published under Chapter XI or under any other law for the time being in force, or in any Land Records published and finally framed under Chapter XII, as a tenure-holder, and his successors in interest, shall be deemed to be a tenure-holder for all the purposes of this Act;

"(ii) every *bajiaftidar* who is recorded in any such record-of-rights or Land Records as a raiyat, and his successors in interest, shall be deemed to be a tenure-holder for the purposes of sections 13A to 13C and 91, and a raiyat for the purposes of all other sections of this Act; and

"(iii) every sub-proprietor shall be deemed to be a tenure-holder for the purposes of sections 13A to 13C, 91, 92, and Chapter XVI, and to be a permanent tenure-holder for the purposes of section 67."

"Now, the same man assumes a dual capacity. He becomes for certain purposes a tenure-holder, and for certain other purposes a raiyat. In the matter of transfers, what right has a raiyat? The raiyat has only the right of occupancy to transfer. Well, he transfers it in a deed in which he calls himself a tenure-holder. Now when a right of occupancy comes into the hands of a tenure-holder, it disappears by the doctrine of merger. What becomes of this doctrine of merger then? A man occupying a higher status purports to sell a right to a man under him; he cannot do any such thing and he therefore sells nothing. We cannot do away with the doctrine of merger, unless we say we will disregard all established principles of law and introduce this new principle here. What becomes of the position of the zamindar when lands get into his hands in which a right of occupancy subsists? Therefore the only way to do away with the difficulty which arose out of an attempt to squeeze the *bajiaftidars*, as it were, into the definitions of the Bengal Tenancy Act) is to do away with the Bengal Tenancy Act.\* These definitions were never meant for this class of people: they are a separate class—I say, treat them separately, and make the definition such as to show their origin.

"I have been given to understand that, though the *bajiaftidar* is recorded as a raiyat, there is some entry to show that he is not an ordinary raiyat but a *bajiafti* raiyat; consequently these people form a separate class of raiyats by themselves and a separate class of tenure-holders by themselves, and they ought to be left as such. If we do not do that,—though it may be the intention of Government to compensate them for the wrong that I say has been done to them,—the intention will not be carried out by means of the definition in the Bill, because, if the definition is one in which their origin is lost, the Law Courts will not go on to inquire into what was the intention. This letter from Mr. Maddox, whatever might be its value here, will have no value in a Court of Law, because a Court of Law will never construe an enactment in the light of the intention of the Legislature or the intention of Government. The intention should be inferred from the wording of the Bill. I do not mean to say that I arrogate to myself such knowledge of law as to say that my amendment is perfect. I am quite willing to be convinced that a slight alteration here or there is necessary; or let the whole thing be done away with and let another amendment be made. But all that I say is that it should be left beyond doubt that the definition should be such as will show the origin of these people, that they were not raiyats, and that they were actually men on whom Government revenue had been assessed. And if they pay their revenue to the zamindar, it is because they hold a small quantity of land. This is done for convenience in the collection of revenue. My suggestion, of course, will require consequential amendments throughout the Bill, and these have been suggested.

\* *Id.*, Act VIII of 1865.

[Mr. H. McPherson.]

And then with regard to clause 6, to which I have drawn the attention of Hon'ble Members. That clause speaks of every *bajiaftidar* who is recorded in any record-of-rights finally published under Chapter XI. Chapter XI of course is a part of this Bill. Up to this time there has been no record; when this Bill comes into force there will be a record. Further, clause 6 says 'under any other law for the time being in force.' What that means I do not understand; whether it means any other law, subsequent to this date or prior to this date, hitherto in force, I do not know. I do not understand what is meant by 'any other law for the time being.' It may mean any law in force when these men were first recorded. The 'record-of-rights' is nowhere defined. A 'record-of-rights' can be any paper which records the rights of a party. Thus 'record-of-rights' may mean a settlement of records of the early British administration. In Orissa these records would show the names of people whose lands have been assessed, and therefore the definition in the Bill is defective. On these grounds I do sincerely hope that there will be a sincere and serious attempt to see that the intention of Government is carried out with some attention to what the decisions of the Law Courts are likely to be."

The Hon'ble MR. H. McPHERSON said:—

"This is one of a series of amendments on the subject of *bajiaftidars* which have been moved by the Hon'ble Mr Das. The others are numbers 11, 18, 128, 152, 156, 222, 253, 257 to 261. I oppose them, partly because they are entirely unnecessary, and partly because they are not likely to be advantageous to *bajiaftidars* but rather the reverse. This particular amendment refers to the definition of *bajiaftidar*. The first portion of the amendment makes no real difference in the definition. The second portion is based on a misapprehension regarding the nature of the distinction which was drawn at the last Revenue Settlement between a *bajiaftidar* tenure-holder and a *bajiaftidar* raiyat; and here I may remark that every *bajiaftidar*, whether tenure-holder or raiyat, has been clearly recorded in the settlement records as a *bajiaftidar*. The classification as tenure-holder or raiyat is an additional description; the word *bajiaftidar* is in no case left out. There is nothing in the record which can cloud or obscure the name or the origin of the right. The distinction drawn between *bajiaftidar* tenure-holder and *bajiaftidar* raiyat was based upon sub-section (5) of section 5 of the Bengal Tenancy Act.\* The question was not whether the *bajiaftidar* cultivated his land through tenants or cultivated it himself. The question was whether the tenancy was a large tenancy or a petty one. So far as my knowledge goes, the great majority of *bajiaftidars*, if not all of them, are members of the higher castes who cultivate their lands through under-tenants. They do not cultivate with their own hands. According to the figures given at page 309 of Mr. Maddox's Settlement Report, Volume I, there are in Orissa 233,200 *bajiafti* holdings with an area of 296,600 acres. The average is not much over one acre. It is obvious from these figures that the great majority of *bajiafti* tenancies are very petty. If all had been classed as tenures—that is as *bajiafti* tenures—in the last Revenue Settlement, occupancy-rights would have accrued in all cases to the under-tenants, who would have been raiyats holding under tenure-holders. The effect of classing the smaller *bajiaftidars* as *bajiafti* raiyats was to relegate their under-tenants to the position of under-raiyats and to prevent those under-raiyats from acquiring occupancy-rights. This was done in the interests of the petty *bajiaftidars*.

"Now, some of the local Associations, in their criticisms of the Bill, have asked that all *bajiaftidars* be classed alike as tenure-holders. We have not accepted this suggestion, because its effect would be to deprive the poorer *bajiaftidars* who have been recorded as *bajiafti* raiyats, of the protection which they now enjoy against the accrual of occupancy-rights. As the Bill now stands, we have secured for these *bajiafti* raiyats all the privileges of transfer and status which attach to *bajiafti* tenures. This is arranged by the provisions of sub-clause (2) of clause 6, to which the Hon'ble Member objects in amendment No. 18. We

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put the *bajiafti* raiyat, so far as transfer and all other rights are concerned, in exactly the same position as a *bajiafti* tenure-holders. At the same time, we leave him that protection which he enjoys through being recorded as a raiyat instead of being recorded as a tenure-holder. At the present day in Bengal most people who have tenancy interests in land are endeavouring to be recorded as raiyats and not as tenure-holders, their object being to debar the people under them from securing occupancy-rights. We have conceded this advantage to the petty *bajiaftidars* of Orissa by calling them *bajiafti* raiyats. So long as the word *bajiaftidar* is attached to their names, they cannot suffer injury as regards the rights based on their peculiar origin and status. At the same time, we have taken care by means of the provisions of clause 50 that the *bajiaftidar* raiyat shall not be handicapped by the operation of the ordinary provisions of the law regarding rent recoverable from under-raiyats. I explained the position to the Orissa members of the Select Committee at a time when the Hon'ble Mr. Das was unfortunately absent, and they were all agreed that no change in the Bill was necessary or desirable.

"The Hon'ble Mr. Das, so far as I have been able to understand him,— and I confess I find him very difficult to follow,— has argued that because the *bajiaftidars* by origin had something of the nature of proprietary rights attached to their interests, we should regard them as proprietors or semi-proprietors, and not record them as tenure-holders or raiyats. It seems to me to be too late in the day to make a change of this sort, or to embody it in the Bill. We have made perfectly plain by our definition what all *bajiaftidar* tenants were in origin, namely, persons holding lands on revenue-free grants which were found to be invalid. The Courts will have that definition before them, whenever any question of their rights comes up. At the same time we have provided that, whenever they wish, they may transfer their tenures without getting the consent of their zamindars, or other superior landlords. We have taken care, in fact, in this Bill to preserve all their rights that are of a real or practical nature. The Hon'ble Mr. Das' definition merely differs from ours in saying that they were assessed to *jama*, which shall be deemed to be rent, whereas we say that they were assessed to rent. The *bajiaftidars* have been treated as tenants for the last 50 years; they have been sued for rent under Act X of 1859,\* and they have been sold up under the Bengal Rent Recovery (Under-tenures) Act of 1865.† Why should we make this change now on grounds which are purely sentimental? It seems to me, it will only create confusion if we accept the Hon'ble Member's proposal. And I may say here that I entirely demur from the Hon'ble Member's insinuation that the settlement authorities have done injustice in Orissa and are now seeking to cover up their past errors by means of this legislation. There may have been mistakes in certain cases, I admit; for in proceedings involving hundreds of thousands of entries there must be mistakes. But that there has been deliberate injustice done to the *bajiaftidars* or to any other class in Orissa through the agency of the Settlement Officers is simply not true, and I accordingly ask the Council to take Mr. Das' suggestions in this regard with the proverbial pinch of salt. As for the *bajiaftidars*, the Bill, as it stands, makes their position perfectly clear, and I therefore ask the Hon'ble Mover to withdraw his amendment. If he does not see his way to withdraw it, I would advise that it be rejected by the Council."

The Hon'ble Mr. Das said:—

"Sir, as regards the remarks of the Hon'ble Member in charge of the Bill that for a long time these people have paid rents to the zamindar, that was simply because there was an arrangement between the Government and the zamindar of the estate within the ambit of which these lands lay. That was in consequence of an arrangement: the zamindar there stood in the position of a farmer: he collected the rent, and they called it rent in order to give

\* i.e., the Bengal Rent Act, 1859

† i.e., Ben. Act V III of 1865.



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facilities for the collection. But why is it too late in the day? We recognise that these people have lost rights, and all that my amendment would introduce is that wherever in the Bill the word 'raiya' occurs, the words '*bajiafi* raiya' should be read, whereas in the Bill the word 'raiya' only occurs. It may be that they have been recorded so elsewhere, and that in the record-of-rights the word *bajiafi* is entered, but it is not so in the Bill."

The Hon'ble Mr. H. McPHERSON said:—

"We have used the word *bajiafi* everywhere in the Bill where *bajiafi* tenancies are referred to"

The Hon'ble Mr. DAS said:—

"Only a raiya is mentioned in some instances. I wish to say that it refers to *bajiafi*. All that my amendment introduces is that wherever you find tenure-holder say *bajiafi* tenure-holder, and wherever you find raiya say *bajiafi* raiya."

The Hon'ble Mr. H. McPHERSON said:—

"When the word *bajiafidar* is used alone, it covers both *bajiafi* tenure-holders and *bajiafi* raiyas."

The Hon'ble Mr. DAS said:—

"Then the Hon'ble Member in charge of the Bill has not taken any notice of the doctrine of merger. I can very well understand why, because it is supposed we can always look down with contempt on what the lawyers think about these things. I remember that this is not the first time in my experience. I remember having raised a legal objection in this Council long ago when the Hon'ble Member in charge of a Bill gave me a sharp rebuke, and I remember the then Advocate-General coming to my rescue, saying that it was a pure point of law and that the offending clause ought to be withdrawn. Fortunately, or unfortunately—fortunately for the Hon'ble Member in charge of the Bill, but unfortunately for me—we have not got even the Standing Counsel\* sitting here. Of course, all that I can say is, do not let these things be given in a dubious form, and, if the intention of Government is to give a right, let it not be given in a form in which there is doubt as to how that clause would be construed by the Courts. If I am wrong (I do not want to arrogate to myself such knowledge of law as to say that my amendment is perfect), let it be settled by somebody—whether the Hon'ble Member in charge of the Bill or some one else. He has never informed me that he has consulted any lawyer, the Advocate-General or Standing Counsel, or that any other lawyers have been consulted. As it is, the Hon'ble Member in charge of the Bill did not take any notice of the doctrine of merger."

A division was then taken, with the following result:—

*Ayes*—12.

The Hon'ble Babu Bhupendra Nath Basu.

" Rai Sita Nath Ray Bahadur.

" Maharaj-Kumar Gopal Saren  
Narayan Singh.

" Raja Rajendra Narayan Bhanja  
Deo.

" Babu Deba Prasad Sarbadhikari.

*Noes*—30.

The Hon'ble Mr. Slacke.

" Raja Kisori Lal Goswami.

" Mr. Greer.

" Mr. D. J. Macpherson.

" Mr. Collin.

" Mr. Stevenson-Moore.

" Mr. Chapman.

" Mr. Finnimore.

\* The Standing Counsel (Hon'ble Mr. Mitra) was, by permission of the President, absent throughout the debate.



Mr. M. S. Das.]

<i>Ayes—12—conold.</i>	<i>Noes—30—conold.</i>
The Hon'ble Mr. Apcar.	The Hon'ble Mr. Kerr.
„ Mr. Faiyid Wasi Ahmad	„ Mr. Stephenson
„ Maulvi Saiyid Muhammad Fakhr-ud-din.	„ Mr. Maddox
„ Rai Sheo Shankar Sahay Bahadur.	„ Mr. Kuchler
„ Mr. Das.	„ Mr. Morshead.
„ Rai Baikuntha Nath Sen Bahadur	„ Sir Frederick Loch Halliday, Kt.
„ Khan Bahadur Maulvi Sarfraz Husain Khan.	„ Mr. Curraming.
	„ Mr. Bompas.
	„ Mr. H. McPherson.
	„ Babu Janaki Nath Bose
	„ Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
	„ Sir Fredrick George Dumayne, Kt.
	„ Kumar Sheo Nandan Prasad Singh.
	„ Lt.-Col. G. Grant-Gordon.
	„ Sir Bijay Chand Mahtab, Maharajahdiraja Bahadur of Burdwan.
	„ Babu Kiranand Sinha
	„ Mr Norman McLeod.
	„ Mr Stewart.
	„ Mr. Golam Hosein Cassin Aird
	„ Babu Hrishikesh Laha.
	„ Maulvi Saiyid Zahuruddin
	„ Mr. Reil.

The following Members were absent :—

The Hon'ble Mr. Mitra.
„ Maharaja Manindra Chandra Nandi.
„ Dr. Abdullah-al-Mamun Suhrawardy.
„ Mr. Dutt.
„ Babu Mahendra Nath Ray.
„ Babu Braj Kishor Prasad.
„ Mr. Dip Narayan Singh.
„ Bal Krishna Sahay.

The result of the division was, *ayes* 12, *noes* 30, and the motion was therefore lost.

*Mr. H. McPherson; Mr. M. S. Das; The President.]*

The Hon'ble MR. H. McPHERSON said :—

"Before the Hon'ble Mr. Das proceeds to move his amendments, Nos. 2<sup>nd</sup> to 4, I wish to explain to him that I am willing to accept his amendment No. 4 'except the power of hearing appeals' in a slightly modified form, which comes to practically the same thing; I would suggest that the words 'other than functions covered by section 213' be added at the end of the sub-clause. This is the form which appears to be best from a drafting point of view."

The Hon'ble MR. DAS said :—

"If the Hon'ble Member accepts my amendment No. 4, I am ready to withdraw this amendment."

The PRESIDENT said :—

"I don't know whether you have understood the position. The form in which Mr. McPherson is willing to accept No. 4 is not as you put it 'except the power of hearing appeals,' but with the words 'other than functions covered by section 213,' added after the word 'provision' at the end of clause 3 (4) (b). I believe it is practically the same thing."

The Hon'ble MR. DAS said :—

"I accept the suggestion, Sir."

The following motions were then, by leave of the President, withdrawn :—

2. The Hon'ble Mr. M. S. Das to move that clause 3 (4) (b) be omitted.

3. If motion No. 2 be not carried, the Hon'ble Mr. M. S. Das to move that the word "experienced" be inserted after the word "any" in line 1 of clause 3 (4) (b).

4. The Hon'ble Mr. M. S. Das moved that the words 'except the power of hearing appeals' be added after the word "provision" at the end of clause 3 (4) (b).

The Hon'ble Mr. H. McPherson proposed that the amendment be put in the amended form just suggested, namely, that the words "other than functions covered section 213" be added after the word "provision."

The motion was then put in the amended form and agreed to.

5. The Hon'ble Mr. M. S. Das moved that clause 3 (15) be omitted.

The Hon'ble MR. H. McPHERSON said :—

"I am willing to accept this amendment for reasons which I will explain. The clause contains a definition of proprietor's private lands. I am willing to accept the amendment because the ground covered by the definition is fully covered by Chapters VII and XIII, and the definition therefore seems to be surplusage. If this motion be accepted by the Council, then amendments 6, 7, 8, 9 and 10 will automatically disappear. The ground of discussion raised by these amendments is covered by the amendments which have been proposed later to Chapters VIII and XIII and will be discussed later."

The Hon'ble MR. DAS said :—

"I am thankful to the Hon'ble Member in charge."

The motion was then put and agreed to.

[Mr. M. S. Das ; Babu Hrishikesh Laha ; Raja Rajendra Narayan Bhanja Deo ;  
Rai Sheo Shankar Sahay Bahadur ; Mr. Saiyid Wasi Ahmad.]

The following motions were, by leave of the President, withdrawn :—

6. If motion No. 5 be not carried, the Hon'ble Mr. M. S. Das to move that the following be substituted for clause 3 (15), namely :—

“(15) ‘Proprietor's private land’ means,

- (i) in temporarily-settled areas, lands which were recorded as *nij-jote* in the record-of-rights published between the years 1891 and 1900, or between the year 1906 and the commencement of this Act, and lands which were recorded as *nij-chas* between the years 1891 and 1900 and again between the year 1906 and the commencement of this Act, and which are held by proprietors and sub-proprietors, other than those referred to in sub-clause (i) of clause (22) of this section, or by tenants holding under such proprietors or sub-proprietors under leases for a term of years or under leases from year to year; and
- (ii) in permanently-settled areas, lands which are known in such areas as *nij-jote*, *khamar*, *khudkast*, *nij-chas* and which are held as *nij-jote* by custom.”

- 7. The Hon'ble Babu Hrishikesh Laha to move that the word “*nij-chas*” be inserted after the word “*nij-jote*” in line 2 of clause 3 (15).
- 8. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word “*nij-chas*” be inserted after the word “*nij-jote*,” in line 2 of clause 3 (15).
- 9. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words “other than those referred to in sub clause (i) of clause (22)” in lines 3 and 4 of clause 3 (15) be omitted.
- 10. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words “under leases for a term of years or under leases from year to year” in lines 5 and 6 of clause 3 (15) be omitted.
- 11. The Hon'ble Mr. M. S. Das to move that the following be added as an Explanation to clause 3 (17), namely :—  
“*Explanation.*—The revenue payable for *bajiafti* land to the proprietor of an estate, settled on special terms by the Government with such proprietor, shall be deemed to be rent.” ✓✓

#### Clause 5.

12. The Hon'ble Mr. Saiyid Wasi Ahmad moved that the words “or by hired servants, or with the aid of partners,” in lines 3 and 4 of clause 5 (2) be omitted.

He said :—

“Sir, before I move my amendment for the consideration of the Members of Council, I should like to make one observation in connection with a remark that fell from the Hon'ble Member in charge of the Bill. He has told the Council just now that it struck him as rather unusual to see the Bihar Members taking such a keen interest in connection with this Bill. I must say that I was rather surprised to hear a remark of this nature from a Legislator. The object that has led at least some of us Biharis to take an interest in this Bill, is primarily because we consider it the duty of every Member of this

[Mr. Sayid Wasi Ahmad.]

Council to take an interest in any measure that may be brought before this Council, irrespective of the question whether it touches one part of the Province or another. It would indeed have been a remarkable feature in connection with the discussion of this Bill if only the two Hon'ble Members who came from Orissa had taken part in the discussion and if all the others had merely formed the audience.

"The second reason why we particularly feel for this Bill is that it appears to me that, after the separation of this Province and the creation of the new Province of Bihar, we shall be practically having two Acts in force in one and the same Province. In the Province of Bihar we shall have the Bengal Tenancy Act\* (I don't know how that will sound—the Bengal Tenancy Act\* in Bihar)—as also the Orissa Tenancy Act; and the chances are that, in about a year or two's time, we shall have an Act, or rather a Bill introduced in the Bihar Council, very similar to this Orissa Tenancy Bill; and probably the Bengal Tenancy Act\* will not long be in existence in Bihar. That is also a reason why we have thought it fit to take an interest in this Bill.

"Now, my amendment is that the words 'or by hired servants, or with the aid of partners' be omitted in lines 3 and 4 of clause 5 (2). I am aware, Sir, that in the definition of 'Raiyat' in the Bengal Tenancy Act,\* these words actually occur, but the question of hired servants and partners has been, to my knowledge, a cause of great anxiety to the petty zamindars in Bihar. Further, it will appear from the definition of tenure-holder, and also from the explanation in the Bengal Tenancy Act\* that the Government has taken care to call a person holding a certain quantity of land not a raiyat but a tenure-holder; for instance, we find that in the Bengal Tenancy Act\* a person holding more than one hundred *bighas* of land will be presumed to be a tenure-holder and not a raiyat; also, in the present Bill, we find that, later on in sub-clause (5), it has been laid down 'where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.' So that there is already an attempt, both in the Bengal Tenancy Act\* and also in the present Bill, to restrict the area of land actually held by a raiyat. We further find that, under the Cess Act,† a tenant, paying more than Rs. 100 as rent, is presumed, for the purpose of the Cess Act,† to be a tenure-holder and not a cultivating raiyat. There also the limitation has been applied.

^ "My intention in moving this amendment to do away with hired labour is, that a raiyat, literally speaking, is really one who actually cultivates the land: that is to say, no raiyat should get his land cultivated either by a hired servant or by partners, because you will be simply allowing a raiyat, who may possess a lot of servants and who may also have a few partners, to unnecessarily get more land for the purpose of cultivation than he can actually cultivate himself. I certainly agree with the idea of putting the words 'the members of his family' in the definition of 'raiya.' It is with this object, Sir, that I think a raiyat should not get more land than he can himself cultivate or get cultivated by the members of his family. A case has been put to me this morning by a friend of mine who asked me to reconsider this amendment, and it possible to withdraw it, viz., the case of a widow—a *pardanashin* widow—who has got no one to look after her land. What will be the fate of such a raiyat? A sufficient reply to that would be that we have got in this very Bill a provision for creating sub-tenants or under-tenants, so that the reply to the argument that if a *pardanashin* woman happens to possess certain land, she will not be able to cultivate herself and may not have any other male member of the family to help her do so, is that she can certainly let it out to others for the purpose of cultivation and create a sub-tenancy.

"I therefore, submit, Sir, that the Hon'ble Members of this Council will see the reason which has lead me to move this amendment. My only ground, as I have already said, is that a raiyat should only be one who can cultivate the land himself and not by hired servants or partners."

\* i.e., Act VIII of 1885.

† i.e., Ben. Act IX of 1880.

[*Maulvi Saiyid Muhammad Fakhr-ud-din*; *Rai Sita Nath Ray Bahadur*; *Khan Bahadur Maulvi Sarfaraz Husain Khan*; *Babu Janaki Nath Bose*]

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, I rise to oppose this amendment. My reason is that my friend seems to be labouring under a misapprehension about the definition of tenure-holder and a raiyat. If you take out the words 'or by hired servants or by the aid of partners' I think you will cut down the number of raiyats to a nullity, because almost in 95 per cent of the cases these raiyats have to employ at least ploughmen and they also are hired servants. Without ploughmen these lands cannot be cultivated. Then again respectable men, as for instance myself or my hon'ble friend the mover of this amendment, could not purchase lands, because as soon as we purchased 'raiya lands,' we should have to employ servants to cultivate them, and therefore our tenancy right would cease to exist. Therefore, I think it would be rather unsafe to cut out these words. In cases of *pardanashin* ladies without any relations, or in cases of widows or in cases of respectable people who have to employ hired servants, it would be impossible for them to cultivate the land. Now, if these words are omitted, those persons will have to lose their raiya rights..

Then we have got here in sub-clause (5) the words 'where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown' "My friend seems to think that even if a raiyat who has got only five bighas of land is incapable of cultivating it with his own labour and without the aid of servants or partners, his status will be that of a tenure-holder. I think this principle will be altogether unsound. If a man having five bighas of land will be a tenure-holder, what would be the necessity of defining the status of a tenure holder in sub-clause 5) of the clause under consideration? A tenure-holder has got a status superior to that of a mere cultivator. I therefore oppose this amendment."

The Hon'ble RAI SITA NATH RAY BAHADUR said:—

"I am sorry to oppose this amendment, Sir. I am surprised that such an amendment has been brought in. It is a daily experience in Eastern Bengal, and in fact it is the case everywhere, that hired servants have to be engaged by ordinary raiyats; this is all the more necessary at the time of reaping the harvest. It is well known that large number of hired servants from different parts of the province go to Backerganj (the noted granary of Bengal) and other places for assisting the cultivators in reaping the crops, and each man is paid not in cash, but by a certain portion of the produce. It would not be possible to carry on agricultural operations without hired labour. What would be the fate of infants and widows if they were prevented from engaging hired labour?"

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN said:—

"I am surprised to hear how this amendment has been put in. I need not say much, but those who have got experience in zamindari matters know well that it would be impossible to do without hired labour."

The Hon'ble BABU JANAKI NATH BOSE said:—

"Testimony has come from Bihar as well as from East Bengal that this amendment is not sound. I can also bear some testimony as one representing Orissa in this Council. Now, Sir, it is a very well known fact that *bond fide* raiyats do employ hired servants, and those hired servants have got a peculiar name. They are called *huthias*. It is also a well known fact that *bond fide* raiyats cultivate land in aid of their partners, and, if this amendment is accepted, it may benefit the zamindars, but it will be injurious to a large number of raiyats who depend for their livelihood on the produce of their land."



[*Rai Baikuntha Nath Sen Bahadur ; Mr. Saiyid Wasi Ahmad ; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

The Hon'ble *RAI BAIKUNTHA NATH SEN BAHADUR* said :—

"I do not wish to take up the time of the Council, but I wish to say that this amendment is rather out-of-date. If my friend takes the trouble to study the literature on the subject, he will find that in 1859, when Act X of 1859\* was passed, this question was discussed threadbare, and in discussing the question whether the raiyat ought to have the right of occupancy or not the question arose as to whether a man, when he is not actually cultivating himself but has to cultivate by means of hired labour or by the members of his family, will be considered as cultivating the land. This was considered in 1859, and I think nothing has taken place since then to change the decision; so I think my friend might possibly think it worth his while to withdraw this motion.

The Hon'ble *MR. SAIYID WASI AHMAD* said :—

"I beg to withdraw the amendment.

The amendment was then, by leave of the President, withdrawn.

13. The Hon'ble *Mr. Saiyid Wasi Ahmad* moved that the words "or of grazing cattle on it" in lines 4 and 5 of the *Explanation* to clause 5 (4) be omitted.

He said :—

"The reason why I have moved this amendment is that it may lead to very undesirable results if tenants are permitted to hold land for the purposes of grazing cattle on it, and yet be called raiyats. The *Explanation* runs thus:—'Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it'

"Now take a concrete case. Suppose a raiyat has got 5 bighas of land and he, instead of cultivating it with a crop that is prevalent in that part, simply grows fodder and grass for purposes of grazing cattle, he will, under this definition, nevertheless hold all this land as a raiyat and the land will be still considered as cultivating land. I am not familiar with the name that is given in Orissa to land intended for grazing cattle, but in Bihar, such lands are called *charuawa* land and are usually found in every village. If you allow each tenant to graze cattle on any kind of land he desires, the danger is that the land may become, say after 20 years, almost useless for ordinary cultivation. Therefore I submit, Sir, that that portion of the *Explanation* dealing with cattle-grazing should be omitted."

The Hon'ble *MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN* said :—

"I rise to oppose this amendment also, because here again it appears that some misapprehension has arisen in the mind of the Hon'ble Member. Here it is said :—'Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it, or of grazing cattle on it.'

"Generally, it happens that these tenants set apart a portion of land for the purposes of making a *kalihan*. Even if that portion has been used for purposes of a *kalihan* for a number of years, still a person has got the right to bring that land within his cultivation in future. The meaning of this expression to my mind appears to be this, that although a tenant had been using it for purposes of gathering produce or grazing cattle on it, he can also use it for the purpose of cultivation, and he will not cease to have his *rayati* right simply because he failed to cultivate it for a few years or used it for any purpose other than cultivation for a number of years. If you do not give the raiyat this right, you place him in a most disadvantageous position. Therefore, I do not think, Sir, that these words should be omitted, and I oppose the amendment proposed by the Hon'ble Member the Mover."

[Mr. Kerr ; Mr. Saiyid Wasi Ahmad.]

The Hon'ble MR. KERR said :—

“The Hon'ble Member, after his attack on agricultural partnerships, which includes the great question of Co-operative Credit Societies, has turned his attention to another of the most serious agricultural problems of rural India—the question of grazing grounds. The Hon'ble Member, as in the other case, has his own way of tackling the problem. This is a difficulty everywhere in India, but it is recognized by everybody, except the Hon'ble Member, that the proper way to tackle the question is to do all that is possible to induce the cultivators to keep a reasonable proportion of their lands out of cultivation, and to reserve them for grazing purposes. In some parts of India land-holders are given remissions of revenue on their grazing grounds to induce them to keep such lands out of cultivation. The Hon'ble Member, on the other hand, would penalise the reservation of grazing grounds, by destroying the raiyati rights of those who use part of their holdings for grazing. The provision which the Hon'ble Member asks us to amend is that a tenant who has acquired a right to hold land for the purpose of cultivation may, without losing his status as a raiyat, use it for the purpose of gathering the produce of it or of grazing cattle on it. The provision is meant primarily to apply to little patches of waste land and jungle. The raiyats use the produce for fuel and similar purposes, and they graze their cattle on the land, and it is a very good thing, in the interest of agricultural economy as a whole, that raiyats should be encouraged to keep small parcels of land waste within their holdings, instead of bringing the whole under cultivation. One of the great difficulties of the cattle question in many parts of this country, is that cultivation has extended to such an extent as to leave insufficient grazing grounds. To a certain extent it is impossible, with the growing competition for land, to put a stop to this process, but we certainly ought to do nothing to accelerate it. The raiyat must have cattle and if there is no land on which he can graze them they must be still fed : but this is an expensive operation and bad for the cattle themselves, as young cattle, like young children, need exercise as well as food. The effect of the Hon'ble Member's amendment would be that, if a prudent husbandman kept a bit of waste land for grazing his cattle or allowed a part of his land to lie fallow for a year or two and grazed his cattle on it, he would at once lose his status as a raiyat.

“Practically, therefore, the Hon'ble Member's proposal would compel him to bring the whole of his lands under cultivation every year. Anything more undesirable in the interests of individual raiyats and of the agricultural population generally, could not be imagined.

“I do submit, Sir, that the first thing to be considered in Tenancy legislation is its effect on the economic condition of the country. As I have shown, the effect of this amendment would be wholly bad, and I must therefore ask the Council to reject it.”

The Hon'ble MR. SAIYID WASI AHMAD said :—

“It appears to me that there must be some misunderstanding or misapprehension on the part of the Hon'ble Mr. Kerr. In moving this amendment of mine, I had no desire that no part of the land should be kept apart in a village for purposes of grazing cattle. I have already stated that, in each village, there is such a thing as *charuawa* land in existence, and that the cattle go there for the purpose of grazing. What I object to is that each raiyat should not be given, under this Bill, the power to utilize a portion of his land, which is meant for cultivation, for purposes of grazing cattle, because my fear is that if you use the land for such a purpose for a long time it will become useless, and if each tenant is allowed to grow anything he likes on land for cultivation, the land will become unfit for cultivation of the crop which is chiefly prevalent in that part of the country.”

The motion was then put and lost.

[*Mr. Saiyid Wasi Ahmad; Maulvi Saiyid Muhammad Fakhr-ud-din; Maharajadhiraja Bahadur of Burdwan; The President; Mr. M. S. Das.*]

The following motion was, by leave of the President, withdrawn:—

14. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the word "and" be omitted at the end of clause 5 (4) (a) and inserted at the end of clause 5 (4) (b), and that the following be added as sub-clause (c), namely:—

"(c) the fact that a tenant cannot be a raiyat of one portion and a tenure-holder of another portion of a holding."

15. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that the words "of a holding" be inserted after the word "area" in line 1 of clause 5 (5).

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"I take it that the intention of the legislature is that, if one holding consists of more than 33 acres, the owner of the holding will be presumed to be a tenure-holder. A man may have different holdings of different quantities. Now, if he has got 25 acres, of land by inheritance, he may afterwards purchase another holding of 25 acres, and then again, by gift, he may get another holding of 22 acres. Now the aggregate of all these holdings will exceed 33 acres, but each of the holdings will be less than 33 acres. Therefore, the definition of a tenure-holder should not apply to such a man who has got different holdings, the aggregate of which comes to more than 33 acres. Without the insertion of the words "of a holding" after the word "area" some misapprehension may arise, and it may be a bone of contention in the Civil Courts, and therefore, in order to have an explicit meaning of sub-clause 5 (5), I suggest that the words "of a holding" may be added after the word 'area' so that there may not be any grounds for misapprehension hereafter."

The Hon'ble MAHARAJADHIRAJA BAHADUR OF BURDWAN said:—

"I brought this question forward in Select Committee, and I was told that it was quite clear that the words "of a holding" were implied. I specially brought this question to notice, because there had been one or two rulings which rather left this in doubt. I was told by the Hon'ble Member in charge that there was no necessity of adding these words. I think in this statement the Hon'ble Maharaj Kumar Hrishikesh Laha and the Hon'ble Raja Rajendra Narayan Bhanja-Deo will bear me out, and I should like to ask the Hon'ble Mr. McPherson to explain the matter to the Council."

The PRESIDENT said:—

"I may say that I do not know yet whether there are many identical motions, but the ruling which I have given before in this Council may be applied now, that is, that if a member has a subsequent identical motion, he must remember that only the member who actually moves the amendment has the right of reply, and that whatever he has to say should be said while the amendment first moved is under discussion."

The Hon'ble MR. DAS said:—

"I do not know what transpired in Select Committee, as I was unfortunately not present there, but at any rate, if the interpretation suggested is that which was put upon the clause by the Hon'ble Member in charge, I should say, why not give expression to one's intention? Intentions are like Goldsmith's wishes: 'If wishes were horses, beggars would ride.' Intentions are nothing. A man may intend to do many things, without giving effect in substance to his intentions. So it is much better to have intentions fully expressed. But apart from that, I am opposed to the principle underlying this clause. This clause really means that, as soon as an actual cultivator attains a prosperous condition and becomes an owner of so much land, he must be removed from

[Mr. Kerr.]

the position and condition of a raiyāt. Directly he is presumed to be a tenure-holder, those cultivating under him will have occupancy rights; consequently his position may be exalted in social status, though he may not have enough to feed his stomach or clothe his back, with. But it is highly desirable on economic grounds that we should not have only raiyats with an average holding of an acre or '80 of an acre, and that those men, who begin life as cultivators with a holding of one acre should be given every facility and encouragement to become prosperous cultivators so long as they are cultivators and actually cultivate the soil. Without this class of people it is not at all possible, Sir, to have anything in the shape of agricultural improvement. We have been given by Government, very kindly, information about manure and other means of cultivation, but then, where are these means to come from? You tie down a raiyat to one acre of land where he will never be in a position to better himself. Of course, if a man does not cultivate himself, let him be a tenure-holder. Why create a presumption in the matter? Why have difficulties thrown in the way of a man bettering himself? He may have a number of men serving under him, or he may go into partnership with another man, and the partner will then find that a presumption exists against the cultivator, and, taking advantage of this, will try to raise the position of his partner to that of a tenure-holder with a view to getting the right of occupancy.

"My contention is that a certain class of raiyats is being driven to poverty, while those who are thrifty and can manage their own affairs better are attaining a prosperous condition. Consequently, it is necessary, on economic grounds, that we should leave room for prosperity and growth of a certain class of raiyat and do nothing here which would encroach upon the tendency in that direction. On these grounds, Sir, I support the amendment of the Hon'ble Member."

The Hon'ble MR. KERR said:—

"I rise, Sir, to oppose this amendment, and I do so to a great extent on the general ground that this Council ought to be very chary of sanctioning a departure from the provisions of the Bengal Tenancy Act\* in dealing with this Bill. This is a general ground which we shall have to take in regard to a good many of the amendments before the Council, and it may be well therefore if I explain the general views of Government in regard to the matter. We do not claim that the Bengal Tenancy Act\* is a complete or perfect law. No human law is; but we do claim that the Bengal Tenancy Act\* was passed 27 years ago, that it has stood the test of time remarkably well, and that it is the admiration of experts in tenancy law not only in India but also in other countries. Moreover, the principles of the Bengal Tenancy Act\* were extended to Orissa in 1830, or more than 20 years ago. We do not claim that the Bengal Tenancy Act\* in all its details is suited to the conditions of Orissa. This present Bill is a sufficient proof to the contrary; but we do claim that when any one contends that any particular provision of the Bengal Tenancy Act\* which has been in force in Orissa for over 20 years and which we have not sought, in the light of our experience, to alter by this Bill, is found unsuitable to the conditions of Orissa, the burden of proof lies on him to make out a case. This is the principle which has been consistently adopted by us in dealing with this Bill. I think my hon'ble friend Mr. Maddox will bear me out when I say that his original draft Bill was subjected to scrutiny on this principle, and that no alterations were allowed to be made in the Bengal Tenancy Act\* which were not clearly demanded by the particular circumstances of Orissa, and I think it is only fair therefore that the same principle should be applied to the amendments brought forward by the non-official members.

"Now, in regard to the particular amendment, the Hon'ble Mover has said that there may be a possible misapprehension on the part of the Civil Courts as to the meaning of this sub-clause. The answer to that is, I think, that the section has been in force for the last 27 years, and there is no evidence that

\* i.e., Act VIII of 1835.



[~~Mr. H. McPherson~~ ; Babu Bhupendra Nath Basu ; Maulvi Saiyid Muhammad Fakhr-ud-din.]

there has been any misapprehension. The Hon'ble Maharajadhiraja Bahadur of Burdwan raised the question in Select Committee, and we told him that, so far as we knew, there was no ground for reasonable misapprehension in regard to the meaning. I think there is no doubt that the unit for the application of this sub-section is the particular tenure or holding of the raiyat or the tenure-holder whose status is under consideration.

"Now, I would just point out the difficulties we shall encounter if we attempt to tinker with this sub-clause. The Hon'ble Mover wishes us to read the sub-clause in the following way:—'where the area of a holding held by a tenant exceeds 33 acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.' It is rather a technical point, but I must try my best to explain it to the Council. The word 'holding' is defined in sub-clause (8) of clause 5 as a parcel or parcels of land held by a raiyat. It is clear, therefore, that it would be a contradiction in terms to say that, where the area of a holding exceeds 33 acres, the tenant shall be presumed to be a tenure-holder. If a man has a 'holding' he cannot be a tenure-holder, but must be a raiyat. The Hon'ble Member's motion would therefore destroy the fundamental distinction between a tenure and a holding. I submit, Sir, that the provisions of the law should be retained and the amendment rejected, and I may add that nothing which the Hon'ble Mr Das has said need influence the Council to the contrary view. Personally, I found it extremely difficult to understand the drift of the Hon'ble Member's speech."

The Hon'ble MR. H. MCPHERSON said:—

"May I, Sir, supplement what has been said by the Hon'ble Mr. Kerr? I would draw the attention of the Council to one point only. When a general principle of law has been embodied in the Bengal Tenancy Act,\* and were we to make any modification of language in the corresponding section of the Orissa Tenancy Bill, the inference to be drawn would be that the alteration was intentional, and we might thus cause confusion by deviations of language. If the words 'of the holding' are introduced in the Orissa Bill the Courts may inquire why they were omitted from the Bengal Tenancy Act.\* The inference might possibly be that, in the Bengal Tenancy Act,\* the 'area held by a tenant' included more than the land held in one single tenancy. That is the sort of danger to which I wish to draw the attention of the Council. We had better leave the clause as it is than tinker with the language, and so give rise to false impressions."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"The language is borrowed *verbatim* from the Bengal Tenancy Act,\* substituting 33 acres in place of 10<sup>0</sup> bighas. I do not know that any difficulty has been experienced in Bengal with that section, and I do not anticipate that any difficulty will be felt with it in Orissa; but, at the same time, I realise that, if we introduce a difference now, it might lead to a different interpretation of the identical section standing in the Bengal Tenancy Act;\* and on the grounds, firstly, that there has been no difficulty in the past, and, secondly, that any alteration made here may lead to a different interpretation of the section in the Bengal Tenancy Act,\* I oppose the amendment."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"The explanation which I have just heard from the Hon'ble Member in charge of this Bill has quite satisfied me that, as a matter of fact, the intention of the legislature is that this clause will apply to the area of a holding only. Now I do not find any valid reason for not incorporating these words 'of a holding,' after the word 'area', as admittedly that is the meaning of law. No doubt these words have been taken, or rather the whole definition has been taken, from the Bengal Tenancy Act;\* but this is no reason why you should retain the same words in this clause if the sense of the Council is that hereafter there may be some misapprehension, and that there may be some



[*Maulvi Saiyid Muhammad Fakhr-ud-din.*]

bone of contention on that ground. I do not understand the Hon'ble Mr. Kerr's meaning in pointing out to me that by putting the words 'of a holding' after the word 'area,' there may be a difficulty. 'Holding' no doubt has been defined in clause 5 sub-clause (8), but if these words 'of a holding' be added after the word 'area,' the meaning of this sub-clause would only be made clearer. The definition of 'holding' would remain unchanged, and the area of the holding will mean the area covered by the holding which forms the subject of a separate tenancy; and if that area exceeds 33 acres, it will be considered to be a tenure. (On these grounds, Sir, I beg to submit that the words 'of a holding' should be added after the words 'area,' and to ask that the amendment may be put to the votes."

A division was then taken, with the following result:—

<i>Ayes—9.</i>	<i>Noes—51.</i>
The Hon'ble Maharaj Kumar Gopal Saran Narayan Singh.	The Hon'ble Mr. Slacke.
" Raja Rajendra Narayan Bhanja Deo.	" Raja Kisori Lal Goswami
" Babu Deba Prasad Sarbadhikari.	" Mr. Greer.
" Mr Saiyid Wasi Ahmad.	" Mr D J. Macpherson.
" Maulvi Saiyid Muhammad Fakhr-ud-din	" Mr. E. W. Collin.
" Babu Hrishikesh Laha.	" Mr. Stevenson-Moore.
" Mr. Reid.	" Mr Chapman.
" Mr. Das	" Mr Finnimore.
" Khan Bahadur Maulvi Sarfaraz Hussain Khan.	" Mr. Kerr
	" Mr. Stephenson.
	" Mr. Maddox.
	" Mr Kuchler
	" Mr. Morhead
	" Sir Frederick Loch Halliday, Kt
	" Mr. Cumming
	" Mr. Bompas
	" Mr. H. McPherson.
	" Babu Janaki Nath Bose.
	" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
	" Sir Frederick George Dumayne, Kt.
	" Kumar Sheo Nandan Prasad Singh
	" Babu Bhupendra Nath Basu.
	" Lt.-Col. G. Grant-Gordon.
	" Babu Kirtananda Sinha.
	" Mr. Apear.
	" Mr. Norman McLeod.
	" Mr. Stewart.
	" Mr. Golam Hossein Cassim Ariff.
	" Maulvi Saiyid Zahiruddin.
	" Rai Sheo Shankar Sahay Bahadur.
	" Rai Baikuntha Nath Sen Bahadur.

[Mr. M. S. Das; Babu Hrishikesh Laha; Mr. Kerr.]

The following Members were absent:—

The Hon'ble Mr. Mitra.

„ Maharaja Manindra Chandra Nandi.  
 „ Dr. Abdullah-al-Mamun Suhrawardy.  
 „ Mr. Dutt.  
 „ Babu Mahendra Nath Ray.  
 „ „ Braj Kishor Prasad.  
 „ Mr. Dip Narayan Singh.  
 „ Babu Bal Krishna Sahay.

The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, and the Hon'ble Rai Sitanath Ray Bahadur abstained from voting.

The result of the division was *ayes* 9, *noes* 31, and the motion was therefore lost.

The following motion was, by leave of the President, withdrawn:—

16 The Hon'ble Mr. M S Das to move that the words “of a holding” be inserted after the words “area” in line 1 of clause 5 (5). ✓

17. The Hon'ble Babu Hrishikesh Laha moved that the words “in the same estate” be inserted after the word “tenant” in line 1 of clause 5 (5).

He said:—

“The area of 33 acres cannot evidently mean parcels of land situated in different districts under different proprietors in different estates, or even under the same proprietor in different estates in different districts. The words ‘exceeds thirty-three acres’ in this clause presuppose that, so long as the holding does not exceed that quantity of land, it remains a compact holding in the same estate under the same proprietor, but as soon as it exceeds that quantity it becomes a tenure, and the tenure-holder can assert his right as such if he has 75 bighas in Bengal and 25 bighas in Kujang. This, I believe, is not the intention of the Bill, but as the sub-clause, as it stands, is vague, I move that the words ‘in the same estate’ be added in order to make the meaning clear.”

The Hon'ble Mr. KERR said:—

“Sir, I beg to oppose this motion on the same ground, as I have already explained in connection with the last amendment, that it is undesirable to allow a departure from the provision of the law which has worked in Orissa for nearly a quarter of a century.

“The Hon'ble Member asks us to provide that where the area held by a tenant in the same estate exceeds 33 acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown. Now the estate is the unit responsible for the payment of Government revenue; it is the unit which is recognised for this purpose in the Land Registration Act\* and in the Partition Act†; but, while it is suitable enough for the object for which it is intended, it is unsuitable for any other purpose and particularly for the purposes of tenancy law. Orissa is a country with small proprietors, and the sub-division of estates owing to the operation of the laws in force is a growing evil; but this is not the whole truth. There are also very large estates, and the large estates in Orissa are represented in this Council by the Hon'ble Maharajadhiraja Bahadur of Burdwan, the Hon'ble the Raja of Kanika and the Hon'ble Mover of this amendment. An estate therefore may comprise a few acres of land in a village, or it may comprise a *pargana* or *killa* consisting of hundreds of villages. The term ‘estate’ has therefore no relevance to any considerations which apply when we come to deal with tenancies. The estate is a unit which concerns

\*i.e., Bengal Act VII of 1876.

†i.e., Bengal Act V of 1897.

[Mr. M. S. Das ; Rai Sheo Shankar Sahay Bahadur ; the President.]

the proprietors only in their dealings with the Collector in regard to the payment of land-revenue. I do not know whether the Hon'ble Mover of this amendment wishes to increase the number of tenure-holders or to increase the number of raiyats, but it really does not matter. What we have to look at in deciding whether a man is a tenure-holder or a raiyat is whether his individual tenancy consists of more than 33 acres or not. There are not infrequent cases in which tenants hold under more than one estate, that is to say, the rents are paid jointly to the proprietors of more than one estate. These tenancies are known in Bihar as *shamilat* tenancies, and I can see no reason why this general provision of law should not apply to such tenancies as well as to the ordinary cases of tenancies which lie entirely within the ambit of one estate. The point which I am endeavouring to explain to the Council is that, for present purposes, that is for the purpose of deciding whether a man is a tenure-holder or a raiyat, the question whether he holds in one estate or more is irrelevant. What we have to deal with is the area of land comprised in the particular tenancy in respect of which it is a question whether the man is a tenure-holder or a raiyat. The proposal of the Hon'ble Member would only complicate this simple issue, and it is impossible to say what its precise effect would be. I would, therefore, ask the Council to adhere to the provision of the law which has been in force in Orissa for nearly a quarter of a century and to decline to make the alteration proposed by the Hon'ble Mover."

The motion was then put and lost.

#### Clause 6.

The following motions were, by leave of the President, withdrawn:—

18. The Hon'ble Mr. M. S. Das to move that sub-clauses (i) and (ii) of clause 6 be omitted.
19. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "or as a raiyat" be inserted after the words "tenure-holder" in line 6 of clause 6 (i).
20. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 6 (ii) be omitted.

#### ✓. Clause 10.

21. The Hon'ble Mr. M. S. Das moved that the words "or by contract" in line 2 of clause 10 be omitted.

He said:—

"The clause in which it is sought to make an amendment is one which aims at preventing frequent enhancements and lays down that, one enhancement having been made, a second one ought not to be allowed within a certain time, viz., 15 years. The clause speaks of enhancement having been made by the Court or by contract. When an enhancement has been made by an order of the Court, it should not be allowed to be revived, or a second enhancement made, within 15 years, and so also in the case of enhancement by contract. I have three motions, numbers 21, 22 and 24. If Your Honour will kindly allow me, I will take them up together and point out the lines in which, in my humble opinion, the alteration of the clause is necessary, leaving it to the Hon'ble Member in charge to see whether he can accept the principle, and, if so, how he would alter the clause; and whether he would accept the proviso in amendment 24, or in some other form."

The PRESIDENT said:—

"I do not think that it would be convenient for the Hon'ble Member to discuss the whole of the amendments together, but, at the same time, there will be no objection to his discussing the principle with reference to this one, and explaining to the Council how he would like this clause to be worded."

[*Mr. M. S. Das ; Mr. Kerr.*]

The Hon'ble MR. DAS continued:—

"All that I mean to say refers to the case of a contract; a man makes a contract and afterwards there is a fresh contract, say for instance, in regard to improvements. A man makes a contract that he should pay so much for the tenure to the zamindar; afterwards he enters into a fresh contract with the zamindar that, "if you will make some irrigation here, or if you will make such and such changes, I will give you Rs. 500 more." In that case, there ought to be a further enhancement allowed. I cannot see that that is not altogether an enhancement in the strict legal sense of the term. It is really entering into a fresh contract on new considerations, and that is what it is sought to secure by having these alterations. If that be not acceptable to the Hon'ble Member in charge, I hope he will accept the proviso suggested in amendment No. 24, viz.,—

'Provided that nothing in this section shall apply to a contract by which a tenure-holder binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, effected in respect of his tenure by, or at the expense of, his landlord.'

"Of course that does not at all clash with the principle which is meant to be secured by the clause. It actually contemplates a case outside the purview of the clause as it stands, and we have cases of reclaiming waste land, in which the tenants may want to enter into a fresh contract. Then, there would, if the clause stands as it now is, be difficulty in having such a fresh contract. We have often been told that the Bengal Tenancy Act\* has stood the test of 27 years. I have often heard this here and elsewhere, and that therefore it must be shown why it should be altered. We also know that the Bengal Tenancy Act\* has stood the test in creating infringements on other people's rights and creating a revolution in Orissa during the last revisional settlement, and that it aroused Mr. Maddox's anxiety to remedy evils that had been created by this settlement, and yet we are repeatedly told that the Bengal Tenancy Act\* has stood the test of 27 years. That is actually begging the question. We came here to legislate, to have a Code which is particularly suited to the conditions of Orissa, and we deny that the Bengal Tenancy Act\* should be adored, worshipped and strictly followed because it has been successful in Bengal; and the point we make is that we know that the Bengal Tenancy Act\* will not do in all respects, for, in some, it has done mischief in Orissa. We can actually show that there are conditions in Orissa to which the Bengal Tenancy Act\* ought not to apply, and in these circumstances I hope the Hon'ble Member in charge will see his way to accept my amendment either as a proviso or in any other form so as to give effect to the proposition as I have stated it; that is, so as to provide for the further contract of a different nature altogether."

The Hon'ble MR. KERR said:—

"I should like to draw the attention of the Council to the fact that clause 10 of the Bill corresponds with section 9 of the Bengal Tenancy Act,\* and, I am afraid, I shall again have to annoy the Hon'ble Mr. Das by referring to the virtues of the Bengal Tenancy Act\*. Section 9 of the Bengal Tenancy Act\* has not only been in force in Bengal for the last 27 years, but, so far as I can gather from the commentaries on the Act, it has never been the subject of any judicial ruling of the High Court. Now when a section has been in force for 27 years and has never been brought before the High Court, there is a very strong presumption that that section has proved extremely suitable, and I think that this Council should be very chary of altering it. The general object of the section, of course, is to prevent too frequent tampering with the rent of tenure-holders. The general object of the amendments, which have been brought before the Council, is to afford more frequent opportunities of tampering with those rents, and this, I think, is most undesirable. It is for the movers of the amendments to bring forward

\* i.e., Act VIII of 1885.

[Mr. M. S. Das; Mr. Saiyid Wasi Ahmad.]

good reasons for showing that it is necessary to allow more frequent alteration of tenure-holders' rents than was considered necessary by the legislature who passed the Bengal Tenancy Act\* in 1885. It was then considered that it was quite sufficient to allow a tenure-holders' rent to be altered once in 15 years, and this, I think, is a sound principle. When a superior proprietor divests himself of his rights in favour of a tenure-holder, it is only right that that tenure-holder should have a certain security of tenure. It is not only desirable in the interests of the tenure-holder himself, but also in the interests of the raiyats of the estate, because it is perfectly obvious that, whenever an enhancement is made in the rent of a tenure-holder, he is bound, in his own interest, to pass it on to the raiyat. Now 15 years is, generally speaking, the period within which the rents of occupancy raiyats cannot be altered, and it is logical therefore that the same period should apply in the case of the rents of tenure-holders. In the particular amendment which is now before the Council the Hon'ble Mr. Das proposes that, where a tenure-holder's rent has been fixed by contract between the parties, it should be open to the Courts to raise that rent as frequently as it pleases. It seems to me that this proposal is not only undesirable for the reasons which I have already given, but also unnecessary. The proprietor and the tenure-holder make their contract with their eyes open. Under the law as it stands at present, they know that the rent for which they have contracted will not be liable to revision by the Court for 15 years, and they take this circumstance into consideration in fixing the rent. It is clear that great uncertainty would be introduced into contracts of this description if the parties knew that the contract was liable to revision by a Court immediately after it was made. I submit, therefore, that the Hon'ble Member's amendment would introduce an undesirable element of uncertainty into contracts, and should be rejected by the Council. I would also add that I would repudiate the Hon'ble Mr. Das' suggestion that serious evils were caused to Orissa by the revisional settlement, or that Government ever conceded that such was the case either with that settlement or with the one that preceded it. We claim that these settlements have done untold good for Orissa in every way, even though—as was bound to be the case in such a large area—some mistakes may have occurred here and there."

The Hon'ble Mr. Das said :—

"I have simply to say this much. I expected, Sir, that there would be no objection. Believing as I do that the Bengal Tenancy Act\* is responsible for all the labour which the Hon'ble Member in charge of the Bill, and the Hon'ble Mr. Maddox have taken to have a special Act, I expected that there would be no serious objection to making matters plain. As regards the objection which has been stated in other quarters, that, if the wording of the Bengal Tenancy Act\* is altered in the slightest degree, the probability is that the Courts would infer that there was some special intention in making this alteration, and consequently would construe the Bengal Act differently, that is an argument which has force only in cases where the Bengal Tenancy Act\* is used side by side with another Act, and in which a certain section has been altered in a slight degree; but when it is clear, as it will be from the preamble and other parts of the Orissa Tenancy Bill, that it is only meant for the special circumstances and conditions of a particular country and people, certainly there will be no difficulty whatever, for it will be obvious that Government was driven to the necessity of a special Code by the experience that the Bengal Tenancy Act\* will not do in all things for Orissa.

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

22. If motion No. 21 be not carried, the Hon'ble Mr. Das to move that the words "on the same grounds" be inserted after the word "Court" in line 3 of clause 10.
23. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or during which enhancement has so commenced" be inserted after the words "so enhanced" in line 4 of clause 10.



[Mr. M. S. Das; Mr. H. McPherson; Mr. Saiyid Wasi Ahmad.]

24. The Hon'ble Mr. M. S. Das moved that the following be added as a proviso to clause 10, namely:—

“Provided that nothing in this section shall apply to a contract by which a tenure-holder binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, effected in respect of the tenure by, or at the expense of, his landlord.”

He said:—

“Sir, I have already explained that a proviso should be added to this clause which would make it clear. It is now only clear in a certain class of cases, instead of generally, and leaves the contract open. It says ‘nothing shall apply to a contract whereby a tenure-holder binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, effected in respect of the tenure by, or at the expense of, his landlord.’

“Of course, the general objection will be that the clause really means that. That may be.”

The Hon'ble Mr. H. McPHERSON said:—

“May I be allowed to interrupt and explain? The clause is clear on the point. When there has been an enhancement by the Court or by contract, the rent cannot be again enhanced, *by the Court*, within 15 years. All the clause means is that, in the absence of a contract, the landlord cannot go to the Court and sue for an enhanced rent. If, five years after an enhancement, the landlord induces the tenure-holder to enter into a contract for an additional enhancement on account of fresh improvements, there is nothing in the Bill which can prevent him from doing so. The clause only refers to what can be done in the Courts in the absence of contracts. The clause is perfectly clear and covers all that you ask for.”

The Hon'ble Mr. DAS said:—

“That is what I do not understand, Sir. The Hon'ble Member must understand that he is legislating for the most backward and stupid people. We are very slow of comprehension, as can be seen in my own case; then why not give us a little more light?”

The amendment was then put and lost.

#### Clause 12.

The Hon'ble Mr. Saiyid Wasi Ahmad moved that the following be inserted at the end of clause 12 (1), namely:—

“provided that the entire tenure, and not a portion of it, is transferred or bequeathed.”

He said:—

“Clause 12 runs thus: ‘Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.’

“If a tenure-holder is permitted by this clause to transfer or bequeath either all or any portion of his holding, the result will be that it will necessarily add to the number of holdings, that is to say, instead of one, it is possible that 50 or 100 separate holdings may be created if portions are allowed to be sold or bequeathed. It will also, if a holding is allowed to be divided and sub-divided, increase the number of suits that the samindar or the superior landlord would have to institute against the defaulting tenants. My amendment is that, if a permanent tenure is to be sold, it should be sold in its entirety. Suppose that this amendment of mine is not accepted by the Hon'ble Member in charge of the Bill, what will be the result? If a tenure-holder seeks to sell his one holding

[Mr. H. McPherson; the President.]

to, say, a hundred persons, the holding will go on getting smaller and smaller, and the difficulty of the zamindars will naturally and necessarily increase. It is for these reasons that I wish to add a provision towards the end of this clause that whenever any such sale does take place, the entire holding should be sold and not a portion."

The Hon'ble MR. H. McPHERSON said :—

Before I discuss this amendment, I should like to make a personal explanation to the Hon'ble Members from Bihar. When I referred to the lively interest which they had taken in the Bill, I did not mean them to believe that a general interest in our proceedings would be other than welcome. What I was thinking of was an interest that ran to over one hundred amendments out of two hundred and sixty, many of which betrayed very imperfect acquaintance with the local conditions of Orissa and some of which appeared to be opposed to the interests and wishes of the representatives of Orissa. The present amendment will illustrate what I mean.

'It is one of a series which has been proposed by the Hon'ble Members from Bihar with the object of placing a veto on the transfer of portions of tenures. Amendments Nos. 28, 38, 41 and 50 are similar, and there may be others. The amendments are not in accordance with the local custom of Orissa nor with the provisions of section 27 of Act X of 1859\* which contains the existing law on the subject. Transfers of portions of tenures, by sale, gift succession and otherwise, are specifically referred to in that section. Such transfers of portions of tenures do not involve any division or distribution of the rent payable, and this has been made quite clear in the redraft of clauses 13A to 13D which I propose later to place before the Council. I would ask the Hon'ble Member, in the circumstances explained, to withdraw this amendment.

The amendment was then, by leave of the President, withdrawn.

*The "fresh amendments," † numbers 1A to 13A.*

The Hon'ble MR. H. McPHERSON said :—

"May I have your permission, Sir, to move the fresh amendments† of the clauses relating to the transfer of tenures and holdings and cognate matters, which have been entered in my name on the separate list that has been laid on the table this morning? They are numbered 1A to 13A."

The PRESIDENT said :—

"The rules are suspended in order to enable the Hon'ble Mr. McPherson to move the fresh amendments which Members will find on the table."

The Hon'ble MR. H. McPHERSON said :—

"There are no less than 62 amendments dealing with clauses 13A, 13B and 13C which refer to the transfer of tenures, and with clause 25A which deals with the transfer of occupancy-rights. Nearly one-half of these amendments have been put forward by Hon'ble Members from Bihar. The remainder which have been filed by the Orissa Members cover all the debatable ground of the transfer clauses and have been very carefully considered by my hon'ble friend Mr. Kerr and myself with the

\* i.e., the Bengal Rent Act, 1859.

† These amendments (numbered 1A to 13A), which will be found set out in full, in their relevant positions, in the report of the debate on the Bill contained in the proceedings of the 21st March and subsequent dates, were printed on a separate paper and placed before the Council for the first time on the morning of the 20th March. They embodied several of the suggestions put forward by Hon'ble Members in the amendments sent in by them in regard to clauses 13A, 13C and 25A; but as they were not included in the original amendment list, and as there had been no time to circulate them for the information of Members before the meeting of the 20th March, they were referred to in the debate as "fresh" amendments.

[Mr. H. McPherson.]

object of finding a solution which will meet the reasonable objections of their proposers. The redrafts of clauses 13A; 13B, 13C, 25A and 91, together with the new clauses 13CC, 13D, 13E and certain consequential amendments, represent the result of our joint deliberation with the proposers of the Orissa amendments, and have been accepted by them as a satisfactory solution. The following are the chief points in which the redrafted clauses differ from those in the Bill as amended in Select Committee:—

"In clause 13A, dealing with transfers by succession, we have made an addition whereby an opportunity is given to the landlord to appear and be heard, and registration is not allowed till the Collector has satisfied himself that the applicant is the true heir or successor.

"In clause 13C, dealing with transfers of tenures other than those specified in clause 13B, we have provided for an alternative fee which minimises the danger of a fraudulent understatement of the consideration-money in deeds of transfer. We consider this preferable to throwing on the Collector the burden of ascertaining true market value in all cases. Several of the original amendments relate to market value.

"Sub-clause (3) of the same clause has been amended so as to leave the burden of proof of custom neutral. The complaint was made that the burden of proof had been laid unfairly upon the landlord.

"In new clause 13CC we have made it clear that the transfer of a portion of a tenure and its registration do not constitute a division of a tenure such as is contemplated in clause 91.

"Clause 91 has been redrafted so as to accord with the existing clause 88 of the Bengal Tenancy Act.\*

"Sub-clause (3) of clause 25A, dealing with occupancy holdings, has been amended on the same lines as sub-clause (3) of clause 13C, but the explanations have been retained, for I regard them as essential to the acceptance of the compromise now proposed. Sub-clause (4), which made the orders of the Collector final, subject to revision, has been excised, and this leaves the orders of the Collector subject to the ordinary course of appeal prescribed in clause 213. Sub-clause 5, which was added because the orders of the Collector were made final in the preceding sub-clause, has also been excised. A new sub-clause has been added which removes permanently-settled estates from the operation of clause 25A, and, with respect to these areas, the *Illustration* which stood in the original Bill as *Illustration (1)* to clause 246 has been restored as *Illustration (1a)*. The justification for this exception is that the evidence of custom of transfer, on which the provisions of clause 25A were based, was collected in the course of the revision settlement from the temporarily-settled area. We have no sufficient information regarding the practice of transfer in permanently-settled areas, and have therefore left it to be governed by existing custom or usage, without attempting to define that custom or usage."

"With this explanation I propose to put, clause by clause, in their proper order, the redrafts or new drafts contained in the separate paper which has been placed before Hon'ble Members this morning. If they are accepted by the Council, I gather that the amendments standing in the names of other Hon'ble Members will automatically fall to the ground, but of course it will be open to any member to bring forward any point which he has raised in his amendment."

#### Clause 13A.

1A. The Hon'ble Mr. H. McPherson then moved that, for the reasons explained above, the following be substituted for sub-clauses (1) and (2) of clause 13A, namely:—

- (1) In the case of every transfer of a tenure or portion of a tenure by succession, the landlord shall recognise the transfer, provided that the transferee shall pay him a fee amounting to rupees two, except in the case of a *bajiafidar* when the fee shall be rupee one.

[*Mr. M. S. Das ; Mr. H. McPherson.*]

- (2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

✓ The Hon'ble MR. DAS said:—

"Sir, I beg to submit that the introduction of these fresh amendments at this stage handicap us very much. This Bill has been in the hands of a Select Committee, and I was told that this Bill has been thought over by Government for years and that the Select Committee went through it and recast it; and now, when we are actually considering the Bill, certain important amendments are made, and we find them on the table as we come to this Council. In justice and fairness to us, I think certainly a little more time ought to have been given to us. When I moved the other day that this Council had not time enough to discuss this Bill, and therefore that further proceedings in connection with this Bill should not be moved in this Council, I was told that this Council was certainly the only competent Council that could deal with it, and now we are faced with amendments that are brought in at this stage; and unless the Hon'ble Member in charge of the Bill wishes us to take up the consideration of these amendments on some subsequent day, it really comes to this that certain amendments are made on certain important provisions of the Bill, and that we are required to proceed with them immediately; if this does not justify my saying that actually this Bill is being rushed, I do not know what does. That is the condition in which Orissa is placed here. Highly-paid official members of the most eminent service in the world have laboured for years, and then they produce a Bill which undergoes considerable change in the Select Committee, and now, at the last moment, we are faced with certain further changes of an important character! And I submit that certainly these changes ought not to be discussed to-day."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, may I rise to explain briefly what the situation really is? If regard be had to this new redrafted clause 13A which has now been proposed by me and if the amendments that stand under the heading of clause 13A in the 'List of Amendments' be examined, it will be found that what has been done is merely to accept some of these amendments. I have thus merely anticipated some amendments proposed by Hon'ble Members. I do not see therefore how it can be suggested that there is any question of rushing a new draft through the Council. Surely, to ask the Secretary to redraft a clause so as to meet the wishes of Hon'ble Members, and to have their amendments thereby put into acceptable shape for them is no very great crime on my part! As redrafted, the new clause covers amendment 34 which stands in the name of the Hon'ble Raja of Kanika, and 35 which stands in the name of the Hon'ble Hrishikesh Laha, while another redraft covers amendment 37 which stands in the name of the Hon'ble Rai Sheo Shankar Sahay Bahadur. We are not making any departure from the draft clauses of the Bill, except so far as is calculated to meet objections raised by the amendments of Hon'ble Members, and I expected that Hon'ble Members would have welcomed the step we have taken which is in the nature of a concession to them. I do not see in the least why we should not consider the redrafted clauses now, but we can consider the original amendments first, if Hon'ble Members so prefer."



[*Rai Sita Nath Ray Bahadur ; Mr. Kerr ; Mr. Apcar ; Babu Bhupendra Nath Basu.*]

The Hon'ble RAI SITA NATH RAY BAHADUR said:—

"I beg to remind the Council, Sir, that the Bill has been in the hands of the Government for several years, and it has undergone several modifications and alterations in the Select Committee. I don't quite understand the position, but it seems somewhat strange that at the last moment serious amendments should be presented to us without notice, and that we should have no time to go through the amendments or study them. All that I can say is that it is an unusual procedure for the Government or, for the matter of that, for the Hon'ble Member in charge of a Bill to move amendments after the Select Committee stage has passed by. Moreover, it is a serious departure from the principles which have been recognised in the Bengal Tenancy Act\* that a portion of the tenure should be allowed to be sold and the landlord should be compelled to recognise transfer of a portion of the tenure. It is against the spirit of the Bengal Tenancy Act\* to compel the landlord to recognise transfer of a portion of a tenure.

The Hon'ble MR. KERR said:—

"My object in intervening at this stage is simply to explain the change that has been made in the original Bill by the Hon'ble Mr. H. McPherson. The clause now before us deals with the transfer of tenures by succession, and it provides that the landlord shall be required to recognize the transfer, provided he is paid certain fees; and, if, in any case, he refuses to accept the fee, the transferee or his successor in interest shall apply to the Collector. The original Bill says that the Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner and shall, by an order in writing, declare that the transfer is duly registered.

"It was brought to our notice that a fraudulent transferee might come up and represent himself as the successor of the original tenant, and we therefore thought it was advisable to meet that particular objection. We now provide that the Collector shall give notice to the landlord to appear and be heard, and shall decide whether the applicant is the real heir or not; and, if the Collector finds that the applicant is the real heir, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

"That is the only change which has been made in the provisions of clause 13A, and the only point that the Council need consider with regard to clause 13A."

The Hon'ble MR. APCAR said:—

"I have not been able to hear distinctly what has been said.

"Do I understand aright that these proposals made by the Hon'ble Mr. H. McPherson are in the nature of a compromise embodying the proposals made in the amendments sent in by various Members of the Council? If I am correct in my supposition, I do not see why the Hon'ble Member could not, as the proceedings went on and in the course of the debate, have made these proposals; but, instead of doing that, these clauses have been submitted before the meeting in a form which is acceptable to Government. I may state that, for my own part, I see no objection to the proposals made, or to the manner in which they have been submitted."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"I really do not understand the reason why Mr. Das complains. It is the most extraordinary complaint that I have ever heard in this Council. When a Bill is proceeded with, we, non-official Members, bring in amendments, and these amendments, when necessary, are changed as to their language, and sometimes they are adopted by the official Members; if they are adopted, these