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MEMO

ON THE

RELATIONS BETWEEN

JENMIS

AND

KANAPATTOM TENANTS

IN

TRAVANCORE.

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TRAVANCORE GOVERNMENT PRESS—1885.

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A MEMO on the relations between Jenmis and Kanapattom Tenants in Travancore.

In the four years during which I have had the honor to be connected with the Government of Travancore, I have received many complaints from the jenmi landlords of the State of the hardship to which they are subjected under the operation of the Royal Proclamation of the ^{25th Karacadagom 1042.}
A. D. 8th August 1867. The complaints have been both frequent and numerous. Their burden is that whilst on the one hand, the Proclamation practically puts it out of the power of the jenmi to oust his kanapattom tenant under any circumstances, on the other, it leaves him without any ready means of recovering those just dues which it is the obvious intention of the Proclamation should be secured to him from his recalcitrant tenant. The established Courts of the country are, indeed, open to him for enforcing payment, but this remedy, owing to the unavoidable expenses and hardships incident to litigation, amounts, it is contended, to a practical denial of justice. The late Edappalli Chief was the first to complain to me of this state of things, and it was, I believe, the difficulty he experienced in managing his tenants, in getting them to renew their kanom leases, in realising his customary dues, and in ejecting them even in cases in which ejection is permitted by the Proclamation—it was this difficulty as much as his straitened circumstances and embarrassed finances which induced him to seek the intervention of Government in the management of his estate. At the last Murajapum which brought crowds of our Numburi land-lords to the capital, they made it a point, I believe, of bringing their grievances personally to the notice of His Highness the Maha Rajah. More recently, an extensive land-holder, the Palūr Numburipad, has more than once earnestly begged the Government to take over all his landed property under Sircar management, alleging as his reason for the request his inability to hold his own against his tenants under the operation of the Proclamation; and since then, the Punjiat Chief has followed suit, although in his case there are other reasons besides the difficulties arising from the Proclamation which induce him to seek for Government interference.

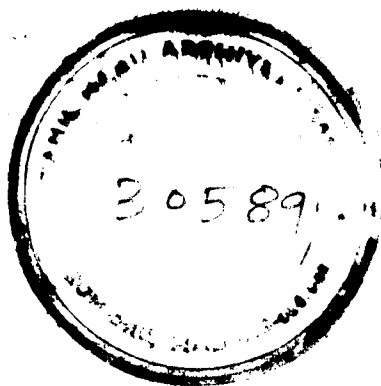
2. I have been led by these repeated complaints to study the past and present state of the question of jenmi and tenant rights, and I have referred in particular to the discussions which preceded and eventually led to the issue of the Proclamation of 1042.

3. I find from these discussions that my friends Sir Madava Row and M. Sadasiva Pillay who were Dewan and 1st Judge of the Sadr Court at the time, took opposite views of the question. The Judge naturally looked at it from a legal and judicial point of view, while the Dewan considered it in its political and social aspects. To the one, the grounds of equity and justice applicable to the case were conclusive; to the other, the considerations of expediency and fitness on which the prosperity of the State depended, appeared to over-ride all other considerations. One at least of the Residents who took part in the discussions inclined to the latter view, as it is the generally accepted view in British India, and the outcome was the Proclamation in question which, for facility of reference, I give in the appendix.

4. Whatever may be thought of the theory of the origin and development of the relative rights of jenmis and tenants propounded in my friend Sir Madava Row's paper, there can, I think, be no question as to the soundness of the conclusion at which he arrived, namely, that the arbitrary ejection of kanom tenants at the will of their land-lords was incompatible with the economic progress and improvement of the country. Holding this view, he very properly sought by means of the Proclamation (although I should have preferred a regular legislative enactment) to lay down the policy, I may say, the law which should guide the Courts in their disposal of cases involving the rights of jenmi and tenant, and thus arrest the mischief, which, in the absence of an authoritative declaration of such policy, the conflicting decisions of the established Courts were producing by setting aside prescriptive rights and long possession, and thus unsettling the minds of the agricultural population and jeopardising the best interests of the country. So far, therefore, as the aim of the proclamation is to impart a character of permanency to the tenure under which the kanapattom tenants

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hold their lands, I think it behoves the Government to adhere firmly to the policy already laid down. It by far this—the most important part of that document—is to be upheld and excluded from consideration, it will be asked what is it that the jenmis object to as being prejudicial to their interests and what is it that they demand.

5. Taking advantage of my presence at Cottayam, I invited the chief jenmis and some of the principal tenants in North Travancore to meet me in order that I might by personal discussion, ascertain, as far as possible, the present state of the question—what has been the effect of the practical working of the Proclamation, how far the complaints of the jenmis that their interests have been prejudicially affected are well founded, in what respects they have been so, and what remedy should be applied. The meeting took place on the 1st and 2nd of October.

B. A list of the jenmis and tenants present is given in the appendix. The result of the conference was most satisfactory. I cannot speak too highly of the patience, moderation and good sense shown by the jenmi land-lords throughout these discussions. Never aggressive, but on the contrary retired and simple in their disposition and habits, contented to a fault, and loyal to the back-bone, they readily disclaimed all desire to assert any right not already conceded and intended to be secured to them by the Royal Proclamation; they had no wish, and did not seek to be supported in any attempt, to exercise any arbitrary power of ejection of their tenants; all that they sought for was the removal of obvious defects in the Proclamation and the carrying out of its spirit in its integrity.

6. The tenants—and only a few of them were present—did not seem to be particularly oppressed with any grievance, and from the nature of the case, one would suppose that they could have no reasonable ground of complaint against any of the provisions of the Proclamation. Their appearance certainly indicated a state of clover which completely forbade any supposition of their suffering from any wrong. But having attended the conference they doubtless thought that they

C. were in duty bound to say something, and they put in a written statement which I give in the appendix to be taken for what it is worth.

7. To my mind, the jenmis have made out a strong case for the interference of the Legislature.

8. I will briefly state the points brought out in their favor in the course of the discussions; but, for this purpose, it is necessary first to go carefully over the provisions of the Proclamation. On the side of the tenants, that document provides that:—

(a) While they hold lands of jenmis for a consideration under such tenures as kanapattam &c. and so long as they pay the stipulated rent and other customary dues, they shall not be liable to be ousted by the jenmis, nor shall the courts give judgment in favor of such action.

Proclamation
Para 1.

(b) When the jenmi refuses to receive the rent, renewal fees &c. the tenant shall be at liberty to deposit the same in the proper Munsiff's Court with a written declaration setting forth the jenmi's refusal; that such declaration shall be filed by the Munsiff free of institution fee; that a notice shall thereupon be issued to the jenmi calling upon him to receive the money deposited and grant an acquittance to the tenant; and that if the jenmi fail to appear, or, appearing, refuse to receive the amount deposited by the tenant, the Munsiff shall pass judgment recording the fact of the refusal by the jenmi and other particulars.

Proclamation paras
4, 5 & 6.

(c) The judgment so passed shall be a bar to any action by the jenmi for ejecting the tenant on the ground of the non-payment of the rent &c. to which such judgment refers.

Proclamation para 7.

On the other side—that of the jenmis—the Proclamation lays down that:—

(d) The jenmi shall be at liberty to exercise according to the rules and usage appertaining thereto, the right of re-adjusting the rent at the renewal of the lease where such adjustment is allowed by custom.

Proclamation para 2.

(e) The jenmi may sue the tenant for the recovery of rent and other dues with interest thereon, where such dues have fallen into arrears, and in such cases the Courts may award payment of the dues.

Proclamation para 3.

(f) The jenmi may seek recovery of land also, where, notwithstanding express demand, the tenant has withheld payment of the rent due for a whole period of 12 years; and in such case alone, the Courts shall be competent to order restoration of land also, such restoration being subject to payment of compensation for improvements &c. which may be due to the tenant according to local usage.

Proclamation para 3.

(g) Where, in future, the jenmi grants leases on receipt of a consideration, if he should desire to secure the right of revocation in respect of any lease so granted, he shall clearly set forth the same in the lease-deed in a form prescribed; the tenant shall in no way demur to the exercise of such right; the jenmi shall be at liberty to seek ejection of the tenant holding such lease, and the Courts may order ejection in accordance with the terms of the lease.

Proclamation para 8.

9. Such are the provisions of the Proclamation. No one can doubt for a moment that its obvious intention was to hold the balance evenly between the jenmi land-lord and his kanom tenant, so far as that could be done consistently with the main purpose and object of the Proclamation—namely to confer permanency of tenure on the tenant in occupation; but owing partly to the incompleteness of the measure i. e. in other words, to the Proclamation not going far enough, and partly to the want of precision in the language employed in it, the actual result has been to strengthen very considerably the position of the tenant and to leave the jenmi very much at his mercy. Such at least is the feeling of the jenmis so far as I have been able to judge from the discussions which took place at the conference.

10. Let us see how far they are able to make good their case.

11. In the first place they point out that while the Proclamation lays down a special and summary procedure to protect the tenant from eviction even after the expiration of 12 years, it leaves the jenmi to recover his just dues from his defaulting tenant by the ordinary and expensive process of a regular law suit. The great bulk of the jenmis are poor and destitute of pecuniary means. Their habits and training unfit them for entering the lists with practised opponents in a civil action. The dues to be recovered by them from their tenants are generally very small and sometimes occasional; a regular suit, even though for such small claims, involves appeals and entails delay, expense, trouble and vexation out of all proportion to the amount at stake; and the attitude of the tenant under the Proclamation is such as to preclude all consideration on his part towards his once allodial land-lord and all attempt at conciliation by the latter. The result practically is a denial of justice. Deprived of the power of eviction which the jenmi once effectually held in *terrorum* over his contumacious tenant, it is urged that he is also without any ready means of enforcing his just claims.

12. But it will be said "Surely those who have the means and otherwise the

Vide Regulation III of 1040 sec. V. Note—I am not at all satisfied that a jenmi's claim to rent falls under Sec. V. Yet that is the section, I am told, under which suits brought after 3 years for recovery of michavarom are thrown out. One would think that such claims came more properly within the purview of Sec. VII than of Sec. V, but the decisions of the High Court are the other way and are of course binding.

ability to assert their rights in the established Courts can fully recover their dues under the Proclamation." The jenmis say no—not altogether. There is no doubt that it was the clear intention of the framers of the Proclamation that the jenmi should have it in his power by a regular suit to recover every fraction of his michavarom or rent and other customary dues. But this intention has been entirely defeated in practice by the ordinary law of limitation which prescribes, or is construed by the Courts to prescribe, that no suit shall lie for rent of land after the lapse of 3 years from the date on which it falls due. The result is that the jenmi must sue every 3 years at least. As, besides the michavarom or regular rent, he is entitled to various customary fees which fall due, some every year and some at irregular intervals, a land-lord having contumacious tenants to deal with, must have

recourse to the Courts almost every year and be at perpetual warfare with them. But, as already said, owing to his impecuniosity and want of ability otherwise, suits for recovery are comparatively few, and the just dues of the land-lord in many cases remain unrecoverable and unrealized.

13. That this is no unfounded or exaggerated statement may be seen from a statement which I have been at some pains to procure in order to test the allegation of the jenmis, and this statement will be found in the appendix.

14. The statement is not complete. Returns have been received as yet from only 18 taluqs out of 28, but so far as they go, they show, it will be seen, that in the interval of 17 years which has elapsed since the date of the Proclamation :—

Rs. 14,72,673 on account of michavarom

5,83,624 „ renewal fees and

3,02,079 „ fees payable on ceremonial occasions or a

total of 23,58,376 was due to 363 jenmis; that out of this aggregate, Rs. 13,92,758 have been recovered out of Court, only Rs. 91,417 through the intervention of the Courts and Rs. 8,74,201 or nearly 37 per cent still remains outstanding. It is obvious from these figures that whether from disinclination to resort to protracted litigation or from inability to undertake it (the latter is far more the case than the former) but a very small fraction has been realized by civil action, while more than one third of the aggregate dues are still unrealized, and that the bulk of this must be given up by the jenmis as bad debts owing to the operation of the law of limitation. A stronger case than this it is hardly possible to establish.

15. Next, the assembled jenmis pointed out what they have found in practice to be another very serious defect in the Proclamation. Paragraph 3 of that document provides that “the jenmi may seek recovery of land (also) where notwithstanding express demand, the tenant has withheld payment of the rent due for a whole period of 12 years,” and “in such case,” the Proclamation continues, “the Courts shall be competent to order restoration of land also, such restoration being subject to payment of compensation for improvements &c. which may be due to the tenant according to local usage”. It is strange that this provision, so just on the face of it to the jenmi on the one hand, and so wholesome a check on continued recusancy on the part of a tenant on the other—it is strange that this provision should have been rendered entirely nugatory in practice by the very language employed. As the Proclamation stands, the tenant has simply to wait quietly for 11 years and more, and just as the 12 years run out, to deposit one year's rent or even a portion thereof in the proper Munsiff's Court, and purchase exemption from liability to an action for ouster, for “unless the payment of rent for a whole period of 12 years has been withheld,” no such action lies; and it has already been shewn that under the Limitation Act no more than 3 out of the 12 years rent can be recovered by a suit. Thus even in the extreme case of a tenant failing to pay his land-lord his just dues for an entire duodecennium, the jenmi can neither recover his land nor money—except a very small portion of his rent—and this in spite of the spirit and the clear intention of the Royal Proclamation.

16. A further grave defect in that document to which the jenmis have invited attention is the omission to secure to them the right of obtaining a renewal of the lease on the expiration of every twelve years, which according to the Proclamation is the period for which a kanom lease holds good. The procuring of this renewal not being made clearly obligatory on the part of the tenant, the jenmi, it is said, is without the opportunity of re-adjusting his rent with reference to the increased value of his property—nor of even enforcing payment of the fees which by custom are payable on the occasion of such renewals, and which have always formed a substantial part of the income of the jenmi land-lord from his property. The Proclamation indeed lays down that “the jenmi shall be at liberty to exercise according to the rules and usage appertaining thereto, the right of re-adjusting the rent at the renewal of the lease where such adjustment is allowed by custom,” and it also in another place states that “where the jenmi refuses to receive rent, renewal fees &c.” But this, it is urged, does not much help the land-lord. Being practically secured from ejection under any circumstances, and not being expressly required by law to

obtain a renewal of the time-expired lease, the tenant need not so much as meet his land-lord with the vantage ground he occupies. Thus all Policheluthu, as the renewal of the kanom leases is called, is, it is said, at a stand-still since the date of the Proclamation except in the rare cases of a jenmi retaining any of his old influence over his tenant, or of the latter being still in the power of the former from the fact of his holding from him other property than that held on kanapattom, or of his being compelled by a suit in a Court of law.

17. As the matter at present stands then, the position of the jenmis is as follows :—

1st. That by their being left to recover their rents and other dues from their tenants by the ordinary, dilatory, expensive and tedious process of a regular law suit, they, or more correctly, the great bulk of them are unable to recover their rights from year to year, and, so far, are practically kept out of what was clearly intended to be secured to them by their Sovereign.

2ndly. That when a jenmi manages to get the where-withal for carrying on a law-suit and further screws his courage to the sticking point and goes into Court, he is met at the very threshold by the law of limitation which precludes his recovering all that is due to him, and the difficulty of his position is thus enhanced in a manner not contemplated by the Proclamation.

3rdly. That the renewal of leases at the end of every 12 years not being made compulsory, the jenmi is without the means, except by an expensive and protracted law-suit, of obtaining such renewal and the fees payable on such occasions, and

4thly. That the power of evicting his tenant which in the extreme case of the rent due being withheld for a whole period of 12 years, the Proclamation expressly professes to secure to the jenmi, is practically defeated by the wording of the document.

18. Such, in brief, is the complaint of the jenmis. That the Proclamation, however unintentionally, has had the effect of leaving the tenant complete master of the situation and the jenmi at his mercy must, I fear, be admitted. If this conclusion is accepted, then it only remains to consider what remedy should be applied to redress the wrong and place the jenmi in the position which, judging from the discussions which resulted in the issue of the Royal Proclamation, it was the undoubted intention of the Government at the time to secure to him.

19. That the intention of the Proclamation was what I have stated it to be, that it has fallen short of such intention, and that the document is so far an incomplete measure will be gathered from the following extracts.

Mr. Fisher who was British Resident in 1864 in a Memo addressed to the Sudr Court on the 1st February of that year, wrote as follows on the question of how the relative rights of jenmis and tenants should, in his opinion, be treated. “All, therefore, that seems to be wanting now is first to recognize the kanom tenure as renewable periodically, but not revocable so long as the holder pays the michavarom and other fees demandable on renewal by the jenmi, secondly to simplify as much as possible the means of recovering the michavarom and fees and to provide for the periodical renewal of deeds and payment of fees by such arrangements as will make the tenants' title depend on punctuality, and ensure for him equal punctuality of renewal of his title, by withholding the fees payable thereon until the title is renewed. Perhaps this might be done by allowing the payment of the necessary fees into a Court where the jenmi held back and making the tenants' title saleable by cheap and easy process should his personal property not satisfy the jenmi's demand.” “It is probable” Mr. Fisher added “that a useful enactment having for its object the easy recovery of rent, fees &c., &c., might be drawn up from Regulation XXVIII of 1802 and Regulation V of 1822,” and he accordingly called the attention of the Sudr Court to those Regulations.

20. The Dewan himself, the framer of the Proclamation, proposed, *inter alia*, “that another enactment be also framed as very properly recommended by the late Resident, in the interests of the jenmis in view to facilitate the recovery of rent &c., dues from the tenants.”

21. It would serve no useful purpose to inquire at this distance of time why, after such an explicit declaration of the intention to secure to the jenmis by some summary process, not only the easy and prompt recovery of their dues, but the periodical renewal of deeds and the payment of fees incident thereto—why the Proclamation did neither. It is enough for our present purpose to state that that measure is professedly incomplete and that the result has been such as to point to the necessity of repairing the omission without further delay. I feel this to be an act of tardy justice which should no longer be delayed in the interests whether of the State or of the jenmis. A paper written by His Highness the Maha Raja in May 1882 is given in the appendix as a valuable contribution to the literature on the subject.

22. I will now proceed to state as concisely as I can the remedial legislation required in my opinion.

23. And first, I would declare that 12, not 3 years should be the limitation applicable to suits for rents and fees due under kanapattom leases. My own view is that this is the case under the present law, but if there is any doubt on the subject, such doubt should be authoritatively removed.

24. In the second place, it is of the utmost importance that some summary and effectual means should be placed at the disposal of the jenmi for recovering his michavarom and other dues as they fall due, without having to resort to a regular suit which is the only course now open to him, and the practical effect of which I have already endeavoured to explain. If anything is ever likely to reconcile him to the loss of the power of eviction which the Proclamation has taken away, it is an easy and ready mode of recovering his rent and other dues which in the case of the majority of this class of land-holders, are all they have in this world to support them through life. But I need not dwell on this point after the extracts I have given from Mr. Fisher's and my predecessor's memos. The question before us is how this summary means of recovery is to be provided. What Mr. Fisher suggested was the passing of an enactment based on Madras Regulations XXVIII of 1802 and V of 1822. These Regulations are no longer in force having been repealed by Madras Act VIII of 1865 which is the present Rent recovery law in Madras. I happen to possess some practical experience of the working as well of the old regulations quoted by Mr. Fisher as of the later enactment which has superseded them. The latter has simply re-enacted with some modifications the provisions of the older Regulations so far as the process for the recovery of rents is concerned, and it has never been a workable or popular piece of legislation. Even if the fact were otherwise, I should not be disposed to take the Madras Regulation as the basis of legislation in the case before us. What I would recommend as far more likely to meet the necessities of the case we have to deal with, may be briefly sketched as follows.

25. I would, by a careful local enquiry, ascertain and record as a first step the various fees payable by the custom of the country by kanapattom tenants to their jenmis, whether at the time of the first execution or subsequent renewal of the kanom lease or at any other time. So far as my limited inquiry goes, in addition to the michavarom which is the pattom agreed upon minus the interest on the money advanced, there are (what are generally not specified in the lease) the following fees payable at the time of the execution or renewal:—

- 1 Adukkuvadu.
- 2 Oppudusi.
- 3 Wólai-panom.
- 4 Elandalai-kanom.
- 5 Adukkala-kanom.
- 6 Sepparai-kanom.
- 7 Parakanom.
- 8 Alakkadai.
- 9 Ona kálcha.

There may be others also. The custom of the different parts of the country varies very considerably. Some only of the above fees are payable in some places, others in others—probably in very few places are all of them payable. Not only the

kind of fees payable, but also the amount is a varying item, and both are determined by custom and prescription. Adukuvadu is the largest of the fees payable. It amounts to 20 per cent of the kanom or money advanced, sometimes more, sometimes less according to local usage. The others are petty sums intended to cover the copyist's fee, attestation fee, cost of writing material and douceurs to the chief members of the household and servants.

26. Besides these renewal fees which are payable only at intervals of 12 years under the Proclamation, certain perquisites are payable on six important ceremonial occasions in the land-lord's family.

The six ceremonies are,

- 1 Choru Unu.
- 2 Upanayanom.
- 3 Samavarthanom.
- 4 Veli.
- 5 Pindam.
- 6 Masom.

These are important events in a Numburi's—I may say in all Brahmin's—families, and the perquisites consist of presents in kind or money. The value of the present varies according to local custom, but is considered to amount in the aggregate to about one-fifth or 20 per cent of the pattom or rent of the property leased. Of course, all these ceremonies do not necessarily occur in every family, and the fees are payable only when they do occur. Further, when the property is a puriadam or garden, the following fees, it would appear, are payable under the term of Punchabhogum, namely:—

- 1 Combu chakkai.
- 2 Colai-thenga.
- 3 Colai-adakkai.
- 4 Colai-valai.
- & 5 Vettu-wolai.

These, as the very terms import, are a share of the produce of the garden given for the benefit of the lord of the soil. The contribution is confined to the principal products—namely the jack fruit, the cocoanut (both the fruit and the leaf, the latter for thatch,) the areca and the plantain.

27. Such are the fees payable by the tenant to the jenmi and the payment of which is or is intended to be vouchsafed to him by the Proclamation. It will be gathered from what has been stated that they are small in amount, occasional in character falling due only once in 12 years or on occasions of domestic events which may or may not occur, and that the rate or amount of the payment is not the same in all parts of the country, though the exact rate or proportion is definitely fixed by local usage in each case. Where a Pagoda happens to be the jenmi, the fees payable are different, and are fixed with reference to the religious festivals to be performed in the Pagoda. It is clear that if the Government is to safe-guard the punctual and prompt discharge by the tenant of such liabilities (and it is punctuality and promptness of payment that jenmis insist on) it will not do to leave to the Courts who have to decide on the claims preferred to them, to take evidence on each occasion as to the nature of the fees, their amount, and the questions of usage which must arise in connection therewith. This will not only take up the time of the tribunals who have to adjudicate, and who, as a rule, are already overworked, but will defeat the object we have in view of ensuring the prompt settlement of the claims of the jenmis. What I would strongly recommend, therefore, as a first step, is that the fees payable by kanom tenants to their jenmis, their nature, their amount, the occasions on which they are payable, and the local customary law governing them, should, in the case of each jenmi in the State be ascertained and recorded once for all by a competent roving Commission appointed by Government and empowered to summon persons, to administer oaths, and to take and record evidence. On the Commission I would place a High Court Judge, an experienced revenue officer, an intelligent jenmi land-lord to represent his class, and a well-informed holder of kanapattom leases as the representative of the tenants. A Commission thus formed and moving about the country would in six or eight months obtain and register all the information of the kind I have indicated. The task may, at first sight, seem formidable, as we have, according to the accounts of the last survey, between 4,000 and 5,000 jenmis including Devaswoms, but the investigation will become easy and simplified as it proceeds, and the fees and rates and the local usage

by which they are governed may not, after all, be so various and divergent as may be imagined, and will be capable of being grouped. Nor will the Commission have to rely on oral evidence only. The leases themselves and accounts will be available which will facilitate the inquiry and ensure correct results.

28. It might be a question for the Commission to consider whether the various fees payable, whether on account of renewal of the lease or on ceremonial occasions, might not be advantageously compounded into a lump sum payable annually with the michavarom where both the jenmi and tenant agreed to such a course. Of course, the feasibility of such an arrangement and the principles on which the composition should be effected would need careful consideration.

29. The information collected by the Commission, when carefully collated and tabulated, I would publish in the first instance as widely as possible, to give those concerned, whether jenmis or tenants, an opportunity of preferring any objections they wished to bring forward. After sufficient time allowed for this purpose, I would adopt this record or table of rights or whatever else it may be called, as final, and make it the groundwork of the necessary legislation i. e. I would embody the information in the shape of a schedule in the proposed enactment for the guidance of the Courts who have to adjudicate on the claims in question. It will probably be questioned whether such a schedule would be a safe guide in all cases for courts to act on judicially. I am inclined to think it would be quite as safe a guide at all events, if not a safer one than the evidence they would have to obtain and act on, in its absence, in each case as it came before them. The jenmis would gladly welcome and facilitate the investigation by the Commission, and I do not know that the tenants would have any object in opposing it. And any misstatement or putting forward of unfounded pretensions will be out of question when both the parties concerned will be confronted and documentary evidence will be abundantly forthcoming to settle disputed points. It might be desirable to have the information taken down attested by the jenmis and tenants concerned.

30. A full and authentic record of the particulars of the customary fees which the jenmis are entitled to receive from their tenants being thus obtained as the basis of legislation, I would suggest the passing of a law for better carrying out the intention of the Royal Proclamation of 1042 on some such lines as the following:—

(a) That each District Munsiff should hear and decide all claims to rent or other dues accruing within his territorial jurisdiction under kanapattom leases as small cause claims, provided that the amount of each claim does not exceed 50 Rs.

(b) That each Zillah Judge having jurisdiction should similarly hear and dispose of all such claims preferred to him when the amount of the claim exceeds 50 Rs. but is not above 100 Rs.

(c) If, in any case, the value of such claim exceeds 100 Rs., then it should be heard and disposed of as a small cause claim under the small cause procedure by a Special Court of small causes, any Judge of the High Court whom His Highness the Maha Rajah may be pleased to appoint for the purpose, forming such a special Court of small causes.

(d) The tenant shall be bound to pay his jenmi land-lord before the 30th day of Audi of each Malabar year, the michavarom payable by him for that year under existing leases.

(e) He shall likewise be bound to pay as they fall due, all customary fees payable on occasions of domestic events in the jenmi's household; or if a compounded sum in lieu of such fees has been agreed on between the jenmi and tenant and set forth in the schedule, such compounded sum shall be paid annually with the michavarom.

(f) Failing payment as required by (d) and (e) it should be open to the jenmi to sue in the Court having jurisdiction under (a) (b) and (c) for the payment withheld, plus interest at 12 per centum per annum from the date on which it fell due.

(g) In deciding on such claims, the Court shall be guided by the schedule appended to the Regulation as to the description and rates of fees or compounded sum due, such schedule being accepted and acted on as correct.

(h) On the expiration of a period of 12 years from the date of every kanom lease, it shall be obligatory on the jenmi to give and on the tenant to obtain a renewal of the lease for a further period of 12 years, and the tenant shall pay to the jenmi at the time of such renewal the adukkuvadu and all other customary fees due on such renewal, or a compounded sum, if a composition has been agreed upon, according to the schedule. He shall also pay any arrears of michavarom which may then remain unpaid for any portion of the expired period of 12 years with interest.

(i) The renewal of the lease required by (h) shall take place within six months from the date of the expiration of the lease, and the jenmi shall grant such fresh lease and also a receipt for the adukkuvadu and other fees and for any arrears of michavarom and interest paid by the tenant as aforesaid.

(j) If the jenmi shall decline or delay to grant such fresh lease and receive payment of the fees and arrears (if any) with interest tendered, and grant a receipt, it shall be open to the tenant to pay into the Munsiff's Court having jurisdiction the amount of such fees and arrears within the period of six months aforesaid.

(k) The Court shall receive payment if tendered and grant a receipt. It shall thereupon give the jenmi notice of the amount paid into court and give him an opportunity of appearing and receiving it or stating such objections as he may have to urge to the receipt of the money. If a larger sum than has been paid into Court by the tenant shall be shown to be due, the Court shall award the same and cause it to be paid and require the jenmi to sign an acquittance and a renewed lease. If the jenmi refuse to do so without reasonable cause, the Court shall then grant such acquittance and renew the lease for a further period of 12 years under its own hand and seal, in conformity with the terms of the expired lease, and such acquittance aforesaid and such renewed lease shall be binding both on the jenmi and tenant and be of the same force and effect as if granted by the jenmi aforesaid.

(l) If within the period of six months aforesaid from the date of the expiration of the lease, the tenant fail to obtain from the jenmi as required by section (h) or from the Court having jurisdiction as required by section (k), a renewal of the lease and a receipt for all fees and arrears (if any) due, it shall be open to the jenmi to sue the defaulting tenant in the Court having jurisdiction under sections (a), (b) and (c) for all renewal fees and arrears of michavarom or other payments due with interest at 12 per cent, plus 25 per cent of the sum sued for as penalty for non-payment at the proper time, and the Court shall summarily decide such suit as a small cause suit under the small cause procedure.

(m) If in any case in which the lease may have been renewed by a Court of law under section (k), the jenmi considers himself entitled to a higher michavarom than that inserted in the renewed lease, it shall be open to him to sue by a regular suit in the Court having jurisdiction for such higher michavarom, and the Court shall decide the suit according to local custom.

(n) In any case in which after the coming of this Regulation into force, a jenmi leases on receipt of a consideration any land not already held on kanapattom and desires to secure the right of revoking such lease on the expiration of any specified period, it shall be competent to him to expressly state such period and his right to revoke the lease and resume possession of the land at the end of such period, and the jenmi shall be at liberty at the end of the said period to eject the tenant, and the Court shall order such ejection in accordance with the terms of the lease.

(o) If at any time a tenant conveys his right, title and interest in any land held by him from a jenmi on a kanapattom lease to another person for a consideration, the purchaser shall report the transaction to the jenmi and obtain from him, on payment of the usual renewal fees, a renewal of the lease, and the jenmi shall be bound to grant such renewal, according to the custom of the country.

(p) When a tenant holding land from a jenmi on kanapattom tenure dies heirless, and his property escheats to Government, it shall be open to the Government to sell the right so acquired by them in the land held on kanapattom and further assess the land with pattom or full assessment.

Provided that the michavarom payable to the jenmi on the land at the time of the escheat shall still form a charge on the land and shall be annually payable by the purchaser to the jenmi, the difference only between the full assessment and such michavarom being payable to Government.

(q) All dues under this Regulation shall be recoverable at any time within 12 years from the date on which they become payable, anything in the ordinary law of limitation for the time being to the contrary notwithstanding.

(r) No appeals shall lie from decisions passed by the Courts under sections (a) (b) & (c).

Provided that the High Court may call for and examine the record of any claim heard and disposed of by a Munsiff or Zillah Judge or special Court of small causes under this Regulation, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by any such Court.

(s) If in any case called for by itself as provided in the last preceding section or which comes to its knowledge, it appears to the High Court that there has been a material error or failure of justice caused by any decision of any such Court aforesaid, it shall be competent to the High Court to pass such judgment, decision or order thereon as it thinks fit.

(t) No person has any right to be heard before the High Court in the exercise of the power of revision vested in it by the last two preceding sections, either personally or by agent, but the High Court may, if it thinks fit, hear such person personally or by agent.

(u) The Courts vested with small cause powers under this Regulation may, in case of any doubt in the disposal of cases coming before them, refer any point to the High Court for their decision.

(v) When such reference is made by the Judge of the High Court appointed as a Special Court of small causes under section (c), or when the High Court in the exercise of the powers of revision vested in it calls up the record of any case decided by such Judge acting as such Special Court, the decision of the High Court shall be by a full Bench.

31. Such are the chief provisions of the law I would propose. Others may on further consideration and discussion be found necessary, but I have indicated the main lines on which legislation should proceed.

32. In explanation of the pecuniary jurisdiction which I have proposed to confer on the different classes of Courts, I may state that the amount due to a jenmi from any one tenant for any one year whether on account of michavarom or other dues is, from the nature of the case, generally a small sum. The interest charged on the kanom always serves to reduce the balance of rent payable to the land-lord; and the other fees, whether those payable on ceremonial occasions or on renewals of the lease are also small. So much is this the case that it is thought that the great bulk of the claims preferred, as it is hoped they will be as they fall due, will be of the value of 50 Rupees and under, and lie to the Munsiff's Courts, leaving comparatively few (those between 50 and 100 Rupees) to be brought before the Zillah Courts, and hardly any before the Special Court of small causes.

33. It will be observed that the Regulation I have proposed goes in one respect further than even the Proclamation of 1042 in securing permanency of tenure to the tenants. It does not allow ejection in any case. This I think is as it should be. The jenmis may now be said to be almost reconciled to the loss of this power, and it will be impolitic to continue it in any shape, to leave it even with the Courts, as the

* Courts are not always apt to exercise the power discreetly and ejections even in extreme cases will disturb that sense of security which it is so important to foster, and is further calculated to revive that bitterness of feeling and irritation which at one time

* His Highness the Maha Rajah's Memo Appendix E.

existed. The securing to the jenmi the punctual and prompt payment of their michavarom and other dues is, at the stage which the question has now reached, the primary object in view, and this I hope will be ensured by the proposed legislation.

34. To another point in the proposed draft Regulation it is necessary to invite attention. It relates to a question which, from its nature, is always difficult of satisfactory solution; which has exercised the minds of legislators and statesmen in England in connection with the Irish Land Question, and which is the subject of animated discussion at the present moment in connection with the Bengal Tenancy Bill. I refer to the right of the land-lord to enhance his rent. Theoretically, the right of the jenmi to participate in the increased profits of the tenant arising from a rise in the price of agricultural produce is unassailable, and it has accordingly always been open to him to assert that right in a Court of law; but in the absence of any defined principles on which such claims should be adjudicated by the Courts, there is no uniformity in the decisions arrived at, and parties engaging in law suits on such a question do not always come out of the Court satisfied with the result. It has been suggested that the rate of increment in the rent to which the jenmi is entitled at each renewal of the lease should bear a certain defined proportion to the rise in prices and fixed by law, so that litigation might be simplified, the discretion of the Courts narrowed, and a degree of consistency and certainty imparted to their decisions. But I see serious practical difficulties in this mode of dealing with the question. In the first place, it is a most difficult operation to ascertain and register correctly the prevailing prices of produce, and the difficulty is infinitely enhanced if it is known beforehand that the register is required for purposes of determining the assessment of land or the enhancement of rent. I had bitter experience of this in dealing with the now superseded Olungu Settlement in Tanjore.

35. But let us suppose for our present purpose that the market prices are capable of being accurately ascertained and recorded. How is any scheme of enhancement of rent based on such prices to be laid down which will be just alike to the jenmi and tenant and will work well in all seasons good and bad, for I presume such a scheme must be settled at each renewal of a lease on the basis of the prices prevailing during the preceding twelve years and hold good during the ensuing twelve years, i. e., during the currency of the renewed lease. Let us take a very common case. It frequently happens that the periodical rains are more or less irregular, partial and scanty, a drought ensues, the harvest fails and this is necessarily accompanied by a rise in prices. Such a case has occurred in Travancore twice within the last four years.

36. Take the opposite case of crops failing from floods—a case by no means uncommon in Travancore with its numerous rapid streams and water-courses. Valuable lands are often destroyed and covered with sand by breaches in river and channel embankments. The price of produce may indeed be high on such occasions, but the tenant is sadly pinched by the loss of his customary harvests. Would any such scheme as is suggested be complete and work without breaking down, which did not provide for the enhanced demand against the tenant being relaxed in such unfavorable seasons?

37. But it will be said that, such exceptional cases apart, the prices of agricultural produce have permanently risen all over the world owing to the extensive gold discoveries of the last twenty years, to a fall in the purchasing power of money and generally to increased material prosperity; that the higher standard of prices thus attained is not likely to fall back again, and that it is right that the jenmi should participate in this increased prosperity and obtain a higher price for the use of his land, after making every allowance which may be deemed necessary for meeting the losses of exceptional seasons. Admitting all this, the question arises how is the rent to be practically adjusted to the rise in the prices? Is the enhancement to be in the exact ratio of the rise in the market? I should decidedly say no. If the price of agricultural produce has risen, wages of labor have risen, and the price of other articles has also risen though not perhaps in the same proportion. The tenant will have therefore to pay higher wages for the labor he employs, to pay more for his own living, and more for implements and live-stock. This necessarily increases the cost of production. If, therefore, the jenmi is entitled to a higher rent owing to higher prices, the tenant is also entitled to have the increased cost of production taken into account in adjusting the rent. An enhancement in the exact proportion of the rise in prices would therefore be obviously unjust and out of the question.

38. How then is the proper proportion to be arrived at?

39. If a hard and fast rule must be laid down for the guidance of the Courts such as that the enhancement should be $\frac{1}{4}$ or $\frac{1}{3}$ or $\frac{1}{2}$ of the rise in price, it can at best be only an arbitrary rule erring on one side or the other and not justified by the true rationale of the case.

40. Again, in the dealings between jenmi and tenant in Travancore, the rates of interest on the kanom money paid by the latter to the former are various. I am not at present prepared to say within what limits the rate varies and what is the maximum and minimum. No doubt the inquiries by the proposed Commission will bring out precise information on this as on other points. But what I wish to say now is that if a rise in prices is a reason for the jenmi exacting a higher rent at the time of renewal, would not a rise in the rate of interest be equally a justification for the tenant demanding a higher rate of interest on his kanom? Say that in a kanom lease executed in the year 1174 the interest agreed on between the contracting parties was 8 per cent, that the money advanced was 2000 fanams, that the full vatton or rent of the land was 200 paraes, and that the selling price of paddy was 2 fanams. Then the michavarom payable to the jenmi would be 200 paraes minus the interest on 2000 fanams at 8 per cent or 160 fanams—at 2 fanams a parah to 80 paraes or 200-80=120 paraes. In 12 years or in 1186 the lease falls in and has to be renewed. Meanwhile, the price of paddy has risen say 25 per cent and is $2\frac{1}{2}$ fanams a parah. The jenmi, let us suppose, demands at the time of renewal that the allowance on account of interest deducted from the kanom shall be not 80 paraes as before, but 64 paraes as the price has gone up from 2 to $2\frac{1}{2}$ fanams. This, if allowed, would leave his michavarom at 200-64=136 instead of 120 paraes or an increase of 16 paraes or $13\frac{1}{3}$ per cent on his former michavarom. On the other hand, let us suppose that at the period of renewal money fetches in the market 10 per cent instead of 8 per cent interest, the question then would be whether the tenant would not be justified in saying to his land-lord "Well, I agree to your demand for enhanced rent on account of the increased price of paddy, but as the current rate of interest is 10 instead of 8 per cent, please allow that higher rate of interest on my kanom money." Would such a demand be just or unjust? Could it be fairly rejected? If not, the result would be that the increase in the michavarom due to the higher price of paddy would be neutralized by the increased interest on the money lent or there would be a balance payable to the jenmi or tenant according as the ratio of rise in prices was higher or lower than the ratio of increase in the rate of interest.

41. These considerations are sufficient to show that it is not possible to devise any scheme of enhancement of rent based on the rise of prices of produce which will not be more or less arbitrary in its character, and therefore open to objection, and that any attempt to adjust such claim on the part of the jenmi by legislation will have to embrace the opposite claim of the tenant to an increased rate of interest on the money lent.

42. But it may be said that all that I have stated merely goes to show the difficulty of laying down a precise rule for the guidance of the courts in dealing with the claims of jenmis to enhanced rent; that such difficulty is no reason for keeping them out of what is justly their due, and that if the tenant, on his side, has similar claims to a readjustment of his liabilities arising from fluctuations in the rate of interest on money, it is the business of the Legislature to provide for the settlement of the claims of each party in the best manner possible, and not to allow the difficulty of dealing with the subject to compromise their rights. I fully admit the force of this argument, and will proceed to state in a few words why—while admitting the abstract right of land-lords to share in the increased rent value of land arising from increasing prosperity and the resulting high prices of agricultural produce—why, in the case of the jenmis in Travancore, it is not necessary, in my opinion, to uphold that right by recourse to *special* legislation.

43. I have already stated in another part of this paper that at each renewal of a kanom lease, the jenmi is entitled to receive from the tenant a fee called adukku-vadu which amounts generally to 20 per cent of the kanom money, sometimes more sometimes less, and that there are also other minor fees payable at the same time. Leaving out of consideration altogether the occasional fees payable on ceremonial occasions, the aggregate of the renewal fees may fairly be estimated to amount to 25 per cent at least on the consideration money paid by the tenant to the jenmi. It is impossible at this distance of time to find out why, in addition to the kanom and the

rent or rather the balance of rent, it was made obligatory on the tenant to pay fees amounting to such a considerable sum. What was the intention of the contracting parties? Would the one exact and the other readily consent to superadd to the substantial consideration for the bargain, perquisites of such value without sufficient reason and an adequate motive? About that reason and that motive now lost in the obscurity of time, it is useless at present to speculate. It is sufficient that the fact remains that the payment of such perquisites is part and parcel of the transaction, that it has been so stereotyped by custom as to have all the force of a legal obligation, and that we propose accordingly to provide a summary procedure to secure their punctual payment. Are such fees, payable as they are at each renewal, likely to have been originally intended to cover the jenmi's claims to increased rent accruing from whatever cause? Whether, however, they were so or not in their origin, would there be anything unreasonable or inequitable in our abstaining from specially legislating for the purpose of securing to the jenmi an enhancement of rent based on a rise in prices, seeing that he must be amply compensated by the fees paid at each recurring renewal of the lease, for any equitable share to which he may be deemed entitled in the increased profits of the tenant? For the fees in question, if they are taken at no more than 25 per cent of the kanom money, come up to that sum every four renewals i. e. in $4 \times 12 = 48$ years. What proportion this 25 per cent

Note.—According to the statement D in the appendix, so far as it goes, the renewal fees amount to 31 per cent of the michavarom.

of the kanom bears to the michavarom it is difficult to say, but I question whether such a payment, repeated every twelve years, is not sufficient to cover *any* enhanced rent which the jenmi may be deemed equitably entitled to.

44. Such are my reasons for the hesitation I feel in recommending any *special* procedure for securing to the jenmis a share in the enhanced profits of the tenant accruing from high prices. At the same time, if, as appears, the jenmi has been at liberty in the past to sue in the established tribunals for enhanced rent, I do not think that that door should now be shut upon him, and it will be seen that I have accordingly proposed in section (m) of the draft Regulation I have suggested, that it should be open to him to sue by a regular suit for any increased rent to which he may consider himself entitled.

45. The Civil Courts, it is true, will have to decide such cases as they have hitherto decided them; that is, that they will have no special rule to guide them and will have to ascertain in the usual manner in each case as it comes before them, the rise in the prices, the resulting increased value of land, the larger profits of the tenants and the enhanced rent due. This, as indeed the determining of all assessments and the fixing of all compensations in Travancore, is always done with the aid of the time-honored institution of "Thatasters" or Punchayets possessing local knowledge and familiar with local conditions, and I confess to a feeling that such a procedure with all its faults is far more calculated to fulfil the ends of justice than a hard and fast rule which must in the nature of things fail in its application to cases dependent for their solution on ever varying circumstances and conditions.

46. But although my own individual opinion, as I am at present informed, is such as I have above stated, still, considering the importance of the question, I should be disposed to call the attention of the Commission to it, and invite their careful consideration of it in all its bearings, in view to their advising the Government as to whether they would recommend any other and what course than has suggested itself to me for dealing with claims to enhancement of rents.

47. There are two more sections of the Bill which call for explanation. I refer to section (o) and (p) both of which merely affirm the customary law of the country applicable to the cases for which they provide. First as regards (o), when a tenant holding under a kanom lease conveys the land to another for a consideration, the latter succeeds to the liabilities as well as the rights of the outgoing tenant, and is accordingly bound to report to the jenmi the transaction by which he has come into possession, and obtain from him, by paying the customary fees, a renewal of the lease in his own name. To prevent any future mistake, it has seemed to me expedient that this procedure should be embodied in the proposed Regulation and receive legislative sanction.

48. The other section (p) also, as already stated, lays down what has always been the custom of the country. A tenant holding land under a kanapattom lease dies heirless, the Government as the *ultimus hæres* steps in and takes possession of the land as well as all the other property of the deceased, brings the land under full assessment and sells it for what it will fetch at a public auction. The purchaser is registered in the public accounts as the owner of the land, but as the Government recognizes the michavarom payable to the jenmi on the escheated land as a first charge upon the property, it arranges with the purchaser for its annual payment to the jenmi, reserving to itself the right of collecting only the difference between the full assessment and such michavarom. This has been the universal practice as shown by the oldest public accounts extant. But in the year 1871, the late Sudr Court in a case which came before them in Special Appeal in which some property held on simple mortgage by a certain ryot had escheated to Government, and which the Government assigned on full pattom to another, the 1st Judge Sadasiva Pillay, in recording his judgment observed "If the mortgagor is an ordinary proprietor of the land and simply made a mortgage of the property with right of redemption, the plaintiff is entitled so to redeem, by paying up the mortgage loan with the value of improvements &c., to the Sircar. If the mortgagor were a jenmi, and had leased the property on kanom tenure such as is declared renewable by the Royal Proclamation, my decision would probably be, that if the Sircar chose to take the position of the kanom tenant, they must do so, subject to the right of the land-lord to demand a periodical renewal of the lease with all its incidents."

The above passage, it will be seen, contains a remark quite incidental as to what the Judge's decision would probably have been if the mortgagor had been a jenmi and if the property had been leased on kanom tenure. Still, apparently on the strength of the opinion so expressed, several judgments have since been passed by the High Court laying down the rule that when the Sircar succeeds to the estate of a kanapattom tenant dying heirless, it acquires no more right than what the deceased had, and consequently that it is liable not only to the payment of the jenmi's michavarom, but is further bound to obtain periodically a renewal of the kanom lease held by the deceased, paying the renewal fees at each renewal. So far, however, as the Sircar is concerned, no actual effect has as yet been given to any of these decisions.

49. The fact is that the ruling of the Courts is opposed to the long established and universally recognized practice in such cases. It is a well understood compact between the Sircar and the Brahmaswom and Devaswom jenmis that so long as the jemmom property remains with those jenmis, whether Brahmin or Pagoda, the land shall be entirely free from all demand of any kind on account of Government. And accordingly, when such property passes out of the hands of the land-lord whether under a kanapattom lease or a sale, the Government steps in and imposes for the first time a light tax called "Rajabhogum" (literally ruler's share). In pursuance of the same process, if the holder of the same at any future time dies heirless and the land escheats to Government, it is brought under full assessment and sold and registered in the name of the highest bidder. The State in thus giving the land to a new tenant confers on him, and, he by virtue of his occupancy, takes from them a fresh right.

50. The entire cultivated and arable area of Travancore is held on various tenures which so modify the right of Government to a revenue from those lands that their demand varies from zero upwards to the full assessed value of the Government share of the produce. Accordingly, a large proportion of the landed property is at the present moment either entirely free of assessment of any kind or is charged only with a light quit rent which forms but a very small proportion of the gross produce. Such being the case, one marked feature runs through the whole of the revenue arrangements of the State—namely, that they all tend, however gradually and considerably, to all lands being ultimately brought under full assessment. It will be readily allowed that this is founded on considerations of sound policy and is financially wise. The State revenue is rendered elastic without its being made burdensome; its expansion keeps pace with the increasing wants of good administration; the Government demand being thus confined principally to the land which is the main stay of all Indian finance, the necessity for other harassing and unpopular taxes is reduced to a minimum and the good of the commonwealth is on the whole ensured.

51. The bearing of these remarks on the question at issue will be evident. A tenant's property falls in to the State on failure of heirs in virtue of its sovereign right to all escheats; it is assessed with full pattom; the tenure consequently becomes changed; it is no longer jenmom or inam land exempt from all demand on account of Government or subject only to a Rajabhogum tax, but becomes fully assessed Government land. If the Government in such circumstances must take the position, in every way, of the heirless tenant and must still hold of the jenmi and pay renewal fees and obtain a renewal of the lease, it seems to me that they must practically refrain from asserting their right to the full assessment and leave the tenure undisturbed; to say nothing of the great practical difficulty attendant on a Government undertaking obligations so incompatible with their position as that of becoming a kanapattom tenant under a jenmi, and rendering themselves liable to all the obligations attaching to that tenant. It appears to me to be quite an arguable point how far it is competent to the Courts to force this position on the Government—to alter a long established custom such as that in question affecting a large class of cases, affecting the right of the sovereign to escheats, affecting the settled financial policy of the State, and calculated further to disturb and upset existing tenures of land and their incidents. The decisions of the Courts to which I have referred have as a matter of fact proved extremely embarrassing, and it is therefore of the greatest importance that in any legislative measure which may be passed for settling authoritatively the relations between the jenmis and their tenants, this question should also be fully considered and set at rest. What I would suggest is that it should in the first instance be brought on behalf of Government before a full Bench of the High Court with the view of securing for it the fullest deliberation and discussion. Meanwhile, it may also be advantageously referred for the consideration and report of the proposed Commission and it is with this object that I have raised the question in this paper by inserting section (p) in the proposed Bill.

52. If it should be ultimately ruled that the Government succeeding to the property of heirless kanapattom tenants are bound to pay the jenmi his renewal fees, the same as those whose places they have taken, there would, it appears to me, be two ways in which this obligation could be discharged with the least practical inconvenience. The first would be by shifting it on to the purchaser, by making it known before the sale that the in-coming tenant must still hold under the jenmi and be responsible to him not merely for the michavarom which is deducted by Government from the assessment payable by him, but also for the renewal fees. Nor will this be any hardship to the new tenant, because with the knowledge of this liability attaching to him, he will pay less for the land at the sale than he otherwise would, and the matter would thus adjust itself as between him and Government.

53. The other way in which the question could be settled without compromising the right of the jenmi to a renewal of the lease and the incidental fees, would be by adding to the michavarom which is deducted from the full assessment, a sum which may be considered a fair commuted value of those fees.

54. I have now noticed the principal provisions of the Bill. It may be objected to the measure as a whole that it is special legislation for a special class, but this is unavoidable and has throughout the discussions been admitted to be necessary. Sadasiva Pillay in his memo pointedly alluded to this objection. He wrote "Instead of a self-acting system of mutual contract based on mutually settled pecuniary interest, requiring no special powers for its enforcement except those which the ordinary tribunals already provide, we would be creating by law a system of relationship which necessitates novel expedients for its working. * * * Arguing from this effect to the cause, I think we cannot avoid the suspicion that the basis of irrevocability has something incorrect and unsound in it in regard to the kanapattom leases of Travancore. Abandon that basis, and we find the present system works itself and requires no novel legislation."

55. If in the interests of the progressive improvement of the country at large, if not of substantial justice, it was found necessary for the Government to step in and declare the leases under which a large class of industrious tenants hold their lands from their land-lords irrevocable, it is surely necessary in the same manner to secure

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to those land-lords who have been thus deprived of their most cherished right of ejecting the tenant, the full enjoyment of their remaining rights to which they are unquestionably entitled. Otherwise, the Royal Proclamation becomes an act of confiscation. Nor will the proposed legislation have anything novel in its character. Our Munsiffs are already invested with and exercise small cause powers, and what is suggested is only an extension of this power. The claims on which they will be called upon to adjudicate, dissociated as they will be from the lands from which they originally undoubtedly accrued, will no longer be connected with any real interest in those lands and will therefore be of the nature of simple money claims. In providing for such claims being heard and disposed of in a summary manner like other small cause suits, we merely seek to save from the evils of ordinary litigation an important section of the community who rightly or wrongly chafe under a sense of wrong, and whom it is necessary by all the legitimate means in our power to conciliate by securing to them the speedy and prompt realization of those dues which it was the expressed object of the Proclamation to guarantee to them. In this view, the measure I venture to propose or indeed any other which may be ultimately decided on will be simply supplementary to and complementary of that Proclamation. In other countries, and indeed in other portions of the British Indian Empire, it is the grievances of tenants which are causing agitation and with which the legislatures concerned are endeavouring to grapple. Happily, here, the tenants are already in the enjoyment of what in the discussions on the reform of the Irish Land question, have been designated the three F's; and what is proposed in this paper, will, while securing to the jenmis the residuum of rights left to them by the Proclamation, strengthen and consolidate those important elements of agricultural progress and prosperity—fixity of tenure, fair rent and free sale.

V. RAMIENGAR,
DEWAN.

Trevandrum, }
31st October 1884. }

APPENDIX.

A.

Proclamation by His Highness the Maha Rajah of Travancore issued under date the 25th Carcadagom 1042 corresponding with the 8th of August 1867.

Whereas, in reference to communications dated respectively the 25th Vrichigom 1005 and 14th Thulam 1007, issued to the Appeal Court, under order of the then Maha Rajah, on petitions addressed to the Palace by Jenmies and Tenants, on the subject of their reciprocal relations, it has been found expedient to reaffirm and render clear the sentiments expressed in those communications and to give them effect in a way equitable to both parties, it is hereby notified,

1. While Tenants hold lands of Jenmies for a consideration under such tenures as Kanapattom—Ottee—Marayapattom—Oolavoppattom—Kodalikani, &c. and so long as they pay the stipulated rent and other customary dues, they shall not be liable to action for ouster by the Jenmies, nor shall the Courts give judgment in favor of such action.

2. The Jenmi shall be at liberty to exercise according to the rules and usage appertaining thereto, the right of readjusting the rent at the renewal of the lease, where such readjustment is allowed by custom.

3. The Jenmi may sue the Tenant for the recovery of rent and other dues with interest thereon, where such dues have fallen into arrears. The Jenmi may seek recovery of land also, where, notwithstanding express demand, the Tenant has withheld payment of the rent due for a whole period of twelve years. In cases of such suits the courts may award payment of rent and other dues; and where it is proved that payment of rent for a whole period of twelve years has been so withheld by the Tenant, in such cases alone, the courts shall be competent to order restoration of land also, such restoration being subject to payment of compensation for improvements &c. which may be due to the Tenant according to local usage.

4. When the Jenmi refuses to receive the rent, renewal fees &c. the Tenant shall be at liberty to deposit the same in the proper Munsiff Court with a written Declaration, or Variola, in detail setting forth the Jenmi's refusal. Where rents &c., are due in kind, the payment to be deposited shall be the price thereof calculated at the Niruk or market rate. Payments hitherto justly due to the Jenmi shall be deposited, as above, in one sum, and in regard to future rent &c., they may be deposited, as they fall due, at the end of each Malabar year.

5. The Variola accompanying the deposit shall be filed in the Munsiff Court free of institution fee, and a notice shall be issued to the Jenmi requiring him to receive the payment deposited and grant an acquittance to the Tenant.

6. If the Jenmi fail to appear, or, appearing, refuse to receive the amount deposited by the Tenant, the Munsiff shall pass judgment recording the fact of refusal by the Jenmi. The said judgment shall also contain statements in reference to the particular items of dues deposited, the property in respect to which the rents &c. were due, the period for which they were stated to be due, and so forth.

7. The judgment so passed shall be a bar to any action by the Jenmi for ejecting the Tenant on the ground of non-payment of the rent &c. to which such Judgment refers.

8. Where in future the Jenmi grants leases on receipt of a consideration, if he should desire to secure the right of revocation in respect of any lease so granted, he shall clearly express the same in the lease deed, to the following effect 'It is hereby declared that at any time after such a day of such a month, of such a year, the Jenmi shall have the right to redeem the land (forming the subject of the lease) from the Tenant, and the Tenant shall in no way demur to the exercise of such right.' And the Jenmi shall be at liberty to seek ejection of the Tenant holding such lease, and the Courts may order ejection, in accordance with the terms of the lease.

(Abstract translation)

(Signed) T. MADAVA ROW
Dewan.

LIST OF JENMIS AND TENANTS.

No.	Taluq.	Proverthy.	Name.
JENMIS.			
1	Vycome	Mulaculam.	Karuthadathu Palur Namburipaud.
2	Muvattoopalay.	Peravam.	Paduthol Palur Namburipaud.
3	Do.	Do.	Palur Vadakkillathu Namburipaud.
4	Yettumanur.	Kaduthiruthi.	Yelumavoo Namburipaud.
5	Do.	Manyur.	Kannampulli Namburi.
6	Do.	Do.	Mangattoo Namburi.
7	Do.	Do.	Kannavalla Namburi.
8	Do.	Aimmanem.	Thadiyakkol Namburi.
9	Do.	Do.	Vadakkumala Namburi.
10	Do.	Kyppila.	Chemangattu Namburi.
11	Do.	Do.	Eravathoor Namburi.
12	Do.	Do.	Oollaimur Namburi.
13	Muvattoopalay.	Peravam.	Kurumur Namburi.
14	Vycome.	Manacunnum.	Chathamangalathu Namburi.
15	Do.	Kulasakharamungalam.	Parapparambu Namburi.
16	Do.	Do.	Muringur Namburi.
17	Do.	Do.	Marappadi Namburi.
18	Do.	Do.	Narayana Nellur Namburi.
19	Do.	Do.	Monattu Namburi.
20	Do.	Vycome.	Eddanthuriathi Nambiyathri.
21	Do.	Do.	Neendur Vadakka Yedathu Namburi.
22	Do.	Do.	Mattappulli Namburi.
23	Cottayam.	Vijayapuram.	Kooramattathu Namburi.
24	Do.	Do.	Vattikkattu Namburi.
25	Do.	Do.	Kanjerakkattu Namburi.
26	Do.	Do.	Moola Namburi.
27	Do.	Do.	Mannur Namburi.
28	Do.	Cottayam.	Paramaswara Iyen (Kariakar of Swamiyar at Thiru-
29	Do.	Pambadi.	Kythamattathu Namburi. [varppu.]
TENANTS.			
1	Cottayam.	Cottayam.	Arakkel Narayanan Govinden.
2	Do.	Do.	Mukkaliyil Aiyappen Govinden.
3	Do.	Do.	Parameswara Iyen (Kariakar of Swamiyar at Thiru-
4	Do.	Do.	varppu.)
5	Chenganacherry.	Do.	Padippurakkal Vappichanayaken Ramanayaken.
6	Yettumanur.	Nelamperur.	Nynadathu Kymal Narayanan Ramen.
		Vechoor.	Ananthakrishna Iyen.

TRANSLATION OF A PETITION PRESENTED BY THE TENANTS.

It was the practice in former days to settle the rate of michavaram due to the jenmis by calculating the yield of the lands devised on kanam tenure at the rate obtaining in the vicinity, and deducting therefrom the rate of interest on the sum advanced to the jenmi by the tenant, the rate of such interest being calculated at one para for every ten paras advanced to the jenmi in the case of advance in kind, and at the rate of 12½ paras on every (1000) thousand chuckrams advanced. It was also the custom to stipulate in addition that the tenant pay to the jenmi a perquisite of 3 fanams during the jenmi's life as *ചെരിവ്* at the rate of half a fanam for every ceremony for 6* ceremonies in the land-lord's family as also to pay Adukkuvathu fees on every renewal at the rate of 2 fanams for every para of land devised on the kanam tenure. This practice is no longer observed.

At the present day, the jenmis *increase* the rate of pattom due from the tenants and *decrease* the rate of interest on the sum advanced by the tenants and thus calculate a higher rate of michavaram than the one that was obtaining before, insist on the renewal of the lease after every 12th year and for the purpose of renewal demand adukkuvathu avakasam at the rate of 1 and 2 fanams on every 10 fanams of the kanam amount and Oppudusi at the rate of 3, 4, 4½ and 5 fanams on every 100 fanams of the kanam. Besides these, the jenmi's demand on every para of land 1 fanam for every ceremony in his family and a fee for every Onam. Many jenmis have by such demands driven their poor ryots to poverty, though some of them have wisely not resorted to such extremes.

2. It has in many cases become impossible to meet the Government Kist and the jenmis' demands from the income of the land.

3. During the last several years, many lands held under this tenure have not yielded anything to their owners owing to droughts and floods.

4. Punja lands require to be left fallow for every alternate year or at least for one year after every two years of cultivation. But the jenmi's demand is all the same every year whether the lands are cultivated or not and alike on all lands whether left fallow or whether they are cultivated once only in the year or whether they are cultivated twice in the year—as is sometimes done in some of the eastern parts.

5. To cultivate *വിരിച്ച* and *മുളകൾ* is less laborious than to cultivate punja lands. Much capital is required for cultivating punja lands; to drain water from the beds of the fields by means of Persian wheels, to bring down bamboos, sticks and leaves for their embankments and to provide strong embankments against the action of tides involve a large expense on the part of the cultivators; sometimes with all these precautions the water floods the crop hopelessly and ruins the poor ryot.

6. Besides, punja lands are almost invariably infested by insects every year and for their destruction the ryots are compelled to flood their fields by letting in the water which has again to be emptied out for raising the crop.

7. Many ryots have been reduced to poverty owing to the severity of the exactions of the jenmi, though owing to the good sense of some of the jenmis their ryots are pretty well off.

8. Owing to the cruel exactions of some of the jenmis, lands of considerable area have been practically left uncultivated thus entailing loss to Government and the jenmis concerned, and reducing to poverty the poor ryots holding lands under them.

(Signed) Arakal Narayanan Govinden and others.

കൊട്ടയത്തിൽ വച്ചു കുടികൾ കൊടുത്ത ഹജ്ജിക് പകുപ്പ്.

ദൈവസ്വം ബ്രഹ്മസ്വം വകയായിട്ടുള്ള നിലങ്ങൾ അയലാചാര പാട്ടത്തിനും ആ പാട്ടത്തിൽ അത്ഥം പറയുന്ന നെല്ലിനു പത്തിനു രണ്ടു പലിശ ഉള്ളതിൽ പാതി ഒരു പലിശ കുറച്ചു പത്തിനു ഒന്നു പണത്തിനു ആയിരം ചക്രത്തിനു രശി നൂറുകൾ ൨൫ പറ നെല്ലു പലിശ ഉള്ളതിൽ പാതി ൧൨½ പറ നെല്ലും ഉദയം നീക്കി ശേഷം മിച്ചവാരം വച്ചു ആധാരം എഴുതി കൊടുത്ത ആ മിച്ചവാരവും പുരഷ്ഠാന്തരത്തിൽ ഒരു പറ നിലത്തിനു മകനു മൃഗ്ഗുതിന്റെ ഉറണിനും വെളിക്കും ഇങ്ങനെ രണ്ടും അച്ഛന്റെയും അമ്മയുടെയും പിണ്ഡം ഇതിനുള്ള നാലും ഉൾപ്പെടെ ആറടി യന്തിരത്തിനു മൊതിരപ്പണം വകക്കു അടിയന്തിരം ഒന്നുക്കു അര പണം വീതം മൂന്നു പണം വീതം ആറു അവകാശവും പററിയും ഒരു പറ കണ്ടത്തിനു രണ്ടു പണം വീതം അടുക്കുവതു കൊടുത്തു പൊളിച്ചെഴുതി പിടിച്ചു നടന്നു വന്ന ക്രമം മിക്ക ജന്മികളും വിട്ട പാട്ടത്തിൽ കൂട്ടിയും ഉദയത്തിൽ കുറച്ചും മിച്ചവാരം അധികം വരുത്തിയും ആധാരങ്ങൾ എഴുതി പിടിക്കണമെന്നും അതു ൧൨ സംവത്സരം കഴിഞ്ഞുകൂടുമ്പോൾ വെണമെന്നും ആ വകക്കു പത്തിനു ഒന്നും രണ്ടും അവകാശവും നൂററിനു ൩ - ൪ - ൪½ - ൫ - ൦ ഒപ്പു തുടിയും ജന്മിയിങ്കൽ ഉണ്ടാകുന്ന അടിയന്തിരങ്ങൾക്കു ഒക്കെയും ഓരോ അടിയന്തിരങ്ങൾക്കു ഒരു പറ നിലത്തിനു ഓരോ പണവും ആണ്ടുതൊറും ഓണക്കൊപ്പം കൊടുക്കണമെന്നു നിർവ്വഹിച്ചു ചിലരു അങ്ങനെ നടത്തിയും വരുന്നതിൽ വച്ചു കുടികൾക്കു വളരെ ദൊഷം സംഭവിച്ചിരിക്കുന്നു.

൨ാമത. മെൽപ്രകാരം ഒക്കെയും ചെയ്യുന്നതിൽ വച്ചു വരുന്ന ചിലവും സക്കാരിലേക്കു കരവും ആ വസ്തുവിൽ നിന്നു പൊഴുന്നതിനു പാങ്ങില്ലാതെ തീർന്നിരിക്കുന്നു.

൩ാമത. ഇപ്പോൾ കുറഞ്ഞൊരു കാലമായിട്ടു വെള്ളക്കെടിനാലും വെയിലിനാലും മിക്ക ആണ്ടുകളിലും കൃഷി പിഴച്ചുവരുന്നു.

൪ാമത. പുഞ്ച നിലങ്ങൾ ആണ്ടുതൊറും നടന്നാൽ നെരുകുവട്ടന്നു വിളവു ഉണ്ടാകാഴിക കൊണ്ടു ഒന്നരവാടൻ കാലവും രണ്ടു കാലം നടന്നു ഒരു കാലവും പഴനിലം ഇട്ടു ചിലതു ആണ്ടുതൊറും നടന്നു കിഴക്കൻപ്രദേശത്തുള്ള നിലങ്ങൾ കന്നി മകര രണ്ടു പൂവു കൃഷി ഇറക്കി എടുത്തും വരുന്നതിനു ഒന്നുപൊലെ അവകാശങ്ങൾ വെണമെന്നു തുടങ്ങിയിരിക്കുന്നു.

൫ാമത. വിരിപ്പും മുണ്ടകനും കൃഷിക്കു കൂലിക്കറവും അതിനെക്കാൾ പുഞ്ച നിലത്തിനു വരമ്പു കത്തു വെള്ളം ചവുട്ട മുതലായതും അതിലേക്കു വളരെ മുതൽ ചിലവു ചെയ്തു വളം ചക്രം മുതലായതും വരമ്പു കത്തുന്നതിനു ദൂര പ്രദേശത്തു നിന്നും കൊമ്പു ചവറു മുതലായതു കൊണ്ടുവന്നും വെണ്ടിയിരിക്കുന്നതും അങ്ങനെ ഒക്കെ ചെയ്യാലും ചില നിലങ്ങളിൽ ചിലപ്പോൾ മടവീണ കൃഷി ദൊഷം വരുന്നതും ആണു

൬ാമത. പുഞ്ച നിലങ്ങളിൽ അപൂർവ്വമായി ചില കാലം നെല്ലു പയിരുകുന്ന സമയം പംഴ വീഴുകയും അതിലേക്കു വെള്ളം കെറി പയിര മുക്കി അടിച്ചു കളഞ്ഞു ഉടനെ വെള്ളം ചവുട്ടി പററിച്ചു വന്നിരുന്ന ചിലവു ഇപ്പോൾ ആണ്ടുതൊറും വെണ്ടിയും ഇരിക്കുന്നു.

൭ാമത. മെലെഴുതിയപൊലെ ഒക്കെയും ഇരിക്കയും മെൽപ്രകാരം ഒക്കെയും ജന്മികൾ തുടങ്ങുകയും ചെയ്തിരിക്കുന്നതിൽ വച്ചു ചില കുടികൾ വലഞ്ഞുപൊയും ചില ജന്മികൾ മുമ്പിലത്തെസ്ഥിതി ഏറെ ദെലപ്പെടുത്താത്തതിൽവച്ചു ചില കുടികൾക്കുദൊഷം സംഭവിക്കാതെയും ഇരിക്കുന്നു.

൮ാമത. ജന്മികളിൽ നിന്നും കുടികൾക്കു ദൊഷം വരുന്നതിൽ വച്ചു ദൈവസ്വങ്ങൾ ചെയ്യാതെയും അധിക പാട്ടവും അവകാശവും കൊടുക്കുന്നതിനു മുതൽ ഇല്ലാതെയും തീർന്നു വസ്തുക്കൾ വീഴുന്നതിനും അതിനാൽ ജന്മികൾക്കു നഷ്ടത്തിനും സക്കാരിലേക്കു കരം വീഴ്ത്തും കുടിയാനവനു പൊറ്റുതിരൊഴുത്തിനും ഇടവരുന്നതാകുന്നു.

അറക്കൽ നാരായണൻ ഗൊവിന്ദൻ മുതൽപേര (ഒപ്പു)

D.

Statement showing the demand, collection and balance of Michavaram and fees due to Jenmis from their Kanapattam Tenants for 17 years from 1867-68 to 1883-84.

Number.	Taluq.	Number of Jenmis.	AMOUNT OF FEES & C. PAYABLE BY KANAPATTAM TENANTS TO THEIR JENMIS FOR THE LAST 17 YEARS (1043 to 1059).				HOW RECOVERED.			Balance due from the tenants.	Percentage of Column 10 to Column 7.	Percentage of Column 11 to Column 7.
			Amount of Michavaram (in kind & in money) payable to the Jenmis.	Amount of fees (in kind & in money) payable to Jenmis on account of Aradityanthrom, Onacalcha, &c.	Amount of renewal fees (in kind & in money) payable to the Jenmis.	Total of Columns 4, 5 and 6.	Amount recovered without the intervention of Courts.	Amount recovered through the intervention of Courts.	Total of Columns 8 & 9.			
1	2	3	4	5	6	7	8	9	10	11	12	13
			Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.		
1	Eranial ...	...	...	...	...	...	...	...	...	...	...	...
2	Culculam ...	...	...	...	...	...	...	...	...	...	...	...
3	Velavencode ...	...	...	...	...	...	...	...	...	...	...	...
4	Neyyattincurray ...	...	...	...	...	...	...	...	...	...	...	...
5	Trevandrum ...	...	...	...	...	...	...	...	...	...	...	...
6	Neduvengaud ...	23	93,628	6,997	12,481	1,13,106	74,657	5,913	80,570	32,536	71.2	28.8
7	Sheraingel ...	...	...	...	...	...	...	...	...	...	...	...
8	Quilon ...	...	...	...	...	...	...	...	...	...	...	...
9	Kunnathoor ...	...	...	...	...	...	...	...	...	...	...	...
10	Karunagapully ...	3	20,912	1,671	3,289	25,872	16,350	790	17,140	8,732	66.2	33.8
11	Kartigapully ...	...	...	...	...	...	...	...	...	...	...	...
12	Mavelikaray ...	20	51,718	28,557	27,711	1,07,986	51,640	867	52,507	55,479	48.6	51.4
13	Changanoor ...	27	3,29,669	44,179	1,59,081	5,32,929	3,10,880	15,491	3,26,371	2,06,558	61.2	38.8
14	Thiruvella ...	51	1,74,530	62,121	1,22,030	3,58,681	2,17,479	12,386	2,29,865	1,28,816	64.6	36.0
15	Ambalapalay ...	5	18,854	18,656	9,646	47,156	13,258	3,500	16,758	30,398	45.1	54.9
16	Kotarakaray ...	...	...	...	...	...	...	...	...	...	...	...
17	Pathanapuram ...	10	35,080	12,826	15,840	63,746	52,114	1,913	54,027	9,719	84.8	15.2
18	Sherattalay ...	4	21,975	3,510	4,600	30,085	18,600	3,280	21,880	8,205	72.7	27.3
19	Vycome ...	46	2,34,035	35,878	80,894	3,50,807	2,18,294	8,509	2,26,803	1,24,004	64.7	35.3
20	Yettumanoor ...	26	1,02,930	9,325	11,555	1,23,810	89,073	10,198	99,271	24,539	80.2	19.8
21	Cottayam ...	30	1,28,605	19,265	29,936	1,77,806	1,21,478	3,148	1,24,626	53,180	70.0	30.0
22	Chunganacherry ...	16	43,595	12,873	6,095	62,563	36,879	1,548	38,427	24,136	61.4	38.6
23	Meenachel ...	28	31,520	12,759	20,781	65,060	38,373	958	39,331	25,729	60.5	39.5
24	Muvattupalay ...	22	34,240	4,963	11,624	50,827	28,407	1,666	30,073	20,754	59.2	40.8
25	Thodupalay ...	11	4,727	1,763	2,100	8,590	2,295	62	2,357	6,233	27.6	72.4
26	Kunathnad ...	11	80,912	8,348	18,259	1,07,519	56,321	9,945	66,266	41,253	61.6	38.4
27	Allengaud ...	19	36,085	13,609	40,269	89,963	18,047	10,976	29,023	60,940	32.3	67.7
28	Paravoor ...	11	29,658	4,779	7,433	41,870	28,613	267	28,880	12,990	69.0	31.0
		363	14,72,673	3,02,079	5,83,624	23,58,376	13,92,758	91,417	14,84,175	8,74,201	63.0	37.0

MEMO.

THE JANMI AND KANAM RIGHTS IN TRAVANCORE.

As in other parts of the world this vexed question of Land-lord and Tenant rights, which is an inevitable result of increasing national wealth, has long been discussed in Travancore.

2. Unlike in the greater portion of British India where, in theory the Government is the Lord of all lands, in the Malabar coast, including Travancore, there are Janmis, mostly Brahmins, who have from time immemorial, been unquestionably accepted as lords of the greater portion of the land.

3. As owners of such extensive tracts of land must always do, they have leased these lands to Tenants under certain specific conditions of mutual rights and liabilities.

4. For all practical purposes it may be safely assumed that the Janmi land-lords seldom or never cultivate their own lands or by means of ordinary Tenants at will.

5. In olden days when the increase of population, industry and wealth was extremely slow and limited as compared with the present, and when the stimulus of litigation did not exist, the mutual relations between the Janmis and their Kanapattam Tenants including the periodical renewal of leases accompanied with customary revisions of rental &c., went on smoothly and cases of the extreme step of the ejection of the Tenant by the Janmi were very rare.

6. But various causes, the concomitants of a progressive civilisation, have, during the past half century, disturbed this archaic simplicity and happiness. The Janmi began to imagine that his Tenant withheld from him his just dues, and the Tenant that he has been required to concede more than he ought to. The wants of both went on increasing while the means on the side of the Janmi remained stationary.

7. It is not necessary to stop here to consider whether the land-lord, though himself inactive, is entitled to any share of the increased gain arising from the increased productiveness of his land or from the increased value of the produce. That question has been discussed threadbare. It is as much a fact that the increase to the national wealth resulting from the increased productiveness of a given land would not have been obtained but for the capital and industry of the cultivator as that it would not have been obtained if the land itself were not available. As we are not prepared to accept the theory of certain Political Economists that land must be treated as water or air, having generally no proprietary value, and as we must respect the rights respected by our forefathers, we must accept land, in this discussion, as an element of value and consider that the cultivator should justly pay for the use of the land at least the increased ratio which under progressive national wealth, he must pay for labor, cattle and agricultural implements; and from this it follows that the proprietor of a land is equitably entitled to a share of the benefit arising from its increased value.

8. And the Kanam lease tenure makes certain recognised provisions to secure this share to the Janmi, especially at the periodical formal revisions of those leases. If those revisions and adjustments had been carried out by the majority of Janmi land-lords with periodic regularity and uniformity much of the existing doubts and disputes would never have arisen. But the Janmi's sleeping over his rights or inability, from various causes, to effect these revisions at stated times have allowed generations of Tenants to pass away undisturbed and vested interests in the land to accumulate to such an extent as to render the Tenants regard as unjustifiable the demands, on the part of the Janmi, for revision however legitimate and customary. The recalcitrancy of the Tenant, as a matter of course, has made the demand of the Janmi all the more pressing and arbitrary. The issue of this has been law suits.

9. The "glorious uncertainties of the law" are proverbial, and have never been more prominently illustrated than in cases appertaining to Janmi and Tenant rights. Confusion was added to confusion and contradiction to contradiction till the whole "judge-made law" became a tangled mass of chaos. Ignorance, carelessness and a deficiency of the sense of responsibility on the part of the Judges might in themselves have produced this result. But to these was added a far more powerful motive—self-interest. I do not mean that self-interest which is the result of actual corruption, but the special self-interest arising from the fact of several of these judicial functionaries being themselves either large Janmi land-lords or large Tenants. For instance Parameswaren Nampuri, who was Chief Justice for ten years, was himself a Janmi and had largely purchased Janmam rights from other Janmis. No single man has perhaps contributed a larger share than this gentleman to make confusion more confused, and it was chiefly on account of some of his decisions that the Janmi's propensity to oust the Tenant attained its climax.

10. Things under these circumstances became past bearing. On one side were Tenants who had squatted for generations together in their lands, built permanent habitations, sunk large sums of money in permanent agricultural improvements, sold and purchased these lands as their own real property. On the other were Janmis, who partly by their own fault and partly by the contumacy or fraud of their Tenants had their legitimate rights kept in abeyance and their legitimate dues withheld for a long series of years, while they found the value of their lands immensely risen, and who finding the law Courts disposed to support their claims to an extent they had themselves never expected, were attuned to the highest re-actionary extravagance. The outcome was something like the present state of things in Ireland—much the same in kind though very much milder in degree. Of course, such a state of things could not escape the attention of an

administration guided by a statesman like Sir Mádava Ráo. Holding in view an effective reform in this direction, Sir Mádava Ráo foresaw the necessity of fortifying the hands of the Government by beginning with a reform in the tenures of Sircar Pattam or purely Government lands. The uncertainty of possession and of dues payable in the case of these Government lands was removed by a Royal Proclamation dated 21st Vaikasy 1040, whereby they were made virtually as secure and transferable as other lands. Having done this the Government directed its attention to the Janmi and Tenant question. The action taken was in the shape of a Royal Proclamation. It is dated the 25th Karkadagom 1042, and is the existing law of this State on that subject. That Proclamation was the issue of a full discussion of the question. To this discussion papers were contributed by Sir Mádava Ráo (Dewan) Mr. Sadásiva Pillay (Chief Justice) and the late Mr. H. Newill (Resident).

11. A few words on these papers will not be misplaced. Sir Mádava Ráo and Sadásiva Pillai took two different stand points, natural to their respective official positions. The Dewan took a *political* and the Judge a *judicial* view of the question. The Judge would have gone astray if he had not confined himself to explain the law *as it stood*. The Dewan would not have done his duty if he had not pointed out to what extent public interests demanded urgently the rectification of the defects of that law.

12. As the action taken by Government rested mainly on Sir Mádava Ráo's memorandum it would be well to state briefly what its main gist is. It is this;—1stly The Janmis are not *ordinary* land-lords. 2ndly They are *sovereign* land-lords, as it is clear that in remote times they exercised real sovereign rights. 3rdly That the very peculiar conditions and usages attached to the Kanapattam and other tenures as between them and their Tenants, often providing for feudal services or the money value of such services by the Tenants, obviously show that the Janmis *were* sovereign land-lords. 4thly The leases granted by them must therefore be treated as such. 5thly That it is opposed to sound policy and to public interest that lands held of sovereign lords should be liable to all the vicissitudes common to those attending the contracts between ordinary land-lords and their tenants. 6thly That far greater permanency of interests to the Tenants was contemplated by these peculiar tenures and that it should be upheld by legislation.

13. Such I consider to be the substance of Sir Mádava Ráo's Memorandum. I perfectly applaud the *End* to which that paper is directed. I perfectly agree as to the wisdom and substantial justice of the action taken by the Government on its strength. I recognise also the great ingenuity with which it is drawn up. But admitting all this, I may yet demur to the soundness of the *logic* employed.

14. The Janmis *were* sovereigns at one time or rather they had the power of making or electing sovereigns. They were very much in the same position as the Electors of Germany—the Grand Dukes, Landgraves, Margraves &c. of the Middle Ages. As such their power in the long run was superior even to the person that wielded sovereign power for the time being, for they could, by combined influence, make or unmake a sovereign while the sovereign could never make or unmake a Janmi.

15. Such was their position. But the all sweeping influence of time has effected a complete revolution. The gradual formation of native *dynasties*, their permanency and aggrandisement of political power, the conquests of Tippu Sultan and lastly the advent of the British Government, have completely changed that order of things. The Janmis who *had* more than sovereign powers formerly are now virtually ordinary subjects. They have no power or privileges of sovereignty. They cannot levy taxes, make war, dispense justice, punish crime or compel a defaulting Tenant to pay his dues. The very fact of their resorting to the established law Courts of the Realm proves their acceptance of their position as subjects and the recognition of the same by the State. An enquiry into their *status* as sovereigns may befit an antiquary but not a statesman or legislator. It is unfair to deprive them of all powers and privileges of sovereignty and at the same time saddle them with all its inevitable encumbrances. It may perhaps be urged that the lands demised on Kanam tenure were so demised when the Janmis *had* sovereign powers, and that therefore the intentions of the parties of *that time* should be taken into calculation. In reality leases of such antique date are as rare as the Dodo. The fact that the antique phraseology is to this day retained in these transactions is no reason that the transactions themselves should be treated as if between a Sovereign and his subject-tenants.

16. Sir Mádava Ráo would have done well not to have imported such a legal fiction to strengthen a cause which needed not such extraneous strengthening. True, there was a dilemma. Expediency and substantial justice required the protection of a large class of the industrious population of the country against arbitrary ejection from the lands in which they had spent their capital and labor for generations together. On the other hand, as shown with great insight and impartiality by Mr. Sadásiva Pillai, the position of the Janmi was *legally* very strong. The fiction of primeval sovereignty of the Janmi in no manner enfeebles his rights or strengthens the hands of the Government in legislating against him. It would have been far more graceful that the legislation should have stood on the simple expediency and substantial justice of the measure itself than on such a fiction.

17. Mr. Newill fairly understood the subject and came to the right conclusion. But I cannot say that he showed anything like depth of thought. For instance, he says, "In Bengal, the Government gave unlimited powers to the Janmis (Zemindars) and the Government soon had to deplore the consequences. A remedy became difficult, but very imperative. The legislature stepped in and declared that if a tenant could prove occupancy for but 12 years he was entitled to *permanent* possession, and could not be ousted." This comparison of the Janmi of Malayálam

created by Parasurāma with the Zemindar of Bengal created by Lord Cornwallis about the end of the eighteenth century in contravention to long existing private rights, distinctly shows that Mr. Newill did not or could not go deep into the subject.

18. To return from this digression and turning to the Proclamation itself, I at once admit its wisdom, fairness and substantial justice. It secures to the Janmi all his just dues—all the dues which the contracts contemplate. It secures to the Tenant safety from arbitrary ejection and from arbitrary demands from the Janmi. The Proclamation, if always rightly construed and rightly acted upon, is within its sphere as potent for good as the Proclamation by Her Majesty the Queen-Empress on Her assumption of the direct Government of India in 1858. But the Travancore Proclamation seems to have been as much misinterpreted and misapplied as the British one.

19. Just as a "Review" article is often woven around the nodule of some insignificant publication, the Proclamation *professes* to be merely confirmatory and explanatory of two communications, more than 35 years prior to itself, issued by the then Maharaja to the then Appeal Court, but in reality may be regarded an original legislation in itself. The object of this device is to cover the innovation technically against hostile comment.

20. The very first para gives the pith of the whole law:—"While tenants hold lands of Janmis for a consideration under such tenures as Kanapattam &c. * * * and so long as they pay the stipulated rent and other customary dues, they shall not be liable to action for ouster by the Janmis nor shall the Courts give judgment in favor of such action."

21. The very next para gives the Janmi the "liberty to exercise according to the rules and usage appertaining thereto, the right of re-adjusting the rent at the renewal of the lease, where such re-adjustment is allowed by custom." The word "liberty" in the above should be interpreted as "right." A legislative *permission* is tantamount to a *right*.

22. The third para describes and defines the *only* contingency under which the law Courts are authorized to entertain an action for ouster and give judgment in favor thereof, as an exception to the prohibitory injunction of para 1. It provides that "the Janmi may seek recovery of land also, where, notwithstanding express demand, the Tenant has withheld payment of the rent due for a period of 12 years" * * * "and where it is proved that payment of rent for a whole period of 12 years has been so withheld by the Tenant, in such case alone, the Courts shall be competent to order restoration of the land also, such restoration being subject to payment of compensation for improvements &c. which may be due to the Tenant according to local usage."

23. The rest of the Proclamation lays down the *procedure* for the guidance of the Courts and of the parties, and need not be noticed here. Only the eighth and last para is an exception. It declares that when in a lease deed between a Janmi and his Tenant the right of resumption at a certain fixed period is expressly reserved, such a deed shall be viewed as between an ordinary lessor and lessee and restoration of land adjudged according to merits.

24. From the above it will be obvious that the Proclamation does not alter the *statu quo* in anything but in the matter of ejection which it reserves as a remedy for extreme recalcitrancy on the part of the Tenant as proved by a twelve years' continuous withholding of the Janmi's just dues. If this simple and clear interpretation had been put upon the Proclamation and uniformly acted upon, no complications or difficulties would have arisen. But unfortunately the oriental mind is so constituted that it easily evolves and accepts intentions which nothing within the four corners of a plainly expressed document justifies. Instances of this occur every day in our life and hamper the action of the best of us. If a superior fines his subordinate for some neglect of duty that subordinate is thenceforth set down to be ever in his superior's disgrace and as undeserving of even his just dues. This is unfortunate enough even when confined to the vulgar public; but when judges, who by their position enjoy an acknowledged independence, and who are expected to walk unswervingly in the path shown by the letter and spirit of the law laid down for their guidance, are swayed by this extrajudicial fancy the result is simply deplorable. In truth, a notion that the Government is all for the Tenants and none for the Janmis put its grip on the minds of the judges. And thenceforth a Janmi suitor came to the Court a prejudged man. No enhancement of rent at the renewal of the lease could be enforced by law. The reaction was violent.

25. So far as I am aware the more reasonable Janmis, who form by far the large bulk, do not at all desire the ejection of their Tenants except in cases of extreme default such as is contemplated by the Proclamation itself. They want only their just share of the increased profit. To deny this is glaring injustice; but it has been denied in several cases. The Proclamation affords no excuse for it, but on the other hand the spirit of it might well be interpreted to afford every legitimate facility to the Janmi to recover his dues while taking away from him the power of ejection.

26. I hear that a written opinion which I gave to a Brahmin Janmi in a case of the above description which he lost in appeal not only aided him in getting a review and favorable decision, but has gone much further than that particular case. I hear that it not only broke the force of the tide against the Janmi, but turned it back upon the Tenant. It is surprising that the irresponsible opinion expressed by me, when First Prince, and that not at all touching the ejection of the Tenant, should be laid hold of by some of the judges as a plea to set aside the *dictum* of para 1 of the Proclamation!

27. The facts of that case are these. In most of these Kānapāttam leases there are, as will be gathered from Mr. Sadāsiva Pillay's exhaustive memorandum and from other accepted works on the subject, what may be called *cross obligations* between the Janmi and the Tenant. A Janmi makes over his land to the Tenant, and at the same time receives a sum of money from him. This

money may be considered either a *loan* or *security*. Under either consideration the Janmi recognises his obligation to pay to the Tenant the interest thereon. That interest is stipulated in *grain*, calculated generally at the market value prevailing at the time. Suppose a Janmi takes 100 fanams from the Tenant at 12 per cent per annum interest. Every half year (there being two crops in most paddy lands the adjustments are mostly half yearly) the Janmi has to pay *grain* to the value of 6 fanams to his Tenant. Supposing that grain sells at 5 Edangalis per fanam the Janmi's obligation comes to $5 \times 6 = 30$ Edangalis of grain per half year in the way of interest. But this is not actually *paid* by the Janmi. Tenant is allowed to *deduct* it from the Michavaram (rent) due to the Janmi. Indeed, the very term *Micha* (Balance) Varam (Rent) explains this arrangement. When the time for the renewal of the lease comes—be it 12, 16 or 20 years, the market rate for grain will have risen. The normal tendency, under increase of population and of trade, is for prices to rise. The price of 30 Edangalis of grain will be not 6 fanams but *more* and the Janmi demands that *less* grain than 30 Edangalis shall be deducted to represent 6 fanams. *What* this reduction of deduction shall be the Janmi and Tenant seldom agree. And after the Proclamation and after the manner in which it was, against its own spirit, carried out, the Tenants began to refuse *any* reduction whatever. One such case came into the Paroor Zilla Court. The Judge (Narayana Pillai, now of the High Court) very sensibly decreed reduction, but not to the extent claimed by the Janmi. The Tenant appealed to the Sadr Court. That Court after a full hearing, reversed the lower Court's decision on the plea that the Royal Proclamation barred the original suit. *What can be more extraordinary!!*

28. The Janmi applied for review. It was not granted. He petitioned the Palace and the Resident. No notice was *then* accorded. His counsel took the trouble of going all the way from this to Cuddalore and obtained the written opinion on this point of law from Mr. Sadāsiva Pillai (then retired). The Janmi being a personal acquaintance of mine he sought a written opinion of *myself* on the construction the Proclamation would naturally bear on the point at issue. This I gave him. With these two written opinions the Janmi's counsel further petitioned the Resident praying for a review by the Sadr Court. The Resident sent the papers to the Court recommending review. The case was reviewed and the Court *confirmed* the lower Court's decision which they had before quashed.

29. Such is the history of my concern in the matter. How the opinion I gave as above, could have furnished a handle to the Judges to subvert or even doubt the express authority of the Royal Proclamation is more than I can understand. But no one can deplore more than I do that such a course was pursued by them.

30. I have already recorded my complete appreciation of the wisdom and justice of the Proclamation itself. Only, it ought to have been followed up by a full and careful enquiry into the points it recognises under the terms "rules" "custom" "usage" &c. For, when the State took away the important right of ejection from the Janmi it was equitably bound to afford him every facility to realise his just dues from his Tenant. Of course, the Proclamation left this to the discretion of the Courts. *How* that discretion was exercised the case I have just noticed sufficiently illustrates.

31. I do not at all undervalue the necessity and wisdom of giving wide discretion to judges. There are matters in which the factors are so numerous and the mutations of those factors so diverse that no Legislature can previously legislate for every possible case. Large discretion must be given to the authorities who have to deal with them. At the same time in a matter like the one we are now considering, in which parties, counsel, and experts may explain obsolete terms according to each one's fancy and give oral evidence on custom and usage according to each one's predominant personal interest, it will be very desirable to furnish the Judges with an explanatory book for their guidance, bearing the stamp of authority. This should be very carefully compiled. I would, in view to effect this, strongly recommend the formation of a Committee of which the Chief Justice should be the President, to call intelligent and well-to-do representatives, themselves not involved in litigation, of the Janmi and Tenant classes from the different parts of Travancore and likewise the leading Vakeels that have pleaded for the claims of either in the law Courts, and examine them. The Committee should also call for and examine *representative* title deeds and other documents illustrative of each point to be determined. The stock of evidence so obtained should be carefully checked and digested, and measured by the standard of equity. A hand book founded upon such *material* will preclude the arbitrary interpretations of "custom" "usage" &c. while it will leave to the Courts sufficient discretion where discretion must be exercised. I consider this step a very necessary one.

32. The cost and delays attendant upon litigation form another ground of grievance to the Janmi. It may be well to consider whether the small cause procedure could not be extended to this special class of cases irrespectively of their money value. Also the awarding of costs should be exercised by the Judges with the object of deterring frivolous litigation constantly in view. These points deserve careful consideration.

33. There is another matter in this connection which demands early consideration and settlement. It is not one between the Janmi and the Tenant, but between these on one side and the State on the other. When a family becomes extinct the State steps in and takes possession of all property. This is done likewise when a Kanam Tenant dies issueless. By doing this the State *now* professes to take possession not only of the *issueless Tenant's* rights, but also of the *living Janmi's* from whom that Tenant had held. This is, on the very face of it, as absurd as it is unjust. But to restrict the State to the Tenant's right alone, though just, would place the State in an anomalous position. How are we to solve this difficulty?

34. To do this we should consider what the State's legitimate due of sovereignty is. And to determine *that* we should consider a different case. Now, when a subject family has the prospect of becoming extinct the last surviving member sometimes seeks an *adoption*. He applies to the State for sanction. The State institutes an enquiry as to what property the applicant has. On receiving a valuated inventory of this the State demands of him a fee or *Adiyara* (Nazarāna) of $\frac{1}{2}$, $\frac{1}{3}$ or $\frac{1}{4}$ of the whole according to the respective consanguinity of the person or persons to be adopted to the adopter. In this inventory lands possessed under Kānapattam tenure are likewise included and rated as all other property. This would clearly show that the State's due is *the fee* or *Adiyara*. And applying this to an *extinct* family the State's due is *not the Janmam right* but that amount of fee chargeable to his Kanom holding which the last survivor would have had to pay if he had sought adoption. And *this* the State has the right to levy from the incoming new tenant of the Janmi. Whether this new Tenant is one of the Janmi's or the State's selection, the Janmi should be legally bound to consider him to be put in possession of a *continuation* of the lease and all rights of the deceased. To place this question on a clear footing express legislation is necessary.

10th May 1882.

RÁMA VARMA.

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